



**Madison County
Commissioner Meeting Minutes
Monday September 13, 2021**

Attendees:

**Todd Smith, Commissioner (Chairman)
Brent Mendenhall, Commissioner
Doug Smith, Commissioner, was excused
Kim Muir, County Clerk**

ACTION ITEMS

Atkinson Land split issue in Lyman with Planning and Zoning

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Commissioner Todd Smith opened the meeting with a Pledge of Allegiance.

Atkinson Land split issue in Lyman with Planning & Zoning from transcribed audio.

Commissioner Todd Smith: Just go ahead and introduce yourself.
I'm Shalae Peterson. I'm Larry & Marilyn's daughter, so I'm speaking for them. If I miss anything, then my dad will clean it up.

Commissioner Todd Smith: Perfect.

Shalae: So, Jared is coming and he knows all the interaction between – Well first of all thank you for having this special meeting. Everything between Jared, the realtor, Bradley Petersen, Melissa and Jeff Rowe, I don't know what the conversations were.

So, this is a piece of property that has been on my. My dad has lived on this farm his entire life. He's farmed it, his dad farmed it and the home they are in - they have been in for almost 60 years in February. And I think if they would have had a son it would still be being farmed. But he was blessed with 5 daughters so 25 years ago he sold it and my dad always wanted to make sure he left us kids something. And when he sold the property 25 years ago he kept this frontage as his retirement; as a supplement, to his retirement. He didn't have a 401 or a pension like the rest of us all have. That was his way of planning for retirement, like we are all doing for our kids. He sold it 25 years ago: there was no zoning laws. If there had been he would have kept the amount of property he would have needed to be able to do what he is doing today. What he's doing was his plan 25 years ago; was to save that property for now, so I guess we're kind of here for 2 reasons:

1. We feel like it has been surveyed and recorded. We feel like it should be a binding, basically three lots: their house with a little property and the other two splits into two. And I personally don't know what that is. And there is Jared so you can come up. And the other:

2. I don't feel like it has been denied, personally. I feel like it's being taken away because I feel like it has been surveyed. It's got to that point and it was literally something between Thursday night, I think that is the 2nd and the 3rd. On the 2nd they had buyers – cash buyers – ready to close last week. On the 3rd they just are told that it can't go through – it's done. And so that was our other thing and I've talked to you about being able to find out happened between that. It's not even a matter of being mad at anyone it's just a little bit or just knowing who's on your side and who's not basically for us. But uh I guess we don't understand why it's – I feel like it's being taken away from them. Dan and I have had two experiences within the last couple of years with selling his moms home for one and when he went to figure out what to do – well I guess I should talk about our experience with Bradley Petersen.

A couple of years ago we wanted a piece of property for Stacey to build on (our daughter) behind us. Dan went in and talked to Bradley Petersen and I don't know any of the conversation. Dan is here if you need any of that. But he looked into it and he came back and said it was in a township so it qualified. We could cut out a piece so Stacey could have 2 acres so we got a surveyor, his name was Jeff Rowe and he said I don't know if we can do this. When Dan said I've talked to Bradley Petersen and he said it's OK, it's in a township. So, Jeff Rowe said well if Bradley Petersen said so he's the boss, it's OK and he surveyed it – no problems. We went to do Dan's moms house he called or went in to see what we needed to do to sell her house cause we needed to sell it. Everyone else was away and we didn't want to rent it. And at that point I think all he did was talk to Melissa, the planner, on the phone and she sent this letter back to him. Basically, saying it was OK because of the age of the house, because of the age of the house – that was basically the question she asked him (how old the house was).

So, now we go to my parents. Their home is, I think they were figuring 78 years old. And I guess we aren't understanding why they aren't grandfathered in. They don't have the property to sell because they did this before the zoning. Our main issue is: on day one if they would have went in and this would have been denied by Bradley Petersen. They wouldn't have been happy about it and they might have done the meeting or whatever needed to be done but they went there and all of that is Jared's so I don't know what all that interaction is. But they wrote a check. Melissa accepted one check. It is in her possession somewhere. Jared has another check, so as far as my parents are concerned it was OK, they paid the fees and Jeff Rowe came out and surveyed it and we have had two experiences with Jeff and I am pretty confident he would never come out and survey something unless he felt like it had been approved, because he basically questioned us on the first one. And it's been surveyed and as far as I know it's been recorded, so it's legally been recorded, legally been surveyed. Um, I'm trying to go through the notes that I was trying to get to the points. Anyway, I guess our point is there were a lot of points that somebody could have caught something. Someone could have said no to it and we wouldn't have been happy but it would have been, that's the way it is. But at this point they have wrote two checks, they have paid a surveyor, they had a buyer, the buyer had sold their home, so there are more people affected than just my parents. And I don't feel like it's being denied, I feel like it's being taken away from them. And I have already talked about this before but I don't know – I guess it's to a point where you guys, I guess, decide. And we just wanted to at least have an in- person meeting where my parents could be right here and you could tell them personally what you value their property at. Cause basically the way this is and the only thing I've had anyone say to us is basically the interpretation between Bradley Petersen who it was his job at the point that he okayed it and the interpretation of the new guy.

Commissioner Todd Smith: Gary.

Shalae: Sorry?

Commissioner Todd Smith: It's all Good.

Anyway, interpretation to me is not more – it's basically like being in court and having it be hearsay. It's his interpretation or his interpretation and I don't even understand what his interpretation is. But it makes sense to me that whoever had the job at the point when it was okay to go through, or Melissa could have said, hold onto the check until we make sure this is good, but she took the check. I don't know if it's cashed or where it is but she accepted the check. The surveyor felt like it was a done deal, or I know he wouldn't have surveyed it because he had already questioned us on one. He was going to survey for Stacey unless he felt it was – I don't think there was any point – well all of those points – there was no money out – there was no other people, their lives were affected by this decision. Something happened at the very end and at that point - the only – should be on you guys. And I don't want throwing anybody under the bus or whatever cause as far as that we want to walk away from here with different feelings towards people. We just feel like: one it was a good deal on our part as far as going through the steps and it could have been denied at any point. But to me once the survey was recorded I don't know how you take that back. I don't know how you change it without having to do a whole new survey or – so.

Commissioner Todd Smith: Okay um. Jared, I appreciate you coming.

Jared: Ya, you bet ya.

Commissioner Todd Smith: You were late.

Jared: Sorry about that.

Commissioner Todd Smith: You have about fifteen minutes. But – so I would like to hear what - and Bradley I hope you can hear all this, cause you are answering it. Jared if you will tell us what your discussion with Bradley was, what you understood the process to be and at what point you felt it was okay to put those up for sale before they were even lots.

Jared: Okay – so when I . . .

Commissioner Todd Smith: Identify yourself.

Jared: I'm Jared Horsely, a real estate agent with Silver Creek Realty Group. I was contacted by the Atkinson's to be able to come as they were doing some estate planning and looking into where they were at with their property and they asked me to be able to find out if whether or not we could split the properties or whether they should sale their whole property. I went to Planning & Zoning and talked to April when she was an employee here and talked with her and she got me in touch with Bradley Petersen. Bradley Petersen looked over the whole entire situation and said: yep you can split this off, you can split off into two, 1.25-acre parcels, and you can get a building permit for the one currently right now but that we are going to get a change in the zoning from Trans Ag 2 to Trans Ag 1. You'll have to wait for that process to take place and for all of that to be completed before you'll have a building right on that lot. But, for the 1.25-acre lot you will have a building right on and you can get started and move forward. He said you can get the survey done on it, get it recorded, you're good to go, you have a building right on

that property. With that information that's what we did. We went and uh we were all the ducks in a row as far as getting everything set to go. Bradley Petersen gave us permission to do that. We listed the properties, got em out there, got em under contract, got everything set to go, um in fact got a contract on the second as well. Had everything good to go. The people who were purchasing the property, the Nelson's contacted me and said , hey listen we figured out a way we can close early, we want to close next week on the property, life is good. I called to follow up with Planning & Zoning and Melissa in talking with her, said you are going to have to talk to Gary. Gary is the new guy and you need to talk to him. I got a phone call the day after that – twice that day – from Gary and wasn't able to be able to receive the phone call at that time because I was in appointments and when I called back he had already left the office. I went down to the office and Melissa said: um he's going to be out. He's got COVID. He's gone but you'll have to talk to him to find out what the details are. So, then the real estate agent representing the Nelson's contacted me.

Commissioner Todd Smith: Which is who?

Jared: Barbara Muggelston, who is here currently. She sent me an email and said: hey planning & zoning has denied this, shut it down, said they are not going to do it, that we could never split on this property, this should have never been done.

I said what are you talking about? April said everything was going to be just fine. Melissa said everything was fine under the interpretation from Bradley Petersen. Bradley Peterson told us everything was going to be fine. That is was a slam dunk. We didn't have any problems or issues. So were processing all the paper work, getting everything set to go and the reality is we are ready to close on the lot and then Gary's interpretation, which my understanding is he contacted you to find out about it as well. Your interpretation, Gary's interpretation says no we can't do anything on there. Well, that would have been wonderful to know back when we first met at the very beginning. But because we didn't know it then the reality was because we were told that we were good to go that it was a slam dunk deal, that there's no reason. The code that they brought up was that the Trans Ag Code was zoned for Trans Ag but it had to be an average of 2 acres uh on the parcels. So, Bradley's interpretation of that was that you could split off two parcels, you can sell both those two parcels and then you will be set to go. When I went and met with Melissa, when Gary was out with COVID, Melissa said: yup it's shut down. You can't do anything. And I said: what about doing other options – what about you know ,getting that other lot set to go in there. Well when I met with Melissa, Melissa said well there is no changing of Trans Ag 2 to Trans Ag 1. That's not in the process. That's never – and she said the wording was changed in it and so there was never a process even started. No meetings held, when I was told there was already one meeting held for Trans Ag 1 to change to Trans Ag 2 and said that there's what's called a small plat subdivision we can do and that we just need to plat the middle one and plat their current existing home and that enabled them to be able to get a build right on that one. It's a 2 ½ month process she said and all we had to do was pay the \$200 bucks. So, we paid the \$200 bucks to make sure the paperwork was done on the first lot. We were going to pay a second \$200 to be able to get that platted so that we can get the build right on that so that we can move forward on that. And it was a week later that we find out that Gary's interpretation is absolutely opposite and now we're in the situation we're in right now. Just for the record we have like five transactions that are backed up here that are all in a mess. Jeff Rowe is on his way right now as well. He had an appointment that went long and so um when we contacted him he specifically said: I'm not doing this until I talk to Bradley Petersen, cause for him he had a question about it, and so a week and a half went by and I've kept calling Jeff and Jeff said: I finally got ahold of Bradley Peterson. Everything is good to go, we'll move forward and we can get it done.

Commissioner Todd Smith: O.K.

Have you got questions, Brent or Troy?

Brent or Troy? Bradley can you pull up this zoning?

Answer: Yes, it's Trans Ag. So, it's Trans Ag. Do we have 1 acre around that at all?

Commissioner Todd Smith: No. All the light green is Trans Ag – The dark green is AG

Question: When Jeff Rowe divided that out is it – how was it divided out?

Answer: There are two 1.25 Acre Parcels and then the current home for the Atkinson's has 1 Acre left on it.

Questions: Do you folks still live there?

Answer: Yes, they do live there.

Commissioner Todd Smith: Do you have any questions Brent before we hear from Bradley?

Commissioner Brent Mendenhall: The comment was made that this subdivision has been surveyed and recorded. It's recorded – the splits are all recorded, everything is-

Jared: That's correct. When we hired Jeff Rowe to come do the survey, Jeff Rowe split everything out, gave us the plat, gave us legal descriptions and he had it recorded.

Commissioner Todd Smith: That was just in the last few weeks though.

Jared: Say that again.

Commissioner Todd Smith: Within the last few weeks.

Jared: No that – we'll have to look at the date that he had it recorded because when we got the offer from Barbara Muggleston, she went in and showed that it wasn't recorded. So, I contacted Jeff and said: hey what happened, what's the deal here, and he said he was waiting to hear back from somebody on - on something, anyway he went in and recorded it. So, I will have to look at the dates. I don't know the exact date when he recorded it.

Commissioner Todd Smith: Did you uh – were you under the understanding that Bradley told you that you could split the house off one acre? You said that he told you that you could have one building permit on the 1.25 acres. The other one would have to wait until the zoning was changed. Correct.

Jared: That is correct.

Commissioner Todd Smith: So, did he say the process you needed to go through on even that one acre? That first lot that would have to have administrative permits.

Jared: All they told us we had to just do the paper work as far as we had to submit the application, pay the \$200.00 fee to be able to get it and then it would be approved because it was set to go.

Commissioner Todd Smith: And you did that?

Jared: So, we - that was on my paperwork to do list that I was doing and I did do that and that's why they have a check for \$200 right now. That - my understanding from you that it's still in the safe.

Commissioner Todd Smith: That's what I was told and I don't think the check has been cashed.

Jared: Yes, we did that.

Commissioner Todd Smith: Yes, so you did do that. Um – but you never got the final approval on the necessary plat. All you got was the verbal that it would be approved but never got the actual.

Jared: Ya, we haven't got – all we have is what Bradley told us.

Commissioner Todd Smith: You never got the administrative permit handed to you, I guess?

Jared: No.

Commissioner Todd Smith: Okay.

Bradley come on up.

Several people talking all at once. Not able to understand what is being said.

Bradley Petersen: With what is happening now, would it be permitted under – would you have that jurisdiction to authorize a split like this under an administrative permit?

Gary: Any administrative land division or any land division has to meet the requirements of underlying zoning, so we would evaluate the application whether it's administrative permit or non-administrative uh whether or not the application is in compliance with the underlying zoning of that land. And so, we do have the application for the land division and I'll let Bradley explain maybe then I can tell my interpretation a little bit later. But any application still has to meet all requirements of the zoning of that area.

Bradley Petersen: The administrative permit process which has come to life and is all and more.

Gary: It could be approved.

Bradley Petersen: Cannot override what the current zoning is?

Gary: It has to comply with the zoning at the time of the application.

Commissioner Todd Smith: So, he had to go back and I believe that Jared made the comment that Gary conferred with me. Gary sent me an email, didn't identify the property, just said hey if we have a 3 1/2 acre, parcel in a Trans Ag zoning is it your understanding that it can be split or not. Something like that! I didn't identify what property and I had no idea what property he was talking about. Um my response to him was no because there's not four acres.

Gary: In light of the application, I inherited the application when I took the job and did a review of it and prepared a response letter and to make sure that it was all in the right spot. I gave it to Troy and said please review this and from a legal stand point I want to make sure things are where they need to be. And it was sill with Troy to be reviewed when the buyer came in to see if they could get a building permit and I had not received a response back from Troy in order to give you guys that decision and render it. Um and so that was in light of the application. I think there is something – a misunderstanding here and one is: you can record a document at the recorder’s office and it doesn’t necessarily mean that that complies with the law. And I could draw up the picture of anything and survey anything and I can go and say I want the recorder’s office to record this. They will record it but that does not mean it’s legally binding. That just means that here is a safe house for this document that has been prepared. It does not mean it has been approved. It does not mean that it complies with the law. And so simply recording a survey does not mean that it complies with anything. And I think there’s a misunderstanding there.

Commissioner Todd Smith: Ya, a recorded survey does not mean that it is a buildable lot.

Jared: No, that wasn’t our understanding. We knew that there was an application that had to be taken care of that Bradley Petersen told me that we needed to do.

Commissioner Todd Smith: Okay, just recording a survey does not make a buildable legal lot. There are pieces all over the county that are split smaller than they are allowed for different reasons. But they’ve never (unable to decipher verbiage) so.

Okay Bradley tell what you remember of this conversation.

Bradley Petersen: Well, I go back and where I’ve always –

Commissioner Todd Smith: And why you told them what they are –

Bradley Petersen: I think the first reaction you look at the answer is: no, you’re not getting another home. But the way I was taught and interpreted and have always been consistent at it, you also have to look at the age of the home and the age of the parcel itself. Both those were pre-existing to us introducing zoning. And the way I was taught to interpret it is that we - it’s the existing home is there with the parcel, they’ve been there for a long time, before we put in the zoning. So how can we punish the homeowner? Most of them have always had the intention of hey, we would like to have a daughter or someone live next to us. That’s their option. They were told they could have one. They could do another lot because the average would be if the zoning ever changes that gives them the option for a second home. Jeff and I are very clear. We talked every day when I was there. Anyone could divide it up six times if they want. That doesn’t mean that they would get any more building lots out of it. So, the interpretation was they can carve off the existing home. That doesn’t take away because it was pre-existing. That doesn’t take away from their one division they can have and then they can have another home. That’s the way I’ve interpreted it. That’s the way I’ve been consistent since I’ve been here. Um, you know I understand Gary’s interpretation; in fact, I can agree with it. But I’ve always had that rule before 1998, how can we punish the homeowner for us changing the rules on them when they had intensions down the road and all of a sudden, we are now saying: you can’t when they did that, that was their intent. And I was taught that way, yes it was Ralph that pushed it and I even talked to my predecessor and that was the way it was interpreted. And I thought that was a fair thing. So, the key here is the date of the property and the date of the home. And that is where my interpretation come in. That’s where the decision came in. The second home potentially it might not ever happen depending on the zone. The zoning yes, is something

that we need to look at. And that was discussed; and it was very clear that's not a buildable lot unless the zoning changes. And Jeff was very clear. I called him and said: do you feel that I gave any misinterpretation with that. He said no; that second lot is not a buildable lot unless the zoning changes. And so yes, I would have approved if was under my interpretation. I've been consistent with that. We can go and look at other places and it's the same consistency that's there.

Commissioner Todd Smith: Okay so in a nut shell.

Person did not identify self: When you say that home – the Atkinson home- does it matter the size of the lot on that home. If there's 3 1/2 acres can he do a one acre and then leave two and one half and that makes the other lot.

Bradley Petersen: That's where I...

Commissioner Brent Mendenhall :? That's the basis that you were going on?

Bradley Petersen: Yes.

Commissioner Todd Smith: Shalae brought up a couple of properties as she was talking and I am very familiar with the area out there, so there um. One that she referred to is Dan's parent's house. Dan is her husband. Is right here and this is one we got a letter on, which is allowed. Um, it looks like it's only a half an acre that is off with that one. Is that correct?

Person did not identify self: No there is one acre.

Shalae: We squared it up to be one acre when we sold it to the county.

Commissioner Todd Smith: According to this map there is only 1 acre. So, do all the out buildings go with it? Basically?

Shalae: Yah that makes an acre, right?

Person did not identify self: We took the natural fence line and that's what was used to square it off.

Commissioner Todd Smith: So, in this case we, they did allow, cause, we have a letter here. His mother or his family's estate to sell this ground off. They maintained the ownership of all this ground.

Person did not identify self: What was the parcel before that one acre was split? How big was it?

Commissioner Todd Smith: Um probably what do you think Dan? 60 acres -over there. Three different or two different parcels over there. So, 15 and ¾ acres and that one is 3 cares and that one is 35.

Gary: Okay we are dealing with different parcel sizes.

Commissioner Todd Smith: We are.

Gary: that would maintain the Trans Ag average of 2 acres on those other splits.

Commissioner Todd Smith: Absolutely.

Gary: And so, it's an apples & oranges comparison a little bit because of the size of the parcel before the split.

Unknown Person: A little bit. I started out trying to see where this may go. The original residence, I'm trying to see what the precedence were with the original residence, if they were 1 acre because of age of home, date of home, setting of home. If we have precedence where we have allowed those older residences to be 1 acre – less than 10. I understand, I know they have their conflicts here but I am looking at if they did that –

Gary: But if you break 1 acre out of 16, you're still in compliance with the underlying zoning.

Commissioner Todd Smith: As long as it is zoned Trans Ag.

Gary: So, if you have Trans Ag, so average it to: you break a 16 into 1 and 1/15th, you're still in compliance with that 2-acre average. Whereas, when you get less than 4, you can't divide less than 4 into 2 pieces and have the average maintained at 2. And so that's where it's different. And that's where the other acreage has to be deeded or (unable to decipher conversation with several talking at the same time).

Unknown Person: Ya, we did that out in Hibbard didn't we and Plano?

Commissioner Todd Smith: We did.

Gary: And then I think there's another kind of difference in legal opinion on it. And that is the term "GRANDFATHERED". And when it comes to land use when, grandfathered is used, the legal term is allowed nonconforming use. Which means you are doing something before the laws were enacted. And then whatever you were using the land for before the laws were enacted you get to continue to do as an allowed nonconforming use. However, that does not apply to future land division. Okay, so the grandfathered use, you got a home on ¾ acre lot and we came up with a rule that says lots have to be 1 acre. Keep using the house; it's a good house, it existed before. But when you do any kind of land division to change the boundaries, or to divide a parcel, it's subject to the rules that are in place at the time of the action. And so, whenever you divide it, it doesn't matter what the rules were 20 years ago, it's what are the rules in place at the time that division is applied for, okay. So, I think there's a misunderstanding of what the grandfathering means with allowed nonconforming uses versus future land division actions, okay. Is that accurate Troy?

Troy: We had a good discussion about this earlier. Just so you're clear let me give you an example. Let's assume there is a gravel pit on there in the 60's and we changed the law in 2010 that says gravel pits not allowed out there. You have a conforming use back in the 60's that all of a sudden turn nonconforming in 2010 and we say it can't be there. So, under that example that's exactly right; you'll be grandfathered

Unknown Person: The use would.

Troy: Yes, that's right. It's not like 2010 we are going to show up and say you can't have a gravel pit anymore. You would say, hey wait a minute it's been here since the 60's so I'm going to keep doing the same thing. So that . . .

Gary: That's not the same with land divisions in the future when you want to divide property or subject to whatever the laws are in place at the time of the division.

Shalae: Okay, these are my 2 points: 1 – It is everybody's interpretation and I get it's your job now. Maybe legally you guys apparently have a lawyer here with you.

Unable to decipher with so many voices talking at one time.

Shalae: So, we're talking interpretation, which to me is not even a legal word. But the other thing – I'm losing my train of thought. Is I go back to our original point. This maybe should have been stopped, it could have been stopped, it wasn't. And there is a point where you can't do it to where so much has happened that I can't believe that you would – it's basically coming down to – I guess it's you, maybe know.

Gary: Okay.

Shalae: Somebody is making a decision on the value of my mom & dad's property. Is it worth \$170,000.00 or \$200,000.00. Is it worth \$85,000.00 or is it worth zero. Unless my parent's sale the home they've lived in for 60 years and uprooting everything so they can sale the property. So, somebody has to tell us how much – I mean is that acreage worth that much for all of this – at this point after all these decisions have been – it's either worth \$170,000.00, it's worth \$85,000.00 or it's worth zero to them. And they hold it and yay for us girls, down the road we get the house and that property to sell together. And at some point, everything else in here has been interpretation by someone. And why It does not make sense that we are going to get down to nitty-gritty. Grandfather –

Commissioner Todd Smith: Well, Shalae to your point, when zoning laws came into effect in 1998 it did affect the values of all our properties.

Shalae: It did. And that's what I'm saying. Day 1, day2, to 3 weeks in –

Commissioner Todd Smith: Absolutely – cause now it went from doing whatever you wanted with your property. You could sell ½ acre of an acre: whatever to all of a sudden and some people, owners of ag to 16 acres. Absolutely, it has an effect on your parent's property at that point.

Shalae: And I understand what you're saying. I'm just saying there's a point where it's gone so far.

Commissioner Todd Smith: And I'm not disagreeing with you. On the other parcel that she referred to on their home. They sold a lot to their daughter and they also sold a lot to Mr. Horsley.

Shalae: We sold it to someone else.

Commissioner Todd Smith: Okay, he now owns it. They are all 2 acre lots in a trans-ag zone. So that's completely different. Cause they did require you to have 2 acres per lot.

Shalae: My point on those was that I felt like Jeff Rowe the surveyor would have surveyed any of the lots if there was a question.

Commissioner Todd Smith: Jeff is here with us now. This is Jeff.

Shalae: That's what I'm just saying: Jeff Rowe checked every time to ask – to know he felt – that's why I brought him up.

Commissioner Todd Smith: Well Jeff is an excellent surveyor and we appreciate all the work he does for us.

Shalae: And he made sure that – I don't think he would have surveyed any one to them.

Commissioner Todd Smith: Jeff there is a question that has come up when you weren't here. What was said and what wasn't said. What was promised and not promised. Bradley admits that he told the Atkinson's or through their Real Estate Agent that they could buy the house on one acre and sale one other buildable lot. That is what Bradley is saying he told them. They are saying that they were told they could do 2 more buildable lots. What was your understanding?

Jeff Rowe? one building lot.

Unknown name: two building lots but one building.

Unknown name: two building lots. One for sure now and two, when the 2nd one is available once the Jones own it.

Commissioner Todd Smith: So, we're all on agreement on that then.

Unknown name: Ya

Commissioner Todd Smith: okay you are all in agreement then that there would not be a building permit allowed on that second lot or on that 3rd lot, I guess let's say; until zoning changed.

Unknown name: That's correct.

Commissioner Todd Smith: Which is a long shot by the way.

Unknown name - Trans Ag 2 to 1 we were told that was already in the process. But the second one we were supposed to do a short plat. That is was a slam dunk once done, as well.

Commissioner Todd Smith: Nothing's a slam dunk. Um, okay our decision here today is - if Bradley would still be the administrator he would have administratively approved this, we would never have known about it.

Unknown Name: With the house and 1 acre and then 1 other lot.

Commissioner Todd Smith: Gary comes in – and I will tell you this – the interpretation how I interpret the law – there is a clause in our Ag Zoning that allows for a split of an existing farm house off of a bigger parcel of ground on at least 1 acre for the intention of selling the farm. And keeping the farm house.

Unknown name: I think that –

Commissioner Todd Smith: Now, it works both ways, right? Cause if you sell the farm you're eventually going to sell the house.

Gary: But the provision in our code in that requires that when you sell the farm it had a deed restriction that says it's not eligible for a building. So, if you cross apply that to Trans Ag, which I think is a legal stretch. Then any parcels created that are nonconforming – meaning they don't average that two, would have to have a deed restriction that would say, no development or building on this, because it doesn't comply with the 2-acre average.

Unknown Name: Which it does not currently say that. Correct?

Commissioner Todd Smith: Doesn't say what?

Unknown Name: There's no deed restriction on that, correct?

Unknown Name: In Trans-Ag there is nothing in that. We're just talking Agriculture zoning.

Gary: But Trans Ag says you have to maintain one dwelling for 2 acres. So, to have a 2nd dwelling you have to start with 4 acres. So, no matter what, to divide 3.5 no future lot could have a building, right?

Unknown Name: I think that's where Bradley might have got that mixed up. Agriculture versus Trans Ag. That might have been it.

Bradley Petersen: It's one of those things you could say that but it just goes back as Todd you know, back when you lived in townsites as a zone as well. You go in there and people set up years and years ago. They set up ½ acre lots because you can have 2 houses on 1 acre. They did that because they were told they could. And it is the same thing with the Tran Ag where it says there is no minimum lot size. You just have to average that.

Commissioner Todd Smith: Bradley, how did you average. Because I don't.

Commissioner Todd Smith and Bradley talking at the same time I was unable to translate this part.

Commissioner Todd Smith: You can't average 2 homes on 3.5 acres and come up with 2 acres.

Bradley: Subtract the current home. The home is there. And that's the way, so you take off an acre and you still have 2 ½ acres. They can get one home on the 2 acres.

Larry: When did the Planning & Zoning Laws take effect, 1998?

Commissioner Todd Smith: 1998.

Larry: When was those homes built on the Bolland lane? I sold that, all that ground there, were on that Bolland lane. There are 4 homes there and they're all averaging 1.2 acres. That was my land and they put on 4 homes there and they're all about 1.2 and 1.3 acres. I don't know when they were built but I'm sure they were built after that planning & zoning took effect. And that was my land when I sold that. So, my land that I kept isn't as valuable as the land that I sold. I don't know who lives in those homes now.

Commissioner Todd Smith: Yes, I seem to have lost my spot here.

Gary: I think that there's two things that play here:

No. 1 Historically the county has not followed what's in the code. And has allowed splits that were not compliant with the code at the time of the split. And I think that's problematic if we try to follow it moving forward. And I think that's where we are at right now.

No. 2 The second thing that compounds this, is that we had real estate transactions on property that was not yet divided. That was listed for sale. That was put under contract, when that lot split had not been approved and that new lot was not existent yet. So, we have some real estate practices here that had put people in financial situations of commitment, when there was not a property to be sold yet. And that's hugely problematic. Because then there's pressure from a buyer who comes in to apply for a building permit on a parcel they don't own that has not been created and is not authorized as a parcel with a building permit. So, they've got earnest money down and they've sold their home as we heard based upon a real estate listing that should never have happened. On a lot that was not authorized and not existent. And that compounded the whole issue of things because now there's a whole lot of people with skin in the game on this; but that applies pressure to not follow the law. And we have a number of lots in this county right now that are listed for sale. The final plat's not been approved yet, nor recorded. And so that's a different issue that we can take on.

Commissioner Todd Smith: Jared, what do you learn in real estate? Is there any such thing as a verbal contract that's legal?

Jared: Silence.

Commissioner Todd Smith: Yes or No?

Jared: There's a systematic way that we can do paper work as far as to make that stuff happen. And if so –

Commissioner Todd Smith: Is have been under a real estate brokerage 23 years. And what you did was wrong. So – I'll just leave it at that. You should never have listed it for sale if it was not legal.

Commissioner Brent Mendenhall: Our problem at hand is we have an employee, who is still an employee at the county, just changed responsibilities. And a commitment was made to allow - and I know there is no such thing as errors & omissions with all the different entities we have. But we do have, where a commitment was made for the splitting off of the original home, less than what would be acceptable and then we have 2 ½ acres left. And I'm trying to think of any way possible that we say, well, you know it's been done before. It got by us this time so from here on out Gary, this is not on you. This is on a prior administrator, who did what he thought was correct, is still an employee of the county. And we stand by what the county has committed to do. Now we have a new administrator, who if this came to you today, it wouldn't be happening. And so, I wouldn't know legally – I'm trying to see legally can we stand by what previous – we've stood by what, as mentioned, a previous administrator before Bradley has done. We've stood by a lot of that stuff that was marginal at best.

Troy Evans: A wrong decision can't be made right by default if the underlying foundation is not correct. That's a problem. I mean if you allowed it and the neighbors got together and sued, the court may undo it.

Commissioner Brent Mendenhall: And that's the problem I'm having, how do we make this whole based on the commitment? Even if some practices of realty were stretched and eagerness to make a sale overshadowed and worth.

Bradley Petersen: Troy, remember when, I can't remember what the situation was with Sam Angell, when he came and talked to us right when I first got here. And he talked about the most important with planning & zoning is consistency with everybody. And that's what we try to do. We were dealing with on another issue, John Ferguson, and my predecessor allowed him to put in 8 lots, and one of them wasn't going to meet compliance and I was going to say no because he was trying to interpret the rule that we have for the Ag Zone and Trans Ag Zone for setting aside property. It wasn't even contiguous. We ended upand your recommendation was, you know, because John was threatening law suits and everything else, you know what we just need to move forward, Bradley had approved this and I remember John was going, so you're telling me, if I would have come in a week earlier, this all would have been approved. And I had to say yah – that's right it would have been. This is how I am interpreting it now. It is a similar situation. I've been consistent and we could go in and show multiple times that this has happened. And that was the way I was taught to interpret it. And if it's wrong, it's wrong. I see where Gary is coming from and I agree with him on a lot of that. But I also know a lot of people have made investments. Told, ya this is something that you are going to be able to do over time. And then we pull out the rug by changing the rules on them.

Commissioner Todd Smith: We didn't change the rules. We are just starting to enforce the rules that are in place. But I think you mis-interrupt it. That is why we are here today. I guess I don't really know where you got the information from to mis interrupt it.

Bradley Petersen: Where did I get I from? This is something that when I first got here the very first day we had a situation like this.

Commissioner Todd Smith: So, you were told of this.

Bradley Petersen: And when I talked to Ralph, he said, oh ya this is exactly what we do. I called Brent on it and he said yep that's what we've always done.

Commissioner Todd Smith: You, know it's not in our code anywhere?

Bradley Petersen: Because of the dates, was the key.

Commissioner Todd Smith: Right, but it's not in our code anywhere.

Bradley Petersen: I was told that if it's a pre-existing structure parcel that we don't take away from the number of divisions or potential building rights. We don't subtract the one off of that.

Jeff Rowe: Since Bradley has been here he has been consistent and we have done that several times.

Commissioner Todd Smith: We are going to recess due to other people needing this room. We will reconvene in 1 ½ hours or so.

Shalae: So, do we come back at that time?

Commissioner Todd Smith: If you would like to. It will just be a discussion amongst us. Let's come back at noon.

The meeting was recessed an hour and a half and reconvened at noon.

Commissioner Todd Smith: We appreciate you coming back. Sorry that we had to recess and go out for a bit. Well these decisions are really hard. We recognize that there were some promises made. Some things said. Some misrepresentation from the county. I've been trying for the last hour to figure how we can legally justify doing it. I'm not finding a way that we can do it. I know others have been done and I feel bad that mistakes have been made but we just have nothing in our code that legally allows us to do it. I don't know what else to say. Troy what did I miss?

Troy Evans: No decision has been made?

Commissioner Todd Smith: Yes, there was actually no written legal decision actually made. There were things told but no decision made. On the processes that when you are dealing with an administrative permit you go and get an application, they actually give you something in writing that says that it has been approved or not. That was never actually done, yet. So, our meeting today is kind of helped gain a little. Typically, once you get that decision you have a right to appeal it. We're notBrent you got anything to add?

Brent Mendenhall: No, no I don't. We have wrestled with this. How can we do this? How can we, even knowing that there may have been others past that were wrong. And the statement that Mr. Evans made: You can't make a wrong, right. And we have wrestled trying to figure out how to do it. How could we have the residence, how can we split that off? Zoning is not everybody's friend. I wrestle, I can't find it. I don't know what we can do. I don't see anyway, that we can permit this to go forward. I just don't.

Commissioner Todd Smith: It would be a lot easier just to say, you can do it.

Unknown voice: Can I ask a question?

Commissioner Todd Smith: Ya.

Unknown voice: So, when we sold our ground and we looked at this and we said this is a nice little piece of property. We're going to keep this so that we can do something with it. There was no zoning so we didn't add to it to make sure we had "X" amount of acreage, or anything. So, all these years we thought that "farmers" think that you have a piece of land, there's money in the bank. But you're telling us that our property is worth absolutely nothing unless we sell our home that we've lived in for 60 years, and uproot our life, in order to sell this piece of ground that we thought was money in the bank, down the road. I mean that's not easy for somebody after in your 80's & 60 years in a home, to sell it, and uproot yourself and go into something else or find something else or do something else. So, there's no way of getting one – you know selling one and keeping the rest. It feels like my bank account has been got into.

Shalae: They can't just sell the one lot that was initially approved. The other one was questionable. We can't just sell the one?

Commissioner Todd Smith: As a lot you can sale it but you can't build on it.

Unknown Voice: That means that my property is worth nothing.

Commissioner Todd Smith: Ya, in a nut shell that's correct. The zoning laws were put in place 23 years ago.

Unknown Voice: And I know you got to start at a starting point with you know, what's what. But it looks like it would not start with the one who made the decision and he was being paid and he got his pay check. Looks like if you started with the one that is taking over now

Shalae: So, do you recoup their money?

Commissioner Todd Smith: Yes, so with that absolutely what we'll offer to you and we will certainly give you your money back for the applications that were made. were there 2 checks?

Unknown Voice: You haven't even cashed them. You just held them.

Commissioner Todd Smith: Okay, ya

Unknown Voice: There's two \$200 checks and a survey.

Commissioner Todd Smith: How much was the survey?

Unknown Voice: But one other question. Do you know if this had of come to an answer even a month ago, two weeks ago, but right up to this date and the next date it is totally different? If we had started knowing we couldn't do this, cause we appreciate what you're thinking and you are probably right, we went two months now –

Unknown Voice: It should have been honored by the person that made the decision. The person who had the authority to make the decision at that time.

Commissioner Todd Smith: And we recognize that – we do

Unknown Voice: That's one of the things we wrestle about – is how do we

Unknown Voice: It's called the Integrity Part

Unknown Voice: Well, you keep saying we want to move forward in the right direction. Great! So, the date he took over his job, from that day forward, he rules the roost. But this was in play before he took over.

Gary: The application, I've got right here, the county received on August 18, 2021. Is when the application for the administrative land division was filed.

Shalae? And when did you say no to it?

Gary: Um, I haven't rendered a decision yet.

Unable to decipher – several voices speaking at the same time.

Shalae: But you put a stop to it, so

Gary: Well, I had reviewed it and I prepared a letter, that I prepared about 2 weeks.

Shalae: So, you didn't see it in between all that time.

Gary: Well, I saw it as soon as I reviewed it and I prepared a letter and I wanted to make sure it was good legally. It went to legal review and then I got Covid and have been out a week and a half.

Shalae: So, those are a lot of days that not a thing was happening.

Commissioner Todd Smith: Gary, actually became an employee July, end of July at some point.

Shalae: I know but I'm just saying there was a lot of days. That's our only point. I get the zoning and I get your decision and we will live with it.

Commissioner Todd Smith: So, here's the issue, and I know that Jared talked to Bradley probably in June. But the actual application was not applied for until August 18th.

Shalae: Okay, I get it. I get all that. I get that you are saying though that it's not going to happen. But at some point, I don't know where, you're worried about you guys being sued if you let it go. And you've had all this time. We had last Friday morning after all of this was put in place. How much sooner, could you have stopped this. That is our whole point, is –

Commissioner Todd Smith: We received it August 18th. When did you actually see it?

Shalae: September 3rd

Commissioner Todd Smith: September 2nd, I think is what you told me.

Shalae: A lot of things every day happen that –

Commissioner Todd Smith: 2 weeks

Gary: Well, and I think compounding this, is we had, and I don't mean to pick the real estate agent.

Shalae: Well, that's what I think you guys are really doing, honestly. I feel like –

Gary: No, it's illegal –

Shalae: You don't want to be sued but these guys are –

Gary: It's illegal and it's unethical to list a property that is not a property yet. And so –

Unknown Voice: Somewhere he got the idea it was.

Voices speaking at the same time: Unable to decipher.

Gary: But that was faulty and so –

Unknown Voice: How did he know it was faulty?

Shalae: That's what I'm asking? When did you know it was faulty? And why did it take clear to the 3rd for them to – a lot of things happen in that time.

Gary: Well, this was, the property was listed as I understand for sale prior to even an application being filed.

Shalae: It was after the survey.

Unknown Voice: There are no signs or nothing.

Shalae: That's what I'm saying, all of that is between you guys and we'll go by what you're saying – legally on that. But you're sitting here worrying about you guys being sued. You got a lawyer in here and I know he is here all the time. But what are their recourses if they - I mean is it Jared and this guy Bradley thrown under the bus. I mean is it basically –

Unknown Voice – So we're just going to keep paying taxes on it, for nothing.

Shalae: I'm just trying to figure out why it was set in limbo for so long.

Brent Mendenhall: I want you to understand, we are not worried about being sued. Because . . .

Shalae: But that's what was said earlier.

Brent Mendenhall: Well, and yes, he is here. He's not here to –

Shalae: Well, I get why he's here.

Brent Mendenhall: He's not here to preside over legal issues. He's here to say-

Unknown Voice: We don't think anybody cares out there.

Brent Mendenhall: No, I think your realtor is the one who jumped the gun.

Unknown Voice: And we have a big enough piece of ground it looks like.

Shalae: Well, and he's not in any risk from us. We're not – Unknown Voice: No, we'll accept your decision.

Brent Mendenhall: And I know that.

Shalae: We accept that and I get it. I just feel like it went so far past a lot of accountability.

Unknown Voice: Somewhere it could have been stopped a month or so ago.

Shalae: And I hate to –

Brent Mendenhall: I don't know where that application was in all of this dark limbo.

Shalae: But I mean a check was received. And it's like why didn't she just say, keep the check until we are sure.

Gary: So, that's another place that there is a misunderstanding. There's an application fee that's not an approval fee. And when you apply for any application whether it's a building permit or whatever, there is a fee associated with a cost of processing that application. Payment of an application fee does not equate approval. It doesn't equate disapproval. It's that your application will be considered. Okay.

Brent Mendenhall: I think that is where they are worried. Where was the reconsideration? What was happening when that application –

Shalae: And so, you're saying that application was not disapproved at that point.

Gary: Right.

Shalae: I mean, we will be fine with this. I guess we are just venting for a minute. But it just seems like there are enough of you guys all involved in this that it could have been stopped.

Gary: And one thing is that the delicate nature of it is that I prepared a letter that I was going to send to you and say, okay, here's the options.

Brent Mendenhall: Was that prepared before today?

Gary: That was prepared about 2 to 2 ½ weeks ago. And before I send any letter of that sensitive nature like that where there is legal interpretation, I get legal review of the letter.

Shalae: So, who was the letter sent to?

Gary: It's not been sent to anybody yet. It will be sent to you. It says here my decision on the application. And so, you haven't received it yet because it was a legal review and I unfortunately got sick and had Covid for a week and a half. It is my first day back.

Shalae: How long have you been here?

Gary: I have been here since the middle of July.

Shalae: I guess the other thing is there is no anything going forward.

Gary: I didn't have an application until – this is dated August 18th – is when we received the application. So, it hasn't even been a month.

Unknown Voice: So, who brought it to your attention or where did you get it from? It's got your signature – Larry and Marilyn both signed this and dated it August 18th. Once we receive an application, Melissa takes them and gives them to me and says you need to review this.

Commissioner Todd Smith: I'm sure it was Jared who took the application. I think he told me that.

Gary: But those are the dates on it.

Shalae: So, I guess there is no going forward? Requesting –

Unknown Voice: Is there any other solution? I mean, you know when you set something aside that you think is going to be for your retirement, that it is something to enhance your senior rights file. Is there anything we can do? Are there any other options?

Commissioner Todd Smith: You, know the only option I can think of, which I doubt is an option, if you could get a half an acre from a neighbor and I guess Lane Moss probably owns it.

Shalae: Ya but he's a good – Lane- I thought Lane was the problem and I figured it out. Lane's good with it.

Commissioner Todd Smith: If Lane would sell you a half acre you could sell one 2-acre lot off.

Shalae: But there's no requesting their house be like dad's house where it is so old he sat on an acre and then be just that much too short.

Unknown Voice: How can we sell our house?

Commissioner Todd Smith: If you sell your house you will need to sell all three lots unless you could pick up a half an acre from the neighbor and then that would give you that 4 acres. And then you could keep your house. I guess – could they keep their house on one acre and sell three. As long as there's only- it has to average 2 acres.

Unknown Voice: The house can't go on an acre then? It can if the other part is 3. You have to start with 4. At least 4 to split.

Commissioner Todd Smith: It can if the other part is 3.

Gary: You have to start with 4. At least 4 to split.

Commissioner Brent Mendenhall: Larry, when you sold there was no way you were going 3 ½, thinking I'm going to need that other ½ acre. Had you known that, I know you well enough that you would have.....

Too many jumbled voices to decipher.

Shalae: We understand what you are saying.

Larry: We're okay with it. We just wish it would have happened a lot sooner. Somebody dropped the ball somewhere. We've had 2 months spending money that we're not going to get.

Commissioner Todd Smith: We're not denying that there were things –

Shalae: But I think it is more than just one person. I think. I know, maybe Jared.

Larry: Jared talked with Melissa many, many times. And she had been in touch with Brad, I think.

Commissioner Brent Mendenhall: There is nothing that grinds on me more than elected officials say our hands are tied.

Unknown Voice: You know you put a house on there you get taxes on that. I pay taxes and get nothing. Not fair, not right.

Shalae: So how do they go about trying to get reimbursed and –

Commissioner Todd Smith: How much was your survey?

Larry: Eight Hundred and Forty – Eight Hundred and Some.

Commissioner Todd Smith: If you will bring us in what you are out, if the checks are not cashed, they won't be.

Larry: I heard one check is in their safe and I think Jared still might have the other check.

Commissioner Todd Smith: Okay if they have been cashed we will reimburse you. If not, they'll just be destroyed. If you get your invoice from Jennifer, I don't have a problem reimbursing that.

Bradley Petersen: Can I ask a question? Why two - there's only one administrative permit that was applied for. Where's the 2nd check?

Larry: I think Jared still had it. I don't know.

Bradley Petersen: Cause I think there's only one check.

Commissioner Todd Smith: I don't know why they wanted two.

Unknown Voice: Well cause somebody told him that if we put our home and then the 2 lots in to one.

Commissioner Todd Smith: Did he apply for a short plat?

Unknown Voice: Ya, subdivision or something.

Gary: Administrative permit application for a lot split.

Commissioner Todd Smith: We'll check with Jared on that. Ya, certainly any dollar or any checks you have given to Planning & Zoning will be –

Shalae: A copy of the minutes

Commissioner Brent Mendenhall: Mr. Chairman, I don't want to do this but I have to. I would like to make a motion to deny this administrative permit with the stipulation that all funds submitted to the

county be refunded and also payment of the survey be remitted to the Atkinson's. Commissioner Todd Smith seconded and voting was unanimous.

Larry: Thank you.

Shalae: Thanks for doing this.

Commissioner Todd Smith: I am sorry Shalae.

Ending of Burn Ban Commissioner Mendenhall made a motion to approve ending of the burn ban that was initiated to go through September 30, 2021, but weather conditions now allow to end the ban. Commissioner Todd Smith seconded and the motion passed.

Approve and sign: Beer and Wine Licenses

After discussion and review, Commissioner Mendenhall made a motion to approve the Beer and Wine Licenses for Broulim's Supermarkets, Orme Family LLC dba Brad's Exxon, Walmart, Inc #1878 and Walmart #1878 Fuel Station. After review and discussion, Commissioner Todd Smith seconded and the motion passed.

There being no further business, Commissioner Mendenhall made a motion to adjourn the meeting at 1:50 p.m. Commissioner Doug Smith seconded and voting was unanimous. The motion passed.

Approved:

Todd Smith, Commission Chairman
Brent Mendenhall, Commissioner
Douglas Smith, Commissioner

Attest:

Kim Muir, County Clerk