



# KOOTENAI COUNTY

## BOARD OF COMMISSIONERS

### Meeting Minutes

#### Community Development

June 15, 2023

9:00 A.M.

451 N. Government Way, Administration Building, Meeting Room 1A/B

The Kootenai County Board of Commissioners: Chair Duncan, Commissioner Brooks (Via Phone), and Commissioner Mattare met to discuss the following agenda items.

Staff present were Community Development Director David Callahan, Planner III Vlad Finkel, Planner II Amy Hilland, Civil Deputy Prosecuting Attorney Pat Braden and Administrative Manager Reba Grytness.

- A. **CALL TO ORDER** – Chair Duncan called the meeting to order at 9:00a.m.
- B. **CHANGES TO THE AGENDA** – Chair Duncan mentioned that item number 4 may need to be discussed in an executive session.
- C. **CHAIRMAN'S OPENING REMARKS** – Chair Duncan remarked that these are deliberations. There will not be any public testimony. This is the time for the Staff to converse with the Board and then the Board will make a decision or the Board has the opportunity to continue deliberations to a time in the future.
- D. **POLL FOR CONFLICTS OF INTEREST**– There were no conflicts of interest.
- E. **DELIBERATIONS**
  1. **MSF23-0001 Humbird Acres** – Planner III, Vlad Finkel started with a PowerPoint presentation for the final plat approval of a major subdivision, Humbird Acres, by Round Mountain LLC. The subject property is located off the intersection of Scarcello Road and Ranch View Drive. The applicants received a preliminary approval of a 16 lot major subdivision on 80 acres in the rural zone in December of 2021. A site disturbance permit has been requested for the interior road that will serve the proposed lots. Each lot will be served with individual wells and septic systems. Originally the applicant wanted Ranch View Drive extended as a public road which would be constructed to the highway district standards and dedicated to the highway district. The applicant has now decided to keep the road as a private one and not dedicate it to the highway district. It would still be constructed to the highway district standards. This change, according to legal counsel, as well as the highway district, would not have to go through another review as long as the road is properly constructed. The road has been done with some minor improvements remaining. Conditions of approval have been complied with. There are no issues with applicant moving forward with recording the mylars and CCR's that would stipulate the maintenance of the interior road.

Chair Duncan asked if there is going to be a property owner's agreement for the road. Mr. Finkel responded that it is going to be covenant, conditions and restrictions that will have the specific provisions for the maintenance of the interior road. There is a road development agreement between the highway district and applicant for any outstanding improvements that may be necessary. Chair Duncan asked if this was a highway district or applicant request. Mr. Finkel said it was an applicant request.



Commissioner Mattare moved that Humbird Acres, MSF23-0001 be approved. Commissioner Brooks seconded the motion.

Commissioner Brooks	Aye
Commissioner Mattare	Aye
Chairman Duncan	Aye

2. **VAR22-0007 Zimmerman** – Planner III, Vlad Finkel started with a PowerPoint presentation- the applicant is asking to have a variance of 15 feet to construct a residence within 10 feet of the prescriptive right of way for Hayden Lake Road. The subject property is very steep with an existing retaining wall that will be partially removed. It is zoned restricted residential. The applicant originally requested a 0 foot setback or 25 foot variance from the road as well as a five foot setback on the east and west sides of the lot. Staff would not support having the structure on the right of way as it could be dangerous entering and exiting the site. Staff would also not support the side yard setbacks as they felt it was a self-imposed action by the applicant to maximize the footprint of their residence which the code prohibits. The highway district rejected the 0 foot setback so now the applicant is asking for 15 foot variance. The purpose of this variance is to move the residence closer to the road as to not disturb the hillside and storm water features as well as retaining walls. There is a history of unstable soil on this hillside so staff will not support any variances until they receive a geotechnical analysis stating that it is possible to build a structure in this location. Public agencies have no objections. There was one comment in opposition and two in support. Staff feels there is an undue hardship that is not self-imposed. The Hearing Examiner as well as staff are recommending approval.

Chair Duncan asked if we were still considering an over lay district for this area. Director David Callahan responded that for this to be done at this time the County would have to hire a consultant to help do the work. Chair Duncan asked Vlad if the size of this residence is in line with the neighborhood. Mr. Finkel responded yes with no side yard variances he feels it is in line with the residences in the area. Civil Deputy Prosecuting Attorney Pat Braden agreed with this statement.

Commissioner Mattare moved that VAR22-0007, for Zimmerman, be approved. Commissioner Brooks seconded the motion.

Commissioner Brooks	Aye
Commissioner Mattare	Aye
Chairman Duncan	Aye

3. **MSP22-0007 Bennett Estates** - Planner III, Vlad Finkel started with a PowerPoint presentation with a request for preliminary approval as recommended by Staff and the Hearing Examiner. This property recently had a zone change from agriculture to rural (ZON22-0004). The subject property consists of 80 acres located at the intersection of HWY 53 and Mountain View Road and will have an interior road to serve the lots. The area development is very similar to what the applicant is requesting. The comp plan designation is suburban which allows for development of underutilized larger parcels of land. The area is very level and should not pose any issue in terms of development and site disturbance. Public agencies comments were that the applicant must comply with the standard requirements and permits. There were three public comments in opposition due to additional traffic concerns.

Commissioner Mattare and Chair Duncan would like a little more time to review this project as the information was not in the packet prior to the meeting. Chair Duncan commented that the Sheriff's Department had no objection to it.

Commissioner Mattare moved that deliberations be continued to June 22, 2023 for MSP22-0007, Bennett Estates. Commissioner Brooks seconded the motion.

Commissioner Brooks	Aye
Commissioner Mattare	Aye
Chairman Duncan	Aye



4. **APP22-0003 Appeal of MIN21-0043** – Commissioner Mattare read a statement into the record, (B-1000, see attached) stating his decision to go with the appellant and overturn the Director's prior approval of the minor subdivision. Chair Duncan asked Civil Deputy Prosecuting Attorney, Pat Braden, if the Board denies this, going with the Hearing Examiner's recommendation, what obligation does the County have when this goes to court. Mr. Braden responded that he would defend the Board of County Commissioners decision whatever it is. Another attorney can be assigned if anyone feels there is a conflict of him doing it.

Commissioner Mattare moved that the Board rule in favor of the appellant for APP23-0003. Commissioner Brooks seconded the motion.

Commissioner Brooks	Aye
Commissioner Mattare	Aye
Chairman Duncan	Aye

**F. BUSINESS (Discussion)**

1. **CD Fee Resolution** – Director Callahan started with letting the Board know that there was an error on one line item in the notice. There should have been two lines, one with permit reactivation and one with re-inspection. The resolution has the correct line items. This portion will have to be re-advertised and the resolution will need to be changed. Chair Duncan asked how much it would cost to publish versus how much we would make by increasing it 30 dollars. Director Callahan stated it would cost 30 or 40 dollars to repost. Chair Duncan is fine with it being re-published.

The Board discussed the upcoming fee increases proposed for the Public Hearing on June 22<sup>nd</sup>. Direction was given regarding the Conditional Zoning Agreement. The fee will be kept where it was previously with the Director having discretionary authority to waive it. The Non-Commercial Conditional Use Permit should be cut in half to a \$1500.00 ceiling. The renewal fee should be \$2253.00. The Variance Fee can stay at \$3200.00. The Administrative Variance will stay at \$2000. On the Appeal of Administrative determination the fee will be \$2000 and Reconsideration Fee will be 750 but if the appellant prevails then they would get half the fee back. There is a resolution in record that allows the Director to make decisions as to waiving fees.

- G. ADJOURNMENT** – Chair Duncan adjourned the meeting at 9:55a.m.

Jennifer Locke, Clerk

By: Reba Grytness  
Reba Grytness, Deputy Clerk

BOCC: Leslie Duncan  
Chairman, Leslie Duncan  
Leslie Duncan, Commissioner - Signed 6/27/2023







# KOOTENAI COUNTY

B-1000

BOARD OF COMMISSIONERS

BRUCE E. MATTARE

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June 15, 2023

## MIN21-0043 APPEAL

A major point of this issue is whether properties were correctly inserted into a community CC&Rs that binds together a group of properties, or if the CC&Rs are mutually exclusive of each other and bound only to the individual properties they are associated with.

All of the land was originally owned by a single farming family and was sold off in slices over time. During that time the same CC&Rs were attached to each of the sold off properties or when the land was subdivided. It is clear to me the original owner intended to develop multiple properties that were bound by a single set of CC&Rs.

The issue is that there are questions as to whether the properties with the exact same CC&Rs were properly entered into the subdivision as more and more lots were created. This is similar to properly entering assets into a trust by creating and executing documentation showing such an asset entry.

### Background

The original property owner was a farmer with likely little to no knowledge of how to subdivide land to develop a community that is bound by a single set of CC&Rs, which made her extremely reliant on legal counsel to execute her wishes. One could reasonably argue that her sophistication level when it came to real estate law was limited.

It also was clear that her desire was to subdivide and sell off land with the single intention of creating a community that was bound by a single set of CC&Rs, which is evident by attaching the same CC&Rs to each of the properties as they were sold to buyers.

Further, the seller represented to the property buyers that they were purchasing property with attached CC&Rs for a single named subdivision. Not only were the buyers aware of the subdivision and the CC&Rs attached to the properties, but they all agreed to the restrictions and conditions as set forth, including restrictions to subdivide, and without the knowledge of how the properties were entered into the subdivision or the methodology of how the CC&Rs were attached to the properties.





It wasn't until one property owner wanted to subdivide his property for the benefit of his kids, did this situation become an issue.

## **Conclusion**

It is clear the original property owner intended to develop a series of parcels to be bound by a single set of CC&Rs. If that were not the case, then the same set of CC&Rs would not have been recorded on the various parcels. Further, the parcels would not be associated with the same development name.

What's at issue is the parcels were not technically bound together with the single set of CC&Rs and therefore are only bound to the CC&Rs on their respective properties and to no others. Whether this process was executed with perfection or not is immaterial. It is the intent of the community that matters.

We use intent in all other aspects of law, which is why we keep records of the intent of legislative bodies when bills are drafted and passed. This isn't a failure to attach the same CC&Rs to every parcel the original owner intended to develop, this is a procedural issues of how the parcels were entered into the subdivision, which one could reasonably argue the original owner could not be expected to know at the time and would be heavily reliant upon outside counsel to help navigate.

To allow for a technicality to invalidate the subdivision and its CC&Rs to bind the various parcels together would have a significant and detrimental effect on the community as a whole, especially given the fact that the intent and understanding of all parties was that all of the parcels were bound by the single set of CC&Rs.

Further, by allowing such a technicality to invalidate this set of CC&Rs, precedent could be set to invalidate communities throughout the state that failed to follow "perfect subdivision process" and allow the members of each of those communities to suffer because of a procedural misstep.

While I recognize that this issue most likely will need to be settled in a court of law, I have concluded that the CC&Rs were intended to bind all of the parcels together and that the subject property cannot subdivide further than its current acreage, and thereby vote in favor of the Appellant.

