

Minutes of a Special Meeting of the Lava Hot Springs Planning & Zoning Commission held Wednesday, December 9, 2020 at 6:30 p.m., Lava City Hall, 115 West Elm Street, Lava Hot Springs, Idaho.

Present:

Fred Hinz, Commission Member

Canda L. Dimick, City Clerk

Vicky Lyon, Commission Member

James Page, Commission Member

Neil Anderson, Commission Chair (participated by teleconference)

Excused: Curtis Waisath, Commission Member

Guests: None

Fred Hinz, Commission Member chaired the meeting because Neil Anderson, Commission Chair was participating by teleconference. Fred Hinz, Commission Member called the meeting to order at 6:35 p.m.

Facts, Findings & Recommendation regarding Afton Diane Beckstead's application for a front yard setback variance, Lots 18-20, Block 11, A.W. Hall's 3rd Addition – 163 South 5th West

Canda Dimick, City Clerk informed commission members that on the application it says that the encroachment is five and a half feet into the front yard, but the garage itself encroaches about two feet into the side yard next to the alley. It was questioned if the variance needs to cover both front and side yard issues.

Neil Anderson, Commission Chair participating by teleconference, suggested referring to the encroachment as "it currently exists".

All agreed to revise statement granting a five and a half front yard encroachment for awning attached to existing garage. The encroachment is for a front yard variance because the garage side yard encroachment has already been approved. It was confirmed that number four in the statement will read "the applicant seeks a front yard setback variance to encroach five and a half feet into the required front yard for an awning attached to an existing garage. A copy of the application together with a letter from the applicant will be attached. Wording in the facts and findings statement will match up with what's on the application variance.

Discussion followed regarding the notifications that were not mailed out to the property owners listed on the last page of the notification list. Canda Dimick, City Clerk reported that it needs to be noted under number five in the statement and questioned the commission members on how they want it worded. It needs to be noted in the record that the notices were not sent. In the recorded staff report made at the hearing it was not clearly reported that all notifications had not been mailed out. A note on the mailings had been put into the commission's packets. When Lindsay McCulloch presented the staff report, she made a comment that she had received an email from the utility company that day. Canda Dimick, City Clerk read the staff report from the November 23, 2020 minutes. It said that Lindsay McCulloch City Code Enforcement Officer introduced herself to the commission members and presented

staff report, November 23 2020, the variance for Diane Beckstead. The notice was published in the Idaho State Journal on November 3rd. Mailings were mailed to all property owners residents within 300 feet of exterior boundaries on October 25th. Regular mailings were mailed to all property owners/ resident within the zip code area. One was returned unclaimed from SLS LLC. It was returned on November 21st. She sent an email to Rocky Mountain Power today and a response was received that they had received the information and she has the email instead of a certified letter but she didn't cover that notifications had not been sent to those listed on the last page. The only one that got an email notification was Rocky Mountain Power. Canda Dimick, City Clerk asked commission members how they wanted it worded in the statement that some of the notices weren't sent.

Canda Dimick, City Clerk asked commission members if she should just leave it out and reference that a copy of the notice is attached here too? Vicky Lyon, Commission Member felt that it can't be left out because what if those on the list come back and say we were never notified.

Commission members discussed stating in the facts and findings that notices were not sent to those on the last page of the notification list, which are Josh Lindley, etc.

Vicky Lyon, Commission Member stated that since notices weren't sent out, the commission is not following procedures and questioned how the commission can be voting on an approval or not? Vicky Lyon, Commission Member felt that especially with the notice to a utility company, that the commission needs to table the facts and findings and the notices need to be done properly. Vicky Lyon, Commission Member stated that there is already major issues and errors and now there is another big one in protocol. She expressed concerns with the commission voting and then someone coming back and saying that the encroachment is not going to work.

Canda Dimick, City Clerk suggested stating in the facts and findings and recommendation to the City Council that the commission recommends notifications be properly sent as required. James Page, Commission Member questioned who is supposed to send the notices out. Canda Dimick, City Clerk explained that the situation is awkward, because in the past, she had the applicant bring the notifications to her and she certifies that they are mailed out and they reimburse the city for the mailing cost along with the application fee. The process didn't happen on this application. Diane brought in the certified mailing return cards to Lindsay. The certified mailings didn't match up with the last page of the notification list. Vicky Lyon, Commission Member commented that first there wasn't an ordinance inspector so that's how the house got built where it did, then the encroached porch got built because there was no code enforcement officer on duty and now there is a roof extension issue, everything has snowballed. Vicky commented that she feels that it is important to follow the ordinances and rules to make sure that i's are dotted and the T's are crossed. She is uncomfortable with not following the protocol for mailing out notices because "here we have yet another error". Fred Hinz, Commission Member agreed with Vicky's comment.

Vicky Lyon, Commission member questioned "why does the city just keep trying to make a wrong, right?" She stated that she is "all for trying to figure out how to say yes to people when they need things, but it also has to be a yes that fits within the city's plan; this situation is a bundle of errors".

Neil Anderson, Commission Chair participating by teleconference, commented that since the registered notices weren't sent that should void the variance.

Vicky Lyon, Commission Member asked if there are instructions given to applicants on who they need to send notices to when they are given the list. It was questioned and confirmed that the names were on the list given to Diane Beckstead but she missed the last page. James Page, Commission Member questioned who was on the last page. Canda Dimick, City Clerk informed the commission that on the last page there is a Joshua Lindley who is a renter living in Lava, and the rest are Intermountain Gas, CenturyLink, Bannock County Planning and Development, Rocky Mountain Power, Independent Cable Systems of Idaho, and Marsh Valley School District. Vicky Lyon, Commission Member stated that those would be ones that could have easements.

James Page, Commission Member commented that the utility company would have had to mark their lines before any digging or excavation would have been done. The contractor or owner should have called Digline but the commission does not know if they did. The structure is built.

Vicky Lyon, Commission Member stated that "it's the principle of it at this point". Canda Dimick, City Clerk recommended bringing the notification issue to the City Council's attention by documenting it in the finding and facts. The City Council needs to be made aware that there were notices not mailed and that the commission feels that they need to have a response back from them. It was also mentioned that notices could be sent out and time given for responses. The applicant would have to send the notices out. James Page, Commission Member expressed that he feels the applicant needs to be made to send the notices out. Vicky Lyon, Commission Member commented that the commission keeps trying to clean things up but it just keeps getting messier. Canda Dimick, City Clerk asked the Commission if it should be stated in the findings and facts that notices were not sent to those on the last page of the notification list, and then name them?

Neil Anderson, Commission Chair participating by teleconference, suggested notifying Mrs. Beckstead that she has to get the registered letters sent and returned before the facts and findings can be completed. Commission members agreed that the notices need to be sent and to let the variance stand in limbo again for another month before submitting a recommendation to City Council because the protocol has not been followed. Vicky Lyon, Commission Member felt that the initial public hearing should not have happened because the applicant didn't follow the rules. The applicant was given the plan and how it is laid out. Vicky Lyon, Commission Member does not feel it is a good idea to move forward. All Commission Members stated that they agreed with Vicky.

Vicky Lyon, Commission Member question the need for a motion. Canda Dimick, City Clerk questioned the need to entertain legal counsel to see if the process requires another public hearing or just sending notices to those that were not notified and establishing a response date. Vicky Lyon, Commission Member stated that the applicant will need to go back to step A which involves sending out notices and have them sent certified to all those who are not within city limits and establish a response deadline. Applicant needs to start at step one because rules were not followed. Vicky Lyon, Commission Member stated that she feels bad for the applicant, "nobody's going to make her rip off the roof/awning, but

rules need to be followed. The City shouldn't have to babysit everything. If the protocol is set and you give somebody that procedure, if they don't follow the procedure, it didn't happen. The next person that needs a public hearing may only send out notices to half of them. Then what do you do, slap them on the hand and go forward? Noncompliance has to stop. Everybody wants to say, well, it didn't happen on my watch. This is a new watch, nothing is going to get by me. Well, here you go."

James Page, Commission member agreed that if she gets away with it somebody else is going to try it and think well she did it, we are going to do it; better to ask forgiveness than permission. Vicky Lyon, Commission Member commented that that's the motto anyways.

