



Elmore County Land Use and Building Department

520 East 2nd South Street
Mountain Home, Id. 83647
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Staff Report to the Planning and Zoning Commission

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Meeting/Hearing Date: 04/25/2024

Date Report Compiled: 04/18/2024

Agenda Item: Appeal of Elmore County Land Use and Building Department Administrative Decision

Appellant: Drewskee Estates, LLC

Case Number: OTD-2024-02

Staff: Kacey Ramsauer, Planner

Location: Section 11 Township 3 South Range 6 East

Zoning: Agriculture (AG) with North Mountain Home Aquifer Recharge Area Overlay

Parcel Number/Property: RP03S06E117250

Property Size: 4 acres

BACKGROUND

OTD-2024-02 comes before the Planning and Zoning Commission ("Commission") as a continued public hearing item from February 22, 2024, for the Appeal of the Elmore County Land Use and Building Department ("Department") Administrative Decision for OTD-2024-02 ("Appeal"), for the denial of a One Time Division of property in the North Mountain Home Ground Water Aquifer Recharge Overlay District ("One Time Division Request").

The One Time Division Request was made for this property to the Department in early August 2023. At the time, the Appellant was inaccurately told that the property would be eligible for a one-time division. However, subsequent to the Appellant's purchase of the property, the Department, in late August informed the Appellant that they had been misinformed and the property would not be eligible for a one-time division based on its location within the North Mountain Home Ground Water Aquifer Recharge Overlay District, which requires 5-acre parcels. The Applicant decided to make a One Time Division Request to the Department, where staff denied the division. Following the Administrative Decision by the Department denying the One Time Division Request, the Appellant appealed the Administrative Decision to the Commission. The Department held a Commission public hearing for the appeal of the Administrative Decision for OTD-2024-02 on February 22, 2024. Staff report and background was presented by staff. Staff recommended denial of the appeal as it is not in compliance with §7-2-38 of the Zoning Ordinance which states:

“The City of Mountain Home and residents of the North Mountain Home Aquifer Recharge area have requested supplemental regulations in the form of a Community Development Overlay (CDO) regulation to allow a greater opportunity to manage land use development consistent with community values... The North Mountain Home CDO provides a minimum lot size of five (5) acres as shown in Table 7-2-38.”

Table 7-2-38 North Mountain Home Ground Water Aquifer Recharge Area Overlay District		
Community Area	Lot Size Requirement	Development Requirement
North Mountain Home	5 Acre minimum Lot	5 Acre Minimum Lot Size

The Appellant was present at the public hearing and provided testimony regarding the proposal and what led up the Appeal of the administrative decision denying the One Time Division Request. Members of the public signed up to testify in this matter. No one signed up in support of or in neutral to the Appeal. There were three neighboring property owners who signed up in opposition to the Appeal. After the public testimony and rebuttal from the Appellant, the Commission Chairperson closed the public hearing. After the Commission discussion, it was decided that the Commission would re-open the public hearing and continue the public hearing until the next scheduled meeting date to allow the Appellant to submit a timeline which outlined the Appellant’s conversations with the Department, which ultimately led to the purchase of the Property. The public hearing was continued until March 22, 2024. The Appellant submitted their timeline to the Department on March 7, 2024, via email (Exhibit A). The public hearing scheduled for March 22, 2024, was cancelled due to scheduling conflicts, and rescheduled for April 25, 2024. The Appellant and all interested parties and parties of record were notified of the change in date. The public hearing notice was mailed and emailed to affected agencies and property owners within a three hundred-foot (300’) radius from the parcel on March 28, 2024, per ordinance §7-3-4 of the Zoning Ordinance (Exhibit B). The notice of public hearing was published in the Mountain Home News on April 10, 2024, as required by Zoning Ordinance §7-3-5(A) (Exhibit C). The notice of public hearing was posted on the property of the Appellant on April 18, 2024, per Zoning Ordinance §7-3-5(B) (Exhibit D).

The surrounding uses and zones of the property are the following:

- North: Agriculture Zone/Bare Land
- East: Agriculture Zone/Bare Land/Residences
- South: Agriculture Zone/Bare Land/Residences
- West: Agriculture Zone/Residences

The site of the proposed One Time Division Request is not located in a designated flood zone, as seen in the attached Exhibit E.

The documents, recordings, and exhibits constituting the Appeal record are numbered sequentially as they become available. This report references the following portions of the Appeal record, which are included as Exhibits:

- A. Applicant Timeline
- B. Agency and Property Owners Notification
- C. Newspaper Publication

- D. Photo of posting on property
- E. FEMA Flood map

The record includes any and all written public comments submitted to the Department by physical or electronic delivery by 5:00 p.m. on April 19, 2024, for the Public Hearing scheduled for April 25, 2024. The record also includes all documents obtained as part of Staff's analysis and review of the Appeal and all documents and exhibits submitted prior to the close of the public hearing as received by the Department. Those portions of the record available at the time this report is submitted have been provided to the Commission under separate cover as a part of the Commissioners' packet. The record also includes all documents and public testimony provided at the Planning and Zoning Commission public hearing on February 22, 2024.

STANDARDS APPLICABLE TO A ONE TIME DIVISION OF PROPERTY PURSUANT TO ZONING ORDINANCE 10-3-4:

1. The proposed division shall result in two (2) parcels that are larger than at least one (1) acre each and comply with the design and dimensional standards of this Ordinance, except when the parcel of record has been diminished by governmental action. As a result of governmental action, the Director may approve a reduced property size on one of the resulting parcels, subject to other regulations of this Ordinance rendering the property as legal non-conforming property.

Staff Response: The proposed One Time Division Request proposes dividing a parcel which is currently a 4-acre parcel, and which would result in two (2) parcels that are each 2-acre in size. This proposal partially complies with larger than one (1) acre each parcel of Zoning Ordinance §10-3-4; however, fails to comply with the requirements of §7-2-38 of Zoning Ordinance as discussed below.

2. The proposed division is not a "subdivision" as defined in this Ordinance.

Staff Response: The proposed division would not result