

**ELMORE COUNTY
PLANNING AND ZONING COMMISSION**

MINUTES

Wednesday, July 16, 2014 at 7:00 pm

Chairperson Osborn called the meeting to order. Members of the Elmore County Planning and Zoning Commission present were Vice Chairperson K.C. Duerig, Shane Zenner, Jeff Blanksma, Debbie Lord, Betty Van Gheluwe, and Sue Fish. Also present were Attorney of Record Phillip Miller, Director Alan Christy and staff members Beth Bresnahan and Kacey Ramsauer.

PLEDGE OF ALLEGIANCE

PUBLIC HEARING

Continuation for Red Baron Estates Pilots and Homeowners Association to Amend an existing Conditional Use Permit CUP-2004-10 in a Agriculture (AG) Zone. Case Number: CUP-2014-10. The site is located in the S1/2 NE1/4, NE1/4 SE1/4, Section 30, Township 1 South, Range 5 East, B.M. A common means of locating the property is from Interstate 84 take exit 74, turn north on Simco Rd. to Desert Wind Rd., turn right on Desert Wind Rd., travel approximately 3.7 miles to Piper St. Property is on the North side of Desert Wind Rd.

Osborn read the rules for this public hearing.

Bresnahan gave staff report and background.

Miller stated that the bottom line is with the additional information, specifically the conveyance documents and the notarized minutes from the Red Baron Pilot's Association, that the pilot's association does have the legal authority and interest in the property to request an amendment to the conditional use permit.

Rosanna (Rosie) Castle is the secretary/treasurer for the Red Baron Pilot's and Homeowner's Association. She stated that she has given documentation to prove she has the legal authority to present and also to apply for this conditional use permit (CUP). She stated that she is submitting a letter that she would like to address particularly with Miller concerning the amended staff report that she received this morning via email. She stated that she did not have prior notice of this and therefore was not able to respond to Miller's letter. She stated that she has 2 copies made for Miller and Osborn as she was crunched for time. She stated that this is covering the taxes for Red Baron because Miller's letter to Christy did state that Idaho Code Section 63-103 states that when taxes are delinquent the County has a perpetual lien on the property until they are paid and that after 3 years the county may issue a tax deed. The Elmore county planning and development ordinance 6-3-4b says that zoning permits which include conditional use permits issued is in violation of state and federal law are invalid. Section 6-27-7a (5) requires the development to comply with all state and federal regulations in this section. The only fair reading that includes tax law and regulations; therefore, when a property is tax delinquent it is not in conformance with Idaho law and regulation and under that the zoning permit and amendment cannot be issued. She stated that in her response to this she has written a letter stating I would like to address the tax issue with Mr. Miller first. The way that I am

reading this says that if we do not get this tax issue settled first then there would be no need to continue the meeting. Mr. Miller I have copied your letter dated July 11 emailed to Christy and highlighted the areas of concern. You cited Idaho code 63-902 which goes over taxes and the duties of the tax collector. Next you cited sections 53-1003 of the Idaho State Statutes which are revenue and taxation/revenue and delinquencies on real properties, personal, and operating property. As you read through this it contains verbiage like "property described, levied on such property, all real and personal property of the owner." As I read this I find no mention of anything regarding property owned by an individual within a homeowner's or subdivision. As I read through the Elmore county ordinance you cited 6-3-4b, 6-27-4a (5) and I still find no reference to an individual property owner within an association or subdivision. Mr. Miller your verbiage in the last paragraph states "therefore when a property is delinquent." You used a single verbiage "a property." The association applied for an amended CUP, yes Mr. Casper, Mr. Plat, Delta J, Ringler Trust, and Mr. Peterson, property owners, are within the confines of the association; however, they are not the ones requesting the amendment to the CUP. Please explain because neither I nor anyone else who has read this understands the reasoning behind this. The association does not own these properties.