Canda Dimick, City Clerk asked the Commission if they are going to want to make a motion to table the recommendation going to City Council until notifications are in order? Vicky Lyon, Commission Member made a motion to table recommendation to City Council and to notify Mrs. Beckstead that she needs to go back to the beginning and send out the notices correctly, ensure that out of town recipients have certified notices sent to them, and go through the waiting period and have another public hearing. Motion was seconded by Neil Anderson, Commission Chair participating by teleconference. All voted aye, unanimous.

Smith Canyon Ranch Subdivision Concept Plan to subdivide 319.7 acres of land into 75 residential lots – Public Hearing scheduled before Bannock County Planning & Development Council December 16, 2020 at 5:15 p.m.

Canda Dimick, City Clerk reported to Commission Members that the proposed subdivision plan has been presented to the Commission before. The subdivision is at the very top of Smith Canyon on the Downey side and is out of the City of Lava Hot Springs impact area. The City has received notice that a public hearing is scheduled before the Bannock County Planning & Development Services on December 16, 2020 at 5:15 pm in Pocatello. There's limited seating. Participants can call in and participate by web conference or telephone. The public hearing notice is for information purposes unless the commission feels like there needs to be some action on it. Canda Dimick, City Clerk reported that the only concerns that she has heard people commenting on is questioning if the county has looked at the impact on the existing road structure on Lava's side. James Page, Commission Member commented that part of the road has no winter maintenance and now that may have to change with the new proposed subdivision. Bannock County plows the Main road now. EMS responders have dealt with some hazardous situations responding to calls.

The web conference and telephone participation procedure was questioned. Some commission members expressed interests in listening in on the public hearing. Vicky Lyon, Commission Member, commented that from an EMS standpoint to respond to calls in the winter in the Smith Canyon subdivision is a disaster. Vicky also commented back on Diane Beckstead's variance situation and explained that regulations are important and are in place for the resident's protection. The big picture needs to be looked at. Canda Dimick, City Clerk stated that comments have not been objecting to the subdivision itself; it is the impact on Smith Canyon and Dempsey Creek Roads and questioning if any improvements are being considered to make them safer and better. Residents in the area feel like all

the traffic is going to come Lava way and not go down to Downey. James Page, Commission Member said that he is going to try and get on and listen. Canda Dimick, City Clerk advised the commission that she posted the agenda item as an action item so a motion could be authorizing commission members to get online and listen to the discussion on it. James Pages, Commission Member commented that people camping there are going to come to Lava to soak in the hot pools rather than go to Downey where there is nothing to do. Some may go to Downata Hot Springs, but the subdivision will be closer to Lava. Vicky Lyon will listen to if someone will remind her with a text. Motion was made by Vicky Lyon, Commission Member for James Page to listen to the public hearing and report to the commission at the next meeting. Motion was seconded by Neil Anderson, Commission Chair participating by teleconference. All voted aye, unanimous.

Luschar Subdivison Concept Plan

Canda Dimick, City Clerk oriented commission members with the location of the proposed subdivision located at the corner of East Maughan Road where it insects with Merrick Road. The parcel being subdivided has one (1) existing home and an indoor arena. The property owners are contemplating on subdividing land adjacent to the existing home/indoor arena into eight (8) one (1) acre residential sites. The concept plan shows moving an existing platted road running through the middle of the lots to run along the edge of the lots. The parcel is ten (10) acres. The property owner is working with their engineer and is entertaining informal input from agencies of any concerns that they can pass onto their engineer. The proposed subdivision is located in the City's impact area. The proposed subdivision is residential, which is compliant to the City's comprehensive plan. Lava West Subdivision adjoins the proposed site.

