

Minutes of the Monday, June 26, 2023  
Meeting of the Planning & Zoning Commission  
Of Lava Hot Springs, Idaho

Those in attendance: Commission Chair, Vicky Lyon, Commission members: Jim Page, Lisa Guthrie, Mark Lowe and Jeanie Avery. Code Compliance Officer, Hudson Saffell. Office Staff: Jill Makuaole and Chandra Taylor. Guests: Hartman Harris, Gary Tucker, Reggie Cochran, Marea and Dennis Betty, Ken Knowles, Ken and Marcia Gallacher, Thresa Cochran, Jim and Judy Hobbs, Steven Mutsaers, Lorrie Lowe, Todd Dye, Lori Bult, Walter and Karen Halladay and Yvette Cadeaux. Bill Goldberg on Zoom.

Jim page welcomes everyone and calls the meeting to order at 6:30. We are going to open a public hearing on a variance for a shed. I need a motion to open the hearing.

Motion to open the public hearing on  
the setbacks for Dennis and Marea Betty.

Motion by Lisa Guthrie.

Second by Jeanie Avery. All Aye.

Jim Page = We need a staff report on the setbacks. Ok, I'll give you to Vicky.

Hudson Saffell – Hud Boring stuff. Notification of the public hearing was posted in the Idaho State Journal on the second of June, 2023.

All home and property owners within a 300 foot radius of 342 W Elm. Dennis is wanting to replace the existing sheds

with one that is about the same size. Seeing that the two sheds are existing structures and the new shed would replace

them I do not see a reasonable cause to impose a setback. Because the storage shed will open to the alley one could

argue that for line of sight purposes one could argue that a setback. However, the 1984-2 Zoning Ordinance line of sight

applies to yards abutting the street. The definition of alley clearly states that an alley shall not be considered a street for

the purposes of this ordinance. However, if the depth of a rear yard is the minimum distance of between the rear lot

ine and the building. And the rear yard shall not have a depth of less than 20 feet  
there is some necessary  
interpretation of the code. To me “building” references the home and not an  
accessory structure but I will leave  
interpretation to the commission.

Jim Page – So this shed is bigger than the two combined?

Dennis Betty – Taller

Vicky Lyon – The new one is taller than the current?

Dennis Betty –Yes.

Vicky Lyon – But it is smaller square footage, right?

Dennis Betty – About the same, 440 square feet.

Jeanie Avery – I drove by and Dennis was outside. He told me what was going to be happening. The  
replacement shed would actually

Give it a little more of a setback from the alley and the neighbor’s property as well.

Jim Page –Do you have any comments you would like to make?

Dennis Betty – The sheds have been there a long time and I’ve never had any problems.

Jim Page – Did any of the neighbors send in anything opposing?

Hudson Saffell – No, I didn’t get anything opposing. I did get one in support from Mark and Julie  
Patterson. “Whatever Dennis wants to  
do is fine with me.”

Vicky Lyon – Are there any comments from the audience? (No) Does anyone on the commission have  
any questions?

Mark Lowe – I just have one is there anybody else that uses that alley?

Dennis Betty – Through traffic a little bit and I think maybe Mark may have something. And the  
apartments they don’t go through they  
park.

Mark Lowe – And you own the property directly behind you? (Yes) Those are all the clarifications I need.

Vicky Lyon – So we have no more questions? Would someone want to move to close the public  
hearing?

Motion to close the public hearing.

Motion by Mark Lowe.

Second by Lisa Guthrie

All Aye

Motion to recommend the variance to the City Council.

Motion by Mark Lowe.

Second by Lisa Guthrie

All Aye

Vicky Lyon reads the rules of a Public Hearing.

Motion to open the Public Hearing on the Junto Development Agreement.

Motion by Mark Lowe.