Miller stated that under that interpretation any of the private properties within the subdivision could be in violation of any state, local, and federal law and you could amend the CUP in any way if the homeowner's association was doing it and that's obviously not the intent of the ordinance, it's a residential subdivision. He stated that under your reading of that interpretation if somebody was running a business out of one of those lots which is not allowed by the ordinance or the CUP, the county would not be able to take that into consideration. He stated that he thinks that's big problem. He stated that suppose the developer is applying for the CUP or for an amendment and he owned most of the lots and other people owned some of the lots, under Castle's interpretation some of those other persons lots could be totally out of compliance with the law and the county could still grant the amendment, that's not the way the ordinance is intended to be set up. He stated that he thinks she is reading the term property too narrowly. He stated that he thinks that when you look at the zoning ordinance, the language that the property referred to is simply the property within the CUP area. He stated that if any one of the lots is in violation that is part of the property within the CUP. Miller stated that if this can't be resolved that one of staff's suggestions in the staff report is a requirement that taxes be paid as a condition in the CUP.

Castle stated that the person who owes the most taxes in the subdivision has been trying desperately to catch up on taxes and he is not 3 years delinquent and neither are any of the property owners in the subdivision. She stated that she has not gone so far as to research this but she does not believe that they are, otherwise the taxing agency would have taken their tax remedy solutions and that has not been done.

Miller states that they really cannot do anything until 3 years has passed but they do have a lien on the property.

Castle stated that they do have a lien on the property but the provisions in the Idaho Code that Miller has quoted in his letter says that they are in the parameters of the state statute and this is her point that if they were behind at that point the county would have legal remedy to take care of this situation. She stated that she does not believe that the association as a whole should be held hostage for the situation of delinquent tax.

Miller stated that someone is out of compliance with the law and it is set up so that there is a 3 year grace period even though they are out of compliance with the law for paying taxes. He stated that he believes the property referred to in the ordinance is the entire property within the area covered by the CUP.

Castle stated this is not clear in state or county codes.

Miller stated that it talks about the development and the land use and so forth.

Castle stated that it also states that "individual". She stated that she is not responsible nor is anyone in the association for others delinquent taxes.

Miller stated that you have to pay, but his position is that he believes that the county can look at what is going on in the subdivision to determine whether all laws are being followed when a CUP amendment is requested.

Castle stated that she would like to know whether to proceed with this because Miller's exact verbiage says cannot, it does not say should not or maybe, it says cannot be issued. She stated that she is not up here to play let's make a deal, she is standing here to present and to make a valid point.

Miller stated that nobody here can tell them what to do and he cannot predict what the commission will decide but whatever the decision is the right to appeal is always there.

Castle stated that she would like to ask the people in attendance from the association if they would like to proceed.

Christy suggested a brief recess to allow the applicant to discuss their options.

Castle said they would like to do that.

Osborn called a 10 minute recess.

Osborn reopened the public hearing.

Castle stated that the decision unanimously is to go ahead and proceed.

Christy for the record that the items presented today and given to the commission are entered into the record as applicant exhibits 1, 2, and 3.

Castle handed out a letter to the commission members and staff explaining what she would be presenting. She stated that she and her husband own a parcel of land within the Red Baron Estates. She stated that they have asked for the word guest to be added to the existing CUP. She stated that she received the voluminous staff report by email and that time has been crunched for her to prepare so she hopes this all makes sense. She stated that she would like to ask the P&Z members 6 questions. She asked how many members of the commission have been to Red Baron Estates with a show of hands.

Miller stated that he cannot tell her that she cannot ask questions of the commission but they cannot go out to view the property individually prior to a CUP hearing.

Castle says she understands this but there has been many opportunities when the Red Baron Estates has been before the P&Z with many issues and a lot of the members do not understand where they are located and have not seen the facility nor the homes and airstrip so this is an important question. She stated that we know these questions are not criteria; granted, but she thinks it's important.

Miller stated that if the P&Z did so, then their vote may not count if they have gone out there during appealing application. He stated that Idaho Supreme Court has stated that the P&Z cannot go out and individually view properties that have permits being applied for and if some kind of a viewing is requested it has to be a public meeting and records kept.

Castle stated that she does not want to sway anyone vote so she will withdraw that particular question. She asked how many members have ever ridden in a small airplane.

5 or 6 raised their hands.

She asked how many members were afraid of planes in general.

None of the commission members raised their hands.

She asked how many members have ever lived in proximity to an airport.

3 members raised their hands.

She asked how many members and staff have lived outside of city limits 15 miles plus from the closest town.

4 raised hands.