Canda Dimick, City Clerk commented that the only concern that she can see with the proposed subdivision is high density issues with privately owned septic and wells on one acre parcels. It is unknown if the Health Department still requires an alternative site for a future septic system in case a system fails. One (1) acre does not seem big enough to comply with regulations. Bannock County needs to relook at one (1) acre subdivisions. If the subdivision is connected to community systems, situations are different. The subdivision will have nine (9) private wells and (9) septic systems on ten (10) acres. James Page, Commission Member stated that he can't imagine that Bannock County would approve it because where he came from the County made them abandon their systems on two (acre) lots and connect to the City's systems. Neil Anderson, Commission Chair participating by teleconference, stated that his home is on 1.2 acres and his neighbor had to drill his well deeper because of the impact on the water table.

Fred Hinz, Commission Member recommended sending input back addressing concerns regarding individual water and septic impacts. A community system is recommended.

Vicky Lyon, Commission Member, commented that another point is residential housing is developing further out of town which is in the City's Comprehensive Plan and that's why it is important to protect the area West of city limits by not commercialize it and allowing structures like storage sheds to be built. Commercializing will block people wanting to build. Vicky feels that the Commission needs to go back

and look at what the vision is for the City; and where Lava is going to grow before allowing commercial development in the area because commercial and houses do not coexist well.

James Page, Commission Member questioned how soon the city plans on annexing out to Merrick Road.

Vicky Lyon, Commission Member questioned stopping potential residential growth with allowing a commercial development in the middle. She reiterated that is why it's important to look at what's going to happen.

Canda Dimick, City Clerk stated that she understands that the commission wishes to address input by expressing concerns on the small size of the lots mainly because of water source and septic tanks.

James Page, Commission Member, commented that the City already has a sewer line running past the development. Canda Dimick, City Clerk explained that the line is pressurized and no one can tie into it and that the City's water lines do not run out that far.

Vicky Lyon, Commission Member commented that she thinks the commission should absolutely send input stating the commission's concerns and that she thinks the subdivision is good; the City needs to be looking at housing.

Neil Anderson, Commission Chair participating by teleconference commented that it never ceases to amaze him of all the people that want to start a subdivision; there are a dozen of them that can't sell but that is their option.

Canda Dimick, City Clerk advised the Commission that a motion is needed because the agenda item is posted as an action item.

Motion was made by Vicky Lyon, Commission Chair to send concerns to the agency involved and the concerns are the water and sewer, but the residential subdivision does fit into the City's Comprehensive Plan for future building. Motion was seconded by James Page, Commission Member. All voted aye, unanimous.

Energy Code Checklist for Residential Construction

Canda Dimick, City Clerk reported that Lindsey McCulloch, City Code Enforcement Officer has been taking some classes on residential construction building and presented copies of a new checklist to commission members in attendance. Canda explained that the City has an energy conservation code worksheet that is included in the building permit packet and that a new energy code checklist has been developed. Lindsey McCulloch, City Code Enforcement Officer has proposed replacing the worksheet with the new checklist in the building permit packet. Lindsey is wanting the Planning and Zoning Commission and the City Council to approve the new form. Applicants will be required to complete the form and submit it with their application. Lindsey has advised that the new checklist still needs to be adjusted to Lava's climate zone which is believed to be climate zone six (6). Adjustments would probably be under the prescriptive requirements.

Canda Dimick, City Clerk, suggested that the Commission take the form under consideration; she will get Neil Anderson, Commission Chairman participating by teleconference a copy and recommended tabling any decision on it at this point. Form will be reviewed at the December 28, 2020 meeting. Motion was made by Neil Anderson, Commission Chair participating by phone to table the energy code checklist until the next meeting. Motion was seconded by James Page, Commission Member. All voted aye, unanimous.

Association of Idaho Cities Planning & Zoning Online Training Session

It was decided to start listening to some of the online training sessions on December 28, 2020. The Commission Members want to do the training sessions together so they can all kind of bounce things off one another as they go through it. The sessions are pretty short. The longest one is 33 minutes. The Commission could pick and do as many of them as they like at each meeting depending on how long they want to meet.

Next Meeting & Adjournment

Next meeting is scheduled for December 28, 2020

Motion was made by James Page, Commission Member to adjourn and seconded by Vicky Lyon, Commission Member. All voted aye, unanimous. Meeting adjourned at 7:15 p.m.

Fred Hinz, Commission Member/Officiating Meeting

Canda L. Dimick, City Clerk