Second by Lisa Guthrie

All Aye

Hudson Saffell gives back ground on Junto Development Agreement

On the 9<sup>th</sup> of February the City Council directed myself to work on the Junto Agreement. On the 13<sup>th</sup> of April on my recommendation the Council directed Gary Cooper, city attorney, to work with Junto's attorney to negotiate the agreement to avoid any legal misinterpretation and to insure compliance in the state of Idaho. Once all the documents were in place including a signed agreement and all exhibits, I asked the commission via email when to schedule a public hearing and this evening was agreed upon. The notification of this hearing was posted in the Idaho State Journal on the second of June, 2023. All letters to all property owners within a three hundred foot radius of the external boundaries of the property were mailed on the first of June, 2023. A physical sign was posted beside the property on sixth West on the ninth of June. On the sixteenth of June I sent to the commission via email the agreement and all supporting documents.

Vicky Lyon – Who will be presenting for the applicant?

Steve Mutsaers – I will. I am Steven Mutsaers the director of Junto affordable housing. We are a 501-C-3 non- profit and our mission is

to provide affordable or workforce housing. We have worked in many different states. We just completed a same concept up in Livingston, Montana. It compiled of the same exact plan of four-plexes. It contained 83 doors targeted more for first responders, teachers, hospital staff so forth because like everywhere else the buzz word is affordable housing. And trying to obtain that ownership is virtually impossible just because of the cost of living. It was refreshing to see teachers come in and have that ownership instead of renting. So we have taken this concept and we're focusing on smaller resort, tourist towns. We have looked over in the Victor and Driggs area and over in Jackson and Sun Valley and so forth. I grew up in this area over the border and graduated Idaho State I've know what Lava was and where it's going. Me and the other board members feel that we could really help with unmet needs here, especially with the common worker and helping with venders bringing in employees and I'm sure it's that issue of not having housing for your employees. That's why we posted our flag here to see if we could help. And as a non-profit it is about expanding the mission and providing that kind of housing and that ownership. Judy found this parcel over here I'm sure you've seen it. It's in the exhibit. We want to apply this same concept to this area. Obviously it's just a conceptual plan and we would like to maximize the space. If we can proceed to the next step of getting approved with the zoning and annexing. Then that's when the real money starts being spent with engineers and so forth and following that procedure. We would like to answer any questions or whatever we need to do to comply with the rules of the town. We just basically want to help.

Marcia Gallagher - What do you mean by low income housing? That scares us as home owners.

Steve Mutsaers – It is more workforce housing not low income housing. Teachers, hospital staff. The units are around 900 square feet with 2 bedrooms and 2 baths. We expect them to sell around 250 thousand to 270 thousand. We build and sell them. We do not rent them. They are very modern. We are not sure exactly how many units we will be able to put in. We are including a playground for kids and green space.

Jeanie Avery – Will there be any low income financing available to anyone who wants to purchase?

Steve Mutsaers – There is a \$5000 grant that is available for down payment assistance. They have to qualify for that. It just helps get them in.

In favor commentary:

Bill Goldberg – on Zoom- neutral. I have what could be some pretty serious questions about the engineering. I was sent a letter about this planning and zoning meeting. And in that letter it showed a plot plan for the proposed four-plex arrangement. And my question is this – basically addressed to both the committee and Mr. Mutsaer- Have you actually looked at the proposed layout for the four-plexes as they sit on the property? There is a really significant steep cliff/slope whatever you want to call it, on the extreme western side of the proposed development. And the ability to put four-plexes and the accompanying garages would be very, very difficult to do engineeringwise has that been looked at in any fashion?

Steve Mutsaers – Again this is a conceptual plan and once all of this works out. And we move to the next step that is when the civil and all engineers get involved. We then will follow what the engineers have to say. And I understand on the back end that steep cliff, originally we were only going to build to there but our contractor has gone in and measured and walked it and feels that possibly we can build on top behind that area a little bit. That all boils down to the experts of the engineers.

Bill Goldberg – Well I'm going to suggest to you that you make a personal visit out there. I've stood on top of...