Castle stated she pulled this information out of the very first report that she received in June. She stated that the 125 foot setback is being adhered to with exception of one property. She stated that there are no overflights under 80 feet with the exception of takeoff and landings. She stated that there are properties outside of the platted subdivision and they can use the runway if they join the association and pay the dues to help maintain the runway and currently only 2 property owners have exercised this right. She stated she does not understand what staff is saying on the report when it says they are utilizing properties that were not part of the receptive approvals. She stated that she needs clarification on this. She stated that she does not know what is being referred to here. She stated that the question of the roads and runway being engineered is a moot point as the preliminary and final plat had all the required signatures, building permits issued, and homes built. She stated if the building department did this incorrectly that is not Red Barons problem. She stated that all existing CUP requirements have been met. She stated that they are in compliance with the Federal Aviation Administration (FAA), the Idaho Department of Transportation (IDOT), and the Division of Aeronautics. She stated that in the most current staff report that she does have letters from the base stating there are no issues with the airspace. She stated that staff has concerns with the potential number of aircraft utilizing the runway. She stated that there is the potential for 46 aircraft but this was a known issue at the time the CUP was issued; however not every property owner will have or does have an aircraft and it is not a requirement to own property at Red Baron Estates. She stated that currently there are 9 homes in the subdivision and there is only 1 pilot and 1 aircraft and one hangar with a plane on the non-platted portion of the subdivision. She stated that one plane has not flown in 2 years or better. She stated that this leaves us with a 2 to 10 ratio on homes, hangars, and pilots. She stated that not everyone who owns homes in the subdivision have friends that fly which leaves a scenario that there will never be 46 planes flying in and out all at the same time or even in the same day as this issue has been blown way out of proportion. She stated this is private property and nobody can regulate the amount of guest's that come into someone's home. She stated that staff's condition of approval regarding keeping logs of flight activity and those being turned into the Land Use and Building Department once per year is far reaching. She stated every pilot does keep a log of activity but it is not a requirement. She asked why require a person on a private airstrip to document every single takeoff and landing and turn it into the P&Z once a year? They are not an aircraft agency, so what is the purpose of this requested condition? She stated as far as she knows Elmore County is not under Marshall Law at this point and she is sure it is not in the job description. She stated that the residents of Red Baron have no intent of violating anyone's property rights. She stated that the immediate area has been the flight pattern for many aircraft that do not belong to the residents of Red Baron nor are they even acquaintances of the property owners. She stated that pilots still fly today as they did many years ago and there is no way any of us will change that. She stated that some pilots fly lower than others and there is no way to judge that distance from the ground with a camera. She stated that just because an airplane flies over does not mean that it is associated with the Red Baron Estates. She stated that the pilots do not fly over home in the Soles Rest Subdivision nor the Taylor/O'Dell property. She stated that there is one mile between Red Baron airstrip and Soles Rest and the pilots stay away from any homes upon takeoff or landing. She stated that the most noise that an aircraft will make will be upon takeoff and is not any louder than a group of motorcycles going down Desert Wind Road. She stated as far as

fumes, smoke, glare, and odor is concerned that is not a realistic concern as the fuel that an aircraft burns is cleaner and creates less fumes than we are required to burn in vehicles. She stated that the engines in airplanes are maintained very well and pilots have more respect for their aircraft than probably anyone in the room does for their vehicles. She stated that since the airstrip is not lighted flying time is limited. She stated that at any time if an emergency were to happen and an aircraft was in need they would be allowed to use the airstrip at any time as this is an FAA rule and regulation.

She stated that in conclusion she believes some common sense should be used in making a decision to allow guests. She stated that quite frankly this should not even be an issue.

Christy stated that the airstrip utilizes 2 approved CUP's and staff's concern is that there are 2 separate approvals on different years and the runway is kind of using those 2 approvals and the major concern is whether this amendment could apply to both CUPs and it seems the answer is yes it can. He stated that the conditions of approval are what have been done on the previous applications and they are there to provide information for the commission on what the maximum use is out there. He asked Castle how many aircraft she thinks could use the site on a busy weekend.

Castle did not provide an answer for this question but that at maximum build out the runway could handle the traffic.

Christy asked Castle to describe the log book used by the pilots.

Castle stated that 99% of them use to put down a start time, where they flew to, hours in the air, and when they landed.

Osborn asked if there was any information on how the runaway was built and the time of use before maintenance is necessary.

