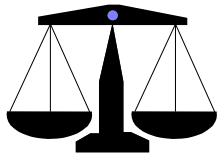


**MINUTES
KOOTENAI COUNTY HEARING EXAMINER
PUBLIC HEARING**

NOVEMBER 3, 2022

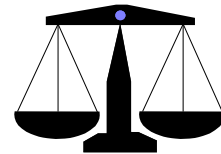
**HEARING EXAMINER
KARL GRANRATH**

**STAFF PRESENT
VLAD FINKEL
AMY HILLAND
BEN TARBUTTON
DAVID CALLAHAN
JENNIFER CONNER
PAT BRADEN via ZOOM**



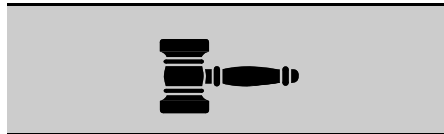
**MINUTES
PREPARED BY:**

JENNIFER CONNER
Recording Secretary



**MINUTES
REVIEWED BY:**

VLAD FINKEL
Planner III



A handwritten signature in black ink, appearing to read 'K. Granrath', written over a horizontal line.

KARL GRANRATH
Hearing Examiner

The Official Record of Public Hearing is available on-line at
www.kcgov.us

Karl Granrath called the meeting to order at 6:04 p.m.

The Hearing Examiner explained that the purpose of the public hearing is to take testimony on the items that appear on the agenda.

The Hearing Examiner will review the testimony presented and make a written recommendation to the Board of County Commissioners, who will make the final decision.

In addition, we will be going in a different order than is stated on the agenda. This will help with time, efficiency and the overall flow of the evening.

The hearing was adjourned at 7:58 p.m.

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CASE NO. MSP21-0008 BUNCO RANCH

Staff Presentation: Vlad Finkel, Planner III, briefly explained the case with a PowerPoint presentation. This is a continuation from October 6, 2022 as more information was requested from the applicant. The original application consisted of 16 lots, however due to staff concerns regarding topography, steep slopes, the design of the original road the applicant changed the application to reflect only 12 lots which reduced the density by 25%. The water source would be by individual and shared wells. There were concerns from the public regarding the hydrogeological analysis not addressing if the proposed wells would conflict with existing wells in the area.

Applicant Presentation: Gene St. Godard, Licensed Geologist states he did the initial evaluation, and has addressed the concerns from Mr. Peterson. There are 12 wells proposed. The old USGS mapping shows gravel in the area. The wells average 12-13 gallons per minute. There are major fault lines, and there is an unconfined aquifer on the south of the property which created a higher yield for the wells. Mr. St. Godard believes this extends across the entire property. They conducted EMS surveys based on bedrock fractures to show the worst case scenario. Another analysis done was a Tyce Analysis which was based on the lookup values, not site specific data, based on 1500 gallons per day, for a whole year. The theoretical draw out based on this analysis on Mr. Petersons well was about .7 feet. If ran at 5000 gallons per day for 60 days, the analysis shows a theoretical draw out of 1.8 feet. Mr. St. Godard states in his professional opinion, this is not a negative effect. Looking at the individual fractures, they run southwest to northeast, and each fracture will not influence any other wells on another fracture.

Public Testimony: Comment Sheets submitted: - 3 Applicant – 2; In Favor – 0, Neutral – 0, Opposed – 1. No one appeared via Zoom. The names and address of the individuals speaking or submitting comments are part of the record.

Brian Peterson-12362 E Bunco Rd-Of the 19 fractured wells shown in the report, 4 or 5 produce less than 5 gallons per minute. Roughly ¼ of the wells do not produce enough water to comply with the code. This lot is 80 acres with 12 proposed wells equals roughly 1 well for every 6.67 acres. The four surrounding sections which are 640 acres, have about 50 wells, which is about 1 well per 50 acres. If the well produces less water because of the other wells, that is a negative effect. Mr. Peterson believes these lots will produce more water than the average lots due to the size.

Applicant Rebuttal: Gene St. Godard states the one gallon per minute is an estimate of the wells running 24/7/365 and never shut off. The model of the Tyce analysis was done as a worst case scenario, at the northern property line, but as you move further away the impact declines. The analysis is an overestimate of use.

Exhibits: HE-1000 – PowerPoint Presentation by Vlad Finkel
HE-1001 – PowerPoint Presentation by Gene St. Godard
HE-1002 – Notes by Brian Peterson

There being no further comments or testimony the Hearing Examiner closed the public hearing for MSP21-0008 at 6:31pm.

CASE NO. CUP22-0011 CANFIELD WATER STORAGE

Staff Presentation: Vlad Finkel, Planner III, introduced the case with a PowerPoint presentation. This is a request by the City of Coeur d'Alene Water Department. The subject parcel is located at the base of Canfield Mountain, and consists of 3.3 acres and there are significant slopes. The purpose of this proposal is to improve the water service to the City of Cd'A residents, as well as increase the water pressure. The access would be from Thomas Lane, which is partly public and partly private. The zoning is Ag-Sub with a Transitional comp plan designation. This parcel is within

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the City of Cd'A ACI, and the County would normally solicit comments from the City, however since the City is the applicant, it would not make sense. Due to the slopes, there will be a significant amount of cut and fill to create a driveway to access the proposed tower. The tower will be a one million gallon, standpipe-style storage tank that will be 90 feet tall and 60 feet in diameter. There is also a proposal to have a concourse trail that the City and County have been working on for some time. The previous property owner reached a decision with the City to create the concourse trail, and now that the City owns the parcel, they will be responsible for those improvements. The trail is not part of this application. There is residential development to the east. Due to the significant size of the tower, staff requested photo simulations. The tower will be painted green to blend in with the surrounding vegetation. Lakes Highway district did state a right of way permit will be required, Community Development will require a building permit and PHD will requires a commercial/industrial application be submitted. No other agency comments. During the public comment period staff received 1 in support and 1 with concerns of not being contacted. Staff believes this PUCF is needed and necessary, and do support the application.

Applicant Presentation: Terry Pickle, Water Department Director for the City of Coeur d'Alene. This project has been ongoing since 2016. In the 2012 Comp Plan, the city identified the need for a storage tank for the northern part of the City. This tank would serve the northern half of the City from Appleway to Prairie Ave, and Huetter to Canfield Mountain. There are no water rights applications for this project since this is not a well, this would be taking excess flow from the city. They look at hillsides to try to hide the tanks, as well as keeping the height down. The tank will be set about 60 feet down into the hillside which will require excavation. Without a CUP, they cannot perform a geotechnical survey to see what the soils consist of. There will be a mile and a half of transmission main, which will require fixing the roadway that they take out, so it will be improving the existing road. The condition of the original owners was to create the trail, which will be public, but there will not be public parking. There will not be any cellular antennas like are seen on other tanks. There will be a buried powerline, and if power is lost there is no generator, everything will run off 12 volt batteries allowing everything to run for 5-7 days with solar recharging. The City will perform annual reviews of the tank, and monthly visits to monitor. The City was unaware they needed to notify the neighbors as they thought the notification would be done through the CUP process. This project will take about \$10 million, and funding is needed. They are hoping to start on the water main line next year, but the rest will be based on the funding which could take as long as 10 years.

Vlad Finkel added there is a 2 year limit to establish a CUP upon approval. Based on the testimony, the City can request a different timeline to establish if any physical construction could qualify.

David Callahan states he would be fine with a construction start as well as an agreement from the City as to the timeframe.

Terry Pickle states the construction for the base and the roadway would need to be done within 2 years.

Public Comment: Comment Sheets submitted: - 4 Applicant – 0; In Favor – 1, Neutral – 3, Opposed – 0. No one appeared via Zoom. The names and address of the individuals speaking or submitting comments are part of the record.

Jason Evans-2823 E Thomas Lane. Coeur d'Alene-In Favor - Became aware of this project about 10 years ago when negotiating the house he was purchasing. Been very impressed with the process the City has taken.

John Buseth-3644 E Thomas Lane- Coeur d'Alene - Did not receive any notice regarding the project. Will there be fire hydrants added to Thomas Lane? Will property owners be able to attach to the water main? Thomas Lane is narrow and unsure how this will be effected by construction. Will the assessor adjust the property value accordingly? Will take years to change the view once the trees are removed to accommodate the tower.

Tim House-1312 Dearhaven - Coeur d'Alene Opposed – Father lives near this project. Will have a huge impact on property values. Appalled this is on the table.

Applicant Rebuttal: Mr. Pickle states he apologizes for the lack of notification. The City is offering opportunities for adjacent property owners for water service in exchange for additional easements or right of way. There will be fire

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hydrants installed every 600 feet per DEQ rules. The fire protection will probably augment the possible decrease in property values. They will make sure there is no parking on the roadway by construction crews and that there will be access for property owners and emergency vehicles. The tower has to match the overflow elevation of the 2 large stand pipes on the prairie which is why they chose this site. This spot will give enough fluctuation of elevation changes. 50% fire storage has to be met, and if they lowered the height of the tower, they would have to move it up the mountain further which would lower the fire storage.

Exhibits: HE-2000 – Presentation by Vlad Finkel

There being no further comments or testimony the Hearing Examiner closed the public hearing for CUP22-0011 at 7:03 pm.

CASE NO. APP22-0003 APPEAL OF MIN21-0043 VALLEY OF LIFE

Staff Presentation: Amy Hilland, Planner II, introduced the case with a PowerPoint presentation. This is an appeal of an administrative approval of MIN21-0043. The project site is north of the City of Post Falls off N. Spokane St. a private road, and accesses W. Hayden Ave to the south which is the nearest public road. The site has a single family home with additional structures. The proposal was to split the 10 acre lot into 2 lots of 5 acres. Each lot would have an individual driveway access from N. Spokane St. East Greenacres Irrigation District would provide water, and the proposed lots would have individual septic and drainfields. The application was received on May 12, 2021. The Order of decision was signed by the Community Development Director on July 13, 2022, and on August 9, 2022 Community Development received a Notice of Appeal from Mark Saul.

Appellant Presentation: Casey Clifton, Attorney representing appellant Mark Saul, starts by stating the staff report that was submitted on 11/2/22, the reason for approval was based on the ambiguity of the CC&Rs. The County's position is to not approve subdivisions that are in violation of CC&Rs, which was the County's original decision, but the staff report shows a different basis for approval which is the ambiguity of the CC&Rs. Finneman Farms are the 7 parcels to the south of the subject parcel along Hayden Avenue to the west. All the parcels are on the south half of Section 15. There are a total of 17 properties included in the same CC&Rs. The original CC&Rs were recorded in 1990 as part of Finneman Farms. The property owners all received the deeds agreeing to the same CC&Rs (Goodall, Peterson, and Dodge Deeds). The staff report states that Scott Poorman says the CC&Rs are sufficiently ambiguous. The question is if the CC&Rs apply to any lots outside of Finneman Farms, and based on the definition of "Lots" this only applies to the Finneman Farm's lots according to the County. There is no provision that brings these annexed parcels into the definition of Lots, which is not true. Mr. Clifton refers to the Pine Haven Case. The definition of lot is not ambiguous. The annexation section states Ethel Carlson owns additional properties outside of Finneman Farms, and the properties could become subject to the declaration. This would state the annexed parcels would be subject to the definition of "Lot". Mr. Clifton refers to APP21-0003, and states the Hearing Examiner explains that the County does not have the authority to remove CC&Rs.

County Presentation: Pat Braden, Civil Deputy Prosecuting Attorney for Kootenai County states the facts are not in dispute, or that Mr. Saul does have standing to bring this appeal. What is being disputed is the legal interpretation of the CC&Rs. It was initially determined the CC&Rs did apply and would have precluded the subdivision. However, the County received a letter challenging that position from Mr. Poorman on January 7th 2022, which gave the second chance to look at the issue. At that point it was found there was enough ambiguity in the CC&Rs to move forward with the application. The staff report does reflect as to why that ambiguity was found, and how the CC&Rs define the term "Lot". The annexation did apply to other parcels that Ethel Carlson owned at that time, but the term "Lot" was not specifically defined. The CC&Rs clearly provide for annexation of other lots owned by Ms. Carlson into the declaration of CC&Rs. The lots owned by Ms. Carlson outside of Finneman Farms were not lots, they were parcels that were not a part of the plat. The free use of the property is of greater consideration than what a property owner would have put in their CC&Rs. It is also stated that the lots within Finneman Farms are to be sold for single family

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uses only and there will be no subdivision of lots. That would leave interpretation that the lots outside Finneman Farms are not subject to that restriction. The County used this information to approve the minor subdivision and it is the position of the County. The County has to determine if the provisions apply or preclude if a subdivision application can be approved, which is done for each case.

Mr. Granrath asks for clarification: The original CC&Rs are from 1990, which are for the original plat of Finneman Farms, and did not attach the subject parcel. The Goodall Warranty Deed specifically transfers title of the subject parcel subject to the attached CC&Rs. How does this factor into the analysis?

Mr. Braden states staff did note in the staff report that the Declaration of Annexation was not included in the deed. The conveyance language made this property subject to the CC&Rs, or at least attempted to do so. The conclusion is that the CC&Rs did attach, but staff is relying on the ambiguity of the interpretation of the term "Lot".

Public Comment: Comment Sheets submitted: - 2 Applicant – 1; In Favor – 0, Neutral – 0, Opposed – 1. No one appeared via Zoom. The names and address of the individuals speaking or submitting comments are part of the record.

Inessa Prigodin-9268 N. Spokane St., Post Falls: Multigenerational family living together in one home on this property. Would like to divide the property to build one house, so they can neighbor their parents and help them as they age.

Applicant Presentation: Scott Poorman, Attorney for the applicants. This is a land use decision, 10 acres being split into two 5 acre parcels. The purpose is to build another house so they are not all living in one house. The topic in question is a legal issue and should be resulted in court. Ethel Carlson adopted the CC&Rs in 1990 for Finneman Farms. There is also a process of annexation to bring other properties into Finneman Farms CC&Rs. In 1993, Mr. Carlson signs a Warranty Deed for the Goodalls, and this document is what is in question. Did the warranty deed satisfy the annexation process that Ms. Carlson created? No. The other parcels did not follow the annexation process either. If the CC&Rs were attached to this parcel, the property owner can remove them.

Appellant Rebuttal: Casey Clifton states the Declaration of Annexation definition as "referring to the recorded instrument by the terms of a particular parcel may be subjected to this declaration". Requirements for annexation: owned by Ethel Carlson at the time the CC&Rs were created, located in southeast and southwest corner of section 15, must be recorded by Ms. Carlson or her successor in interest, describe the portion of the annex, and must incorporate the CC&Rs. Per the deed, all these requirements are met. It should be the burden of the property owner to take this matter to court, not the appellant.

Exhibits:
HE-3000 – Presentation by Amy Hilland
HE-3001 – PDF Presentation by Casey Clifton
HE-3001a – Appellant's Supplemental Brief
HE-3002 – Best Hill Coalition vs. Halko LLC by Scott Poorman

There being no further comments or testimony the Hearing Examiner closed the public hearing for APP22-0003 at 8:18 pm.

Prepared By,

Jennifer Conner, Recording Secretary