Steve Mutsaers – I know. I have,

Bill Goldberg – If you look at the plat that was sent to me it shows buildings within, I'm going to say 25-30 feet of the west property line.

And I am going to suggest that it is on the edge of impossible to put a building there without really compromising the integrity of that hillside. And the ability to put a building up on top is close to zilch unless you have stilts on the eastern edge of your four-plex fifty feet long. It's just not gonna work. It needs to be looked at. As far as the concept of your proposal I have no objection what so ever. It's just simply an engineering thing and I'm a bit concerned about the integrity

of the city.

Vicky Lyon – We have one opposed. Hartman Harris.

Hartman Harris – I'm not necessarily opposed. But I do have some concerns, in your application it is very ambiguous because it says low

Income housing but then there is 50% rentals. I don't understand what that's about.

Steve Mutsaers - Sure so, your attorney, Gary, with our attorney as far as this agreement with lending with both private money and

institutional money. It's all about managing risk. And so going through the agreements I understand the reservations

about short term rentals. The lenders as a whole lenders want to manage risk so with the agreement it was 50% can

be nightly rentals and 50% cannot. We just are here to build them and sell them.

Hartman Harris - My other concern is the commercial zoning that would include establishments that would sell beer and alcohol. And I'm

not too in favor of that either.

Steve Mutsaers – The plan with the two commercial lots are outside of our model. We have never really done commercial there is a

possibility of selling them to a commercial developer. My thought was like a laundry mat or a dollar store- whatever the town needs.

Ken Gallacher – What I'm wondering is 50% of them can be rentals, correct? Is there anyway the city council can have that guarantee

that 100% don't turn into rentals?

Vicky Lyon – There is a pathway to put deed restrictions. There are a lot of restrictions that can be put on the deed.

Yvette Cadeaux - They are low income but what does low income mean. What kind of cut off do you have?

Steve Mutsaers – It really isn't low income it's more like affordable housing. What I mean by that is 250-270 thousand. So that kind of

price in this day and age is very affordable. Two bed, two bath, vaulted ceiling and a garage.

Karen Holliday – You say two parking spaces. Is the additional one in front of the garage?

Steve Mutsaers – Yes.

Bill Goldberg – I am of a different mindset. Your town is considered, I guess, by many as a resort town and your economy is built around visitation. I don't know that there is anything else that really carries the load as far as your economic basis. What I believe you need is a replacement for your unfortunate demise of the Wagon Wheel. To have a bar put in there I think would be an asset.

Hudson Saffell – Thanks Bill, if you actually lived here you would know it was the Blue Moon, not the Wagon Wheel.

Hartman Harris – I have another question. I know all of this is just kind of a dream thing. As far as ambulance and fire truck will there be room for them to get up and turn around, or is there going to be a second exit?

Hudson Saffell – So I was going to summarize this at the end. I sat down with both our maintenance crew and our fire chief at length, as Steve can testify to this, spacing between buildings, ways for us to access behind the structures, fire hydrant. The road is more than wide enough. Also according to Idaho State Code if there were to be any short term rentals they would have to have fire suppression, none of these are going to have fire suppression. This will stop the overnight rentals. This is an annexation and development agreement at the same time, as soon as we annex them all city rules apply.

Steve Mutsaers – And, obviously, if we don't follow the rules we don't get our permits.

Jim Page – I have a question, rough estimate, let's say you get annexed in this year or within the next month, how long is your build process?

Steve Mutsaers – Well, I can tell you the one we just finished in Livingston from start to finish, most of the infrastructure was in, 17 months. I'm guessing it will be closer to two years. We are going to go in phases, build and sell, build and sell.

Vicky Lyon – How many phases?

Steve Mutsaers – This will boil down to what the engineers tell us. There will be four units per phase.

Jeanie Avery - Four four-plexes for 16 units. How many for residents and how many for rentals?