Castle stated she does not have that information but she stated that they try to do maintenance every year and they have plans for filling and sealing the cracks on the runway because it is all asphalt and in time will crack. She stated that her husband built the runway and he goes above and beyond standards.

Lord stated that all the documentation that she has seen says this is a dirt runway and wondered if there are different regulations for a paved runway as opposed to a dirt one and if this runaway has been paved are there any documents regarding this.

Castle stated that she can get records from the paving company that paved the runway. She stated that it was not required to be paved but they wanted a nice runway.

Miller asked when the runway was paved.

Castle stated that it was in 2006.

There were no further questions.

Osborn moved on to public testimony

Ken Casper signed up in support but did not wish to testify.

Sheila Casper signed up in support but did not wish to testify.

Bob Hunter signed up in support. He owns property in the subdivision and owns an aircraft. He stated that he gets the feeling that people perceive these airplanes as big heavy aircraft coming in and pounding the pavement and that is not the case. He stated his plane weighs 750 lbs. and holds 26 gallons of fuel. He stated that the impact on the pavement is insignificant. He stated that all of these issues and concerns have been blown way out of proportion. He stated that they have no desire to fly over anyone's house and no pilot wants to do that. He stated that low flying will not promote long life in a pilot although it does happen but it's not good practice. He stated that he flies a teardrop pattern to the approach just so that he avoids getting close to any houses. He stated that a good pilot will always keep the plane in a place that they can get it

down without hurting anyone in an emergency. He stated that there is just a lot of rumors about this and nobody knows what they are talking about.

Donna Jackson signed up in support and lives in Red Baron. She stated that her family has lived in Idaho for many years. She stated that her husband's grandfather owned one of the first private planes at the Boise airport. She stated that they moved out to Oasis years ago because of the airport. They enjoy the planes but it is a rare occurrence when they do fly in. She stated that it would be a treat to be able to have their pilot friends fly to their home as landing at the Boise airport isn't doable. She stated that she hopes this will pass.

Frank Brady is the president of the Red Baron Pilot's and Homeowner's Association. He stated that this runway is the only one that he has ever landed on that does not have cross cracks in it. He stated that it is very well built and they are entertaining the idea of seal coating the runway as well.

Lord asked if there is a different set of rules with the FAA for a paved versus non paved runway.

Brady stated that the FAA cannot dictate what happens on the runway, only the aircraft when it's in the air.

Jolene Hobdey is signed up in neutral and is representing the Oasis Rural Fire District. She stated that a 10,000 gallon water tank for fire protection was installed and the fire chief did inspect it. She stated that it does need to be filled with water and a Memorandum of Understanding (MOU) will be written between the homeowner's association and the fire district. She stated that if the change to the CUP is granted the fire district would like to be notified of public events.

Judy O'Dell signed in as neutral. She lives next to the Red Baron Subdivision. She read a letter to the commission members that was submitted to the P&Z.

Barbara Jameson signed in as neutral. She stated that she does not know much about the history of this. She stated that they have two 120,000 gallon tanks. It's a private airstrip at this point but they want to go commercial. She stated that if they are commercial they will have much tighter inspection system for those tanks. She asked for an estimated number of weekend flights. She stated she understands from testimony that there cannot be any changes to the CUP if there are unpaid taxes so this should not be approved as everyone else has to pay taxes and so should they.

Bob Ruth is signed up as opposed. He stated that the Soles Rest Creek Homeowner's Association has asked him to speak upon their behalf. He stated that they submitted a packet to the commission with photos and concerns. He stated that he wanted to address the main issue with this CUP and that is adding the word guests and that could mean either one plane or potentially unlimited. He stated that Soles Rest is roughly 1300 feet from the end of that runway. He stated they had a meeting previously with members of Red Baron expressing their concern about aircraft flying over the subdivision. He stated that they were told at that time when Red Baron formed a pilot's association that Soles Rest would get an aviation agreement that would require a northerly flight turnout on takeoff and landing. He stated that they were never given that. He stated that they have asked 3 different times for an agreement and every time they are turned down very abruptly. He stated that they aren't anti-airplane in Soles Rest but when the planes are flying over their homes it's very worrisome.

Van Gheluwe asked the reason they weren't given the aviation agreement when they asked for it.

Ruth stated that they have never been given a good reason they just won't.

Osborn asked if they had ever written up the agreements.

Ruth stated that they had 2 written up that were never agreed upon. He stated that he is willing to come to an agreement with them.

