



Abbreviated Minutes: Complete Set of Minutes Are on File in The Clerk's Office

**Madison County
Commissioner Meeting Minutes
October 17, 2022**

Attendees:

**Todd Smith, Commissioner Chairman was excused
Brent Mendenhall, Commissioner
Douglas Smith, Commissioner
Troy Evans, Deputy Prosecuting Attorney
Kim Muir, County Clerk**

Commissioner Elect Dustin Parkinson was also present

ACTION ITEMS

Public Hearing, Connect Engineering for Sunset Estates, appeal on Preliminary Plat.
This meeting was streamed electronically.
Commissioner Todd Smith was excused from the meeting as he was ill.

Commissioner Mendenhall began the meeting at 5:30 p.m. The Sunset Estates preliminary plat was denied by the Madison County P & Z Commission and was appealed to the Board of County Commissioners. This appeal is now being heard this evening before the Madison County Commissioners.

Commissioner Mendenhall explained the rules of the Public Hearing and the order of testimony. The entire meeting was recorded.

Gary Armstrong, P&Z Administrator: The application is the preliminary plat for the 87 acres located at 1600 W 3400 S., North of 3400 S. to divide into 43 buildable lots. Average over 2 acres per parcel served by individual wells and septic. Designed as a loop with lots in the center of the subdivision. Domestic wells are on the center lots. The matter was first heard March 9, 2022 by P & Z. Most of the issues were regarding irrigation. Neighbors have expressed concerns of traffic and irrigation. The Planning & Zoning Commission voted unanimously to table the application with the request of an irrigation management design detailing traffic, some issues were not in compliance with code. Applicants revised and addressed the issues. P & Z has recommended denial. Main purpose was they didn't think what was proposed for irrigation was sufficient. An email was submitted showing they would be appealing the recommendation for denial. We are here tonight in response to that appeal for the body to consider the preliminary plat. The end result could be denial of the preliminary plat application if it does not meet requirement. Applicant can resubmit and it goes to square one. Other option is to approve the Preliminary Plat application if it meets the requirement of County Code. Whatever is approved tonight must

be in the final plat and everything must be in order. The requirements 115-31, groups everything in one or two sentences. Stormwater drainage will be decided by the commission to decide. Breaks group down into 10 subpoints. Addresses discharge facilities – high level requirements of final plat.

Applicant: Barry Bame, 2295 N Yellowstone, Idaho Falls. Connect Engineering, Idaho Falls
Gary did a good job on the presentation and he will add. This has come down to the irrigation system. The interior lots will irrigate off their well. This comes down to if this system is adequate. All applicants feel that the irrigation system is adequate. Berms may need to be around the lots. CCR's state the need to be coordinated as it is with any system. He reads the code that per state statute they are leaving the irrigation up to the homeowners. When head gates are open responsibility to coordinate will be up to each individual owner. If required then they will have it engineered. Commissioner Doug Smith asks why they are cutting it off there. If homeowners don't want to irrigate, they won't have to. They could flood irrigate off the ditches or they could leave it as a weed patch. Each purchaser of the subdivision will be legally delivered shares of the water. Each share goes with the land. The interior lots are designed so that they can be watered under the domestic well.

The question was asked, will every lot be engineered so that every lot will be able to water out of the domestic well and Who is responsible to ensure they are not watering more than allowed? Barry answered, he is working with Rod Robison with Reed Canal Company and they are continuing to work with them.

Opposition presentation by an attorney or spokesman for a group: None.

Verbal public testimony:

Neutral: None.

Opposing:

Les Huot, 3197 Paradise Avenue: Speaking on the Plan. Extending Paradise avenue and 3000 W – which are dead ends. Connectivity code he asks to consider putting in a fire gate. No benefit for people on these streets that are dead end. There are two entrances required. Last few meetings P & Z held it would be shorter to come in on these two streets rather than the main street. Board agreed to a gate, but not allow all traffic to come in. Gary presented a map showing the area discussed. Also, a stop sign should be placed. That is his request.

Kurt Papenfuss, 1926 W 3000 S: And Archer Lyman road is a hazard and people are travelling too fast and as they turn people nearly hit them. There is no turn lane. People are just getting going and then have to slow down for those turning. Road was just chip sealed. They repair the road on the sides and snowplows rip it up. Added traffic will just add to it. The water flows north and you have to put it back south with the irrigation plan. He doesn't know how they will get water to flow backward.

Rachel Gee, 3500 S 2140 W: She could speak in the neutral position. She would just like to see forethought on the whole thing. What will it be in 20 years? Are there HOA's so that this is not a free for all. They are only a mile away from City limits. Ditch runs on the south side of the property and it does run up hill. Will it be feasible to irrigate? She would like to see a solution with the Reed Canal and flood irrigating around this. She flood irrigates (lives on the west side of the Archer/Lyman highway. She can only irrigate every few weeks and she doesn't know how it will work to add more to the flood irrigation. She would like to see forethought with an HOA to make sure trashy yards will not be allowed.

Dallas Brown, 1445 W 3400 S.: Feels like it is reckless to assume that all owners will understand irrigation - they irrigate every 2 weeks. Hard to say that everyone will agree on a timeline. He feels it should be set up before the new homeowners come in and be structured so all can follow the plan. The water is important because it recharges the aquifer. He would hate to deal with running out of water. He is concerned about the traffic – he has many small children and more traffic would not be good – a turn lane would be a really good thing.

Justin Riley, 1946 W 3400 S.: A lot has been covered that he agrees with. You can't water uphill. This piece hasn't been watered in the last few years and they don't know how it would work. The sub water is a big concern. The canal is a mile and a half away. There are many landowners on this and it affects all landowners on the canal. It will need to be maintained and upgraded. Regarding traffic, they do comply, but the parcel does not touch the main roads. Their parcel does not touch the intersection, so they don't have to improve the intersection. If you don't plan for this, it is an issue. He has had problems with people filling in the ditch and requiring an attorney to get the ditch put back in.

David Riley, 6963 Sam Tillery Lane, Knoxville, TN: His property is the main ditch that supplies water to this subdivision. There are three or four sinkholes in the ditch and you have to have enough water to run the system. It won't go to the end of the ditch. There is no drainage on the property and overflow will go down to Justin's property and sit. He has seen when sloughs have covered the area. With him being on the center ditch it has been a problem. There is not enough water for these additional lots. If they try to trickle the water under the road, it will flood his property. It is not a steady flow – it ebbs and flows and there needs to be checks. Basements have flooded. The road wasn't expected to go through and people didn't buy a lot in there for a county road to go through. It was a dead end. Wells have gone dry all over out there. He doesn't know how they will get that many wells out there.

Rebuttal by the applicant. Barry Bame responded to each person opposing the application as follows:

Les. Sub road connecting to the road is a requirement by code. It was platted as a through road and by code they have to connect there. It does meet requirements. They did add an S curve on the North South road to calm the traffic. Paradise was platted as temporary dead end. He was trying to follow code and listen to the neighbors when they added the S curve.

Justin: His statement is wrong. The Traffic Impact Study did consider the intersections. They have worked with staff and have worked out the improvements and they will have to pay for turning lanes when it comes into play. Both intersections were included in the TIS and warrants the need for turn lanes. The developer will work with planning and staff to pay into the intersections.

Rachel: CCR's have already set up and he would be happy to email them to anyone requesting. The developers do not want it to look trashy and they have the CCR's set up to stay clean and pretty. Garbage and refuse is addressed, as is the requirement to keep yards well maintained.

Irrigation issues: There is a bigger ditch that runs through the property. The proposed irrigation ditches naturally flow South to North. CCR's require homeowners go through the irrigation district to set up irrigation. Each user is responsible for the water and each must work with the water master for distribution, No one can use more water than is allowed This subdivision will have 1 person in charge to go and talk to the Canal company.

Easement – on the plat. It does show a 15-foot easement and they will be in place for the ditch. The ditch will be constructed as part of the public improvement plan. The developer will put in the ditch. The HOA will maintain.

Commissioner Mendenhall asks, what if they don't?

Mr. Bame answers, the developer comes in and sells off the lots. The CCR's state the people need to take care of the ditch.

Commissioner Mendenhall asks, if they don't what is the strong arm?

Mr. Bame: The HOE and CCRs are in place to help us take care of this, but people do have their own right to their property.

Question: If someone builds a home and water is delivered, who is the manager until the subdivision is sold out?

Answer: The owners of the property. We are relying on the ditch to deliver water.

Question: What if there isn't water?

Answer: They don't irrigate in those times. We all face water shortages.

Commissioner Smith asks, are we prudent to keep approving these things if they aren't going to work? Who is on the hook? Is the county?

Mr. Bame: No one in the state can guarantee there will be water in the future. Code changes are needed so developers know that and can proceed this way.

Commissioner Mendenhall closed the Public Hearing at 6:34 p.m.

Discussion by Commissioners

Commissioner Smith: He understands why P & Z would not approve this. He is not sure a pressurized system would allow for water on a more adequate basis.

Commissioner Mendenhall: They are offering a pressurized system, but we have had discussion regarding watering with domestic wells. He is concerned that if the water is not there for any lot in that subdivision, they are not going to watch their lawns burn up and Madison County has been discovered and subdivisions are being applied for. This is not an easy decision. This is being sold as if there is water there. This is not the case. He is concerned about the change to Paradise subdivision become a through road. We will need confirmation the developers have a definitive response from Reed Canal. To build a ditch anywhere takes time to hold water. We are not convinced that there has been research to provide water for that many homes.

The Commissioners discussed tabling the matter or denying it. They could table and request additional info. If its new info the public would have a right to consider new information. The Applicant's representative was asked what his preference would be. They prefer tabling.

Troy Evans counseled, If tabled and there is a request for new information the public would need to respond. If the action is to deny, they resubmit the application and it goes back to P & Z. If you choose to deny you need to be specific. It will need to be stated in the motion. If you table, be specific.

After review and discussion, Commissioner Doug Smith made a motion to table with the instructions to understand when people should be able to obtain water and how often. Who is going to maintain the ditches, particularly the main ones around the property. He still thinks a flood irrigation situation is not his preference. He would like to see an application of a pressurized system where people don't have to worry about berms around their lots. He has had heartburn with HOA's. He lives in one. People buy with the understanding of the rules and then people change them, as is their prerogative and it is a scary situation. The County has no jurisdiction over HOA's or CCR's to enforce.

Commissioner Mendenhall: Added to the motion and requested additional information from applicant as follows prior to it coming back:

1. Date of decree for water rights on this property.
2. An official statement from Reed Canal that they are in favor of or reject irrigation use.
3. Opinion from Madison County Fire Dept of requirements being met. Mr. Bame and Gary Armstrong comment this has been completed. The property is close in proximity to the new fire station. This may have been concluded prior, but will be checked.
4. Exploration of a fire gate if it is feasible and what it would accomplish.
5. Manager of water and ditches identified by name, and will it be until the last lot is sold in
6. History of flood irrigation on the ground provide a narrative of what it is like and how it

spreads.

7. See where it is spelled out in HOA/ CCR's regarding ownership of the water rights and that they are transferred to the property owner and are non-transferrable. The water rights stay with the lot.
8. Are the developers willing to put in writing they will be responsible for the turn lanes on any arterials.

Commissioner Doug Smith would like to see a proposal for a pressurized system and feasibility of why it would service better than flood irrigation. He prefers this type of system vs. flood irrigation.

Commissioner Mendenhall seconded and voting was unanimous. The motion passed.

Commissioner Mendenhall made a motion to adjourn the meeting at 6:51 p.m.

Approved:

Todd Smith, Commissioner
Brent Mendenhall, Commissioner
Doug Smith, Commissioner

Attest:

Kim Muir, County Clerk