Steve Mutsaers – Well again this all boils down to finalizing...are you talking about the 50%? However we need to do that. Whether it's one for one or whatever, we haven't really gotten to that because we don't know how many we are building as of yet.

Yvette Cadeaux – Is there any type of protection to stop investors from purchasing units then renting them out?

Steve Mutsaers – I can't prevent that. If an employer wants to buy a whole unit for their employees, I can't stop that. It can't be short term rentals because there won't be fire suppression.

Mark Lowe - It's kind of bothersome that this whole project is being proposed as c-2. Why are we going to a c-2 zoning on this? If we are doing it for setback allowances it will allow all those commercial uses as well. Can you get to the same thing going through a PUD process rather than commercial. It just makes me uncomfortable to make this a c-2. It's clear out of line with our other zones in the city. It will compound the problems we will have with that. We lose the ability to control the commercial. Why did we go to c-2?

Hudson Saffell – To have commercial space. If we follow the trajectory of Main Street we have the fire station and electric company. That is commercial. T-Paul's vision was to take Lava west.

Todd Dye – I am the broker selling the property. That property is zoned recreational at this time. Anything can be put in. There is a lot of concern on what will open in the commercial zones. No matter what you have to get a business license from the city. The city still maintains control of what goes on with the city. The city will still have control of what goes in to the commercial.

Judy Hobbs, Junto's real estate agent – We all want good growth. I am the agent and owner of the real estate office in Rexburg. I represent Mr. Mutsaers and his corporation. They have worked very hard with the city, the mayor and Hud trying to make a development that is good for the city. Family housing for people who are going to put down roots. From the beginning the Mayor was adamant that this was the type of development that was needed. I believe your attorney will tell you that the development agreement is like another layer of protection on top of the zoning. What is in the development code defines



more closely what can happen. What is in that development code when the purchaser signs that becomes another layer of the law. Certainly an approval this evening based on that clarification from your attorney I believe would be something that Junto affordable housing would feel like would be a real win-win for both sides.

Mark Lowe – Paragraph 3 on the affordability commitment says the owner shall include a deed restriction with the sale of at least 50% of the dwelling units built through completion of the final phase. Stating that such restricted dwelling or portion thereof may not be offered for rent for a fee for a period of 30 days or less as a short term or vacation rental. So by that saying 50 percent may not do that so that is saying that 50 percent CAN be used as a short term rental.

Steve Mutsaers – We were just talking about that one of the restrictions is fire suppression. We are not putting in fire suppression so the other 50 percent still won't be able to rent on a short term basis.

Yvette Cadeaux - It sounds like your investors don't want to invest unless they have that provision.

Steve Mutsaers – They are the ones with the big money and they are managing risk. Our model is to build and sell, not rent.

Jim Hobbs – On the Chair of P & Z for St. Anthony – The gentleman on the end (Mark Lowe) is looking at the matrix. This is just the initial concept, to go through you guys and get your yea or nay to move forward. As Steve mentioned, it is a pretty big investment. I had the opportunity to go tour the Livingston, Montana facility. What an awesome facility. Every driveway I went past had a smile on their face because they had their own doorknob. What a wonderful thing. Steve will have restrictions from the city that allow certain thing. The state of Idaho has really strong rules on short term rentals. Those we can't change. The developments that I've seen and the one in my town now. I think they are great. They want to sell these and support schools.

Motion to close the public hearing.

Motion by Lisa Guthrie.

## Second by Jim Page.

## All Aye.

Mark Lowe - Is there a way to...I am not comfortable with recommending this as is. With it being in a commercial zone with only half of

those being restricted as to not being overnight rentals. Is there a way that it can be...if on paper it said that half of those

dwellings were deed restricted and could not become overnight rentals and yet through the ordinance or actions of the city

restrict the other 50 percent of them so that the lending institutions are...

Vicky Lyon – Would it be 50 percent of each phase? Would have the deed restriction or would it be the first 50 percent had to be

homes then after that they could go for rental... long term rental.

Mark Lowe – Any of them could be long term rental. It's that less than 30 days, it's that short-term rental and if they are in a commercial

zone the city would be hard pressed to stop it.

Hud Saffell - It needs to be an HOA.

Jim Page – We can do it however you guys decide or recommend. It can be in the first phase or in the last phase. We don't know yet

how many are being built. I just want to build them and sell them.

Hud Saffell - Fire Chief, Ken Fagnant wanted me to talk about. We are experiencing a new generation of folks that do not like to

volunteer. There will come a point where we, as the city, will have to pay for fire and ambulance. This housing would be for

folks like that.

Mark Lowe – The 50 percent that are not deed restricted, will you get a premium price?

Steve Mutsaers – No, they will all be the same price. We are a non-profit.

Jeanie Avery – Is there a way to write in the deed that it can never be a nightly rental?

Mark Lowe – Half of them already are.

Jim Page – I would like to see the city control it than the county.

Jeanie Avery – I see a lot of benefits. The tax benefit is wonderful. Added residents is wonderful. A couple of small businesses like a

laundromat, a little convince store would be an asset to the town, as long as we do everything possible to restrict nightly

rentals.

Motion to push it on to city council with a thumbs up with the recommendation of no nightly rentals.

Motion by Jim Page.

Vicky Lyon – To create a new zone is a time process. What the city attorney has said, and Hud reiterated tonight is that we can do deed

Restrictions, and those have more “teeth” than a zone.

Mark Lowe – Point of order. We have a motion on the floor. Can you withdraw the motion.

Jim Page – I withdraw the motion for a moment.

Mark Lowe – It’s not unheard of for property that is to be annexed into the city...property that has city services and is not able to be

annexed at this time agrees to be annexed at a future date. Would there be the possibility of the agreement on this

property agreeing to a future zoning change. Can we preapprove the zoning change to allow high density housing?

Steve Mutsaers – There would have to be some kind of language or guidelines. You know what I’m saying.

Motion to recommend the city council approve the Junto proposal affordable/work force housing development agreement with the recommendation that a possible new zone be created with high density housing, two commercial business spots and no overnight rentals.

Motion by Mark Lowe.

Second by Lisa Guthrie.

All Aye

Short break.

Vicky Lyon – Reconvenes the meeting. Announces the next meeting will be July 31, 2023. The agenda deadline will be July 17, 2023 at 5:00 pm.

Motion to add approval of the May 24, 2023 minutes.

Motion by Lisa Guthrie

Second by Jim Page

All Aye.

Minutes of May 22, 2023

Vicky Lyon – on page 2 of the May 22 meeting, says that Hud said he personally inspected, the proposed rooms and living spaces. Then back here it says there is a kitchenette in the basement, but he didn't go in the basement.

Hudson Saffell – I said that because John told me.

Vicky Lyon – You can't have two full kitchens, but we didn't really know if it was a kitchen or a kitchenette. Did Ken Fagnant go in there?

Hudson Saffell – No.

Vicky Lyon – They were adamant that they were going treated like everybody else. We had Fire Marshal inspections on the Beus, Shaw and Hirschi and Christensen's.

Jeanie Avery – On page 3 the last comment by John Taylor the third line. Cause we have to set a precedent. Did he really say two?

Chandra Taylor – Yes, he said to.

Motion to approve the minutes on Monday, May 22, 2023

Motion by Lisa Guthrie.

Second by Jeanie Avery.

All Aye.

Mark Lowe - On the May 24<sup>th</sup> minutes Ken Fagnaut's name is misspelled.

Motion to approve the May 24, 2023 Minutes as ammended.

Motion by Mark Lowe.

Second by Lisa Guthrie.

All Aye.

Motion to adjourn.

Motion by Mark Lowe.

Second by Lisa Guthrie.

All Aye.