Dawn McClure signed up in opposition and is the president of the Soles Rest Homeowner's Association. She stated that she wanted to submit a letter from the Soles Rest Homeowner's Association giving Bob Ruth permission to speak on their behalf.

Christy entered the letter into the record as opposition exhibit # 1.

Jennifer Sturgill signed up in opposition. She lives in the Soles Rest subdivision. She stated that the reason they brought the property is because the traffic from Red Baron was light. She stated that they don't want unlimited invited guests flying over their home.

There was no further testimony.

Osborn called a 10 minute recess to give the applicant's time to prepare the rebuttal.

Osborn called the meeting back to order.

Castle gave the rebuttal to the public testimony. She stated that she does have in her letter that the Oasis Fire District will be notified of events. She stated that the avigation agreement between O'Dell/Taylor and Red Baron has been submitted to the county and recorded long ago despite the fact that they testified that it wasn't. She stated they do not fly over people's homes and they have no control over aircraft not involved in Red Baron. She stated they abide by FAA rules and regulations and fly 1,000 feet above any homes which does include Soles Rest and that they have never flown 80 feet over their homes. She stated that they have a posted traffic pattern as well as the sectional charts that are submitted with the FAA. She stated that they are not commercial nor have they ever confessed or requested to be. She stated that that whenever a piece of property is sold within the Red Baron Estates the title company makes the buyers aware of the avigation agreement and it goes with the piece of property although she hasn't checked it out personally. She stated as far as the 120,000 gallon tanks is concerned the only ones she knows about are on the Taylor/O'Dell properties. She stated that they have no tanks other than the water tank. She stated they do not fly nor have they ever flown over Soles Rest and that this the reason an avigation agreement has not been signed with their homeowner's association because there is no need for one. She stated that even if all properties were sold there would be a 2-10 ratio of pilots to homeowners and/or planes. She stated that those in Soles Rest know there was an airstrip in Red Baron prior to buying their homes. She stated that she doesn't think that they should have to notify their neighbors of they are planning any get together's in Red Baron. She stated that being made to keep records of any and all people flying in and out of Red Baron is too much of an imposition and if Red Baron is made to do that then every private airstrip in Idaho should be made to do the same.

Van Gheluwe asked if they would be willing to have an avigation agreement with Soles Rest.

Castle stated that she speaks for the association when she says there is no need to have one when one is not necessary as Soles Rest is 1320 feet from the end of the runway.

Duerig asked about the catalog in the packet regarding airparks and the publishing of flight patterns.

Christy stated that this was something submitted by Soles Rest.

Bob Hunter stated that they don't even need to be published because the standard traffic pattern is left hand, 800 feet above the ground, any airport anywhere. Only if that pattern is modified do you publish it. He stated on any map if it's a right handed pattern you will see RP right beside the field elevation.

Osborn asked who publishes it.

Hunter stated that the airport publishes it on the sectional map if the traffic pattern differs from the standard.

Fish asked how many planes they anticipate coming in and out of the airport as she skirted around this question when asked previously.

Castle stated that she cannot honestly answer that because she has no idea. She stated a weekend or holiday might be better suited for company than a weekday.

There was no further testimony.

Osborn closed this public hearing.

Miller stated that it would be a good idea to have the P&Z take this under advisement since there was a fairly lengthy document submitted by the applicants.

Commission consensus is to defer the discussion portion of the public hearing to a date certain.

Duerig moved to defer discussion of this hearing to August 6, 2014.

Fish seconded.

Motion carries unanimously.

FCO's and Minutes

FCO for Case Number: CUP-2014-09.

Van Gheluwe moved to approve.

Lord seconded.

Motion carries unanimously.

Minutes from 06-18-2014

Duerig moved to approve.

Lord seconded.

Motion carried unanimously.

NEW BUSINESS

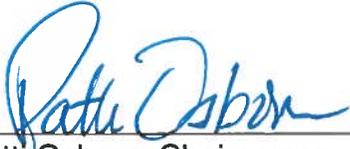
Upcoming P & Z Schedule

Christy stated that the next public hearing will be held August 6, 2014.

MEETING ADJOURNED

Approved

Approved



Patti Osborn, Chairperson

8/6/14

Date:



Attest:
Alan Christy, Director

8.6.14

Date: