



BEFORE THE BOARD OF ADA COUNTY COMMISSIONERS

In re:

Application of Kent Brown

Project No. 201504129 VAC

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. 201504129 VAC.

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

1. In accordance with Section 8-7A-2B of the Ada County Code, the petitioner completed a pre-application conference with the director prior to the submittal of the application on November 5, 2015.
2. On December 10, 2015, Development Services accepted Project #201504129 VAC and scheduled it for public hearing before the Board of Ada County Commissioners on February 10, 2016.
3. On December 14, 2015, staff notified other agencies of this petition and solicited their comments. Any comments received were incorporated into the staff report and are attached as Exhibits.
4. On December 15, 2015, a letter was sent to The Honorable Mayor Dave Bieter of Boise City complying with the provisions of Idaho State Code §50-1306A(4) notifying him of a petition

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that has been brought before the Board of Ada County Commissioners to vacate an easement on a plat that is located within one (1) mile of the boundaries of Boise City.

5. On December 24, 2015, property owners within 300 feet of the site were notified of the hearing by certified mail. Legal notice of the Board's hearing was published in The Idaho Statesman on January 26, 2016 and February 2, 2016. Notices of the public hearing were posted on the property by January 31, 2016 and a certification sign posting was submitted to the director by February 3, 2016.

C. As to the project description, the Board finds based on the application materials found in the file for Project No. 201504129 VAC the following:

1. PROPOSED USES: Vacate an irrigation, utility, and drainage easement shown between Lots 5 and 6, 9 and 10, and 13 and 14, Block 6 of Southcreek Subdivision No. 1.
2. PROPOSED STRUCTURES: Single-family dwellings.
3. PROPOSED SITE IMPROVEMENTS: None.

D. Based on the materials found in the file for Project No. 201504129 VAC, the Board finds the following concerning the project description:

1. PARCEL NUMBER AND LOCATION: The parcel numbers are R8048190540, R8048190550, R8048190580, R8048190590, R8048190620, and R8048190630. The properties are located at 4328, 4334, 4360, 4378, 4408, and 4416 S. Aleut Way.

2. OWNERSHIP: LP Silverpine, LLC and Paradigm Construction.

3. SITE CHARACTERISTICS

Property size: .402 acres.

Existing structures: None.

Existing vegetation: Bare ground.

Slope: The area is generally flat with the majority of slopes being less than 15%.

Irrigation: Southpark Subdivision No. 1 pressurized irrigation system.

Drainage: The properties drain towards the Southpark Subdivision No. 1 storm drainage system.

Views: The property is generally visible from all directions.

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

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The properties are vacant lots in the Southcreek Subdivision No. 1 and are located in the Very High Density Residential (R20) District.

- 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 site is single-family residential and vacant lots in the Simpson Subdivision located in the Medium High Density Residential (R8) District.

South: The site is bare ground is a future phase of Southcreek Subdivision located in the Very High Density Residential (R20) District.

East: The site is large lot residential and a church located in the Shalom Subdivision located in the Southwest Community Residential (RSW) District.

West: The site is single-family residential and vacant lots in the Southcreek Subdivision No. 1 and is located in the Medium High Density Residential (R8) District and the High Density Residential (R12) District.

- G. Based on the officially adopted Ada County land use maps and materials found in the file for Project No. 201504129 VAC, the Board finds the following concerning services:

Access Street and Designation: Access to the subject properties is off of S. Aleut Way, which is designated as a local street.

Fire Protection: Whitney Fire District.

Sewage Disposal: Boise Public Works Department.

Water Service: United Water Idaho.

Irrigation District: New York Irrigation District, Boise-Kuna Irrigation, and Boise Project Board of Control.

Drainage District: None.

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

This section details the comp plan goals, objectives and policies; the zoning ordinance regulations; and other applicable standards regarding development of the subject property.

1. The Board finds **Section 8-6-6 of the Ada County Code** is applicable because the applicant is petitioning for the Board to vacate an irrigation, utility and drainage easement shown between Lots 5 and 6, 9 and 10, and 13 and 14, Block 6 of Southcreek Subdivision No. 1. The Board finds the petition complies with **Section 8-6-6 of the Ada County Code**. Regarding Section 8-6-6 the Board finds the following:

An applicant or owner may petition the board for a total or partial vacation of a recorded subdivision plat, including easements. Vacation shall be processed in accord with the

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regulations set forth in Idaho Code section 50-1306A and recorded in accord with the regulations set forth in Idaho Code section 50-1324.

The Board finds that this petition has been processed in accord with the regulations as set forth in Idaho Code Section 50-1306A. The subject property resides outside of city limits, but is within one (1) of the city limits of Boise City. A letter was sent to the Honorable Mayor Dave Bieter of Boise City complying with the provisions of Idaho State Code §50-1306A(4) notifying him of a petition that has been brought before the Board of Ada County Commissioners to vacate an easement on a plat that is located within one (1) mile of the boundaries of Boise City. As evidenced in the record, written notice of the Board's public hearing was given by certified mail with return receipt on December 24, 2015, to all property owners within 300 feet of the boundaries of the subject properties, which is at least ten (10) days prior to the Board's public hearing on February 10, 2016. Notice of the public hearing was published in the Idaho Statesman on January 26, 2016 and February 2, 2016, which is once a week for two (2) successive weeks. The notice published on February 2, 2016, is more than seven (7) days prior to the public hearing.

The Board finds that the Southcreek Subdivision No. 1 was approved through Project #200600131 ZC-S-DA. The final plat for the subdivision was signed by the Board on June 16, 2014.

The Board finds that the petitioner's detailed letter (Exhibit #4) states that they are seeking the vacation of the easement because when Southcreek Subdivision No. 1 was originally platted, the lots in Block 6 were planned for attached housing. The developer has not been able to find anyone interested in building that type of product in this area. However, the developer has found a builder that can build a detached home on the lots if the three side lot line easements were removed.

The Board finds that the request to vacate an irrigation, utility, and drainage easement between Lots 5 and 6, 9 and 10, and 13 and 14, Block 6 of Southcreek Subdivision No. 1 final plat can be granted as these easements have not been used and will serve no purpose. At this time the following easement holders have provided written documentation that they relinquished their interest in the easement: LP Silverpine, LLC in Exhibit #6, Intermountain Gas in Exhibit #7, United Water Idaho in Exhibit #8, and Cable One in Exhibit #12. The Boise Project Board of Control replied in Exhibit #31 that they have no objection to the vacancy of the above-mentioned easements as long as it will in no way impede delivery of water to any lots in the Southcreek Subdivision. Idaho Power responded in Exhibit #24 that they are requesting for the petitioner to submit an Idaho Power Application for Release of Easement Form to their Corporate Real Estate Department for further review. The Ada County Engineering & Surveying Division provided the following comments in Exhibit #30 – Provide documentation of the relinquishment of the “property drainage” easements by Paradigm Construction Company, LLC. Provide documentation of the relinquishment of the “public utility” easements by Idaho Power. Provide documentation of the relinquishment of the “pressure irrigation” easements by New York Irrigation District, per Note #1 on the recorded plat of Southcreek Subdivision No. 1.

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The Board finds that the request to vacate the easement on the subject properties will not remove the enforceability of other plat notes or easements on the properties.

The Board finds that in accord with Idaho Code Section 50-1324 before a vacation of a portion of a plat can be recorded, the Ada County Treasurer must certify that all taxes due are paid and such certification is recorded as part of the records of the vacation. The treasurer shall withhold the certification only when property taxes are due, but not paid. Upon payment of the appropriate fee therefore, the Ada County Recorder shall index and record, in the same manner as other instruments affecting the title to real property, a certified copy of the order by which the plat notes have been vacated. Such certification shall be by the officer having custody of the original document and shall certify that the copy is a full, true and correct copy of the original.

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 Project No. 201504129 VAC complies with Section 8-6-6 of the Ada County Code, with regard to the vacation of an irrigation, utility, and drainage easement shown between Lots 5 and 6, 9 and 10, and 13 and 14, Block 6 of Southcreek Subdivision No. 1.

ORDER

Based upon the Findings of Fact and Conclusions of Law contained herein, the Board approves Project #201504129 VAC. The Board hereby orders the vacation of the irrigation, utility, and drainage easement shown between Lots 5 and 6, 9 and 10, and 13 and 14, Block 6 of Southcreek Subdivision No. 1.

DATED this _____ day of _____, 20____.

Board of Ada County Commissioners

By: Jim Tibbs, Commissioner

By: Rick Yzaguirre, Commissioner

By: David L. Case, Commissioner

ATTEST:

Christopher D. Rich, Ada County Clerk

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EXHIBIT A

CONDITIONS OF APPROVAL

REQUIRED ACTIONS. THE FOLLOWING LIST DETAILS THE TASKS (IN ORDER) THAT THE APPLICANT AND/OR OWNER MUST COMPLETE BEFORE THE APPROVAL OF PROJECT #201504129-VAC WILL BE CONSIDERED FINAL. PLEASE NOTE THAT YOU HAVE UNTIL TWO YEARS OF THE WRITTEN DECISION TO COMPLETE THESE TASKS UNLESS A TIME EXTENSION IS GRANTED. SEE SECTION 8-7-6 OF THE ADA COUNTY CODE FOR INFORMATION ON TIME EXTENSIONS.

1. Provide documentation of the relinquishment of the “property drainage” easements by Paradigm Construction Company, LLC.
2. Provide documentation of the relinquishment of the “public utility” easements by Idaho Power.
3. Provide documentation of the relinquishment of the “pressure irrigation” easements by New York Irrigation District, per Note #1 on the recorded plat of Southcreek Subdivision No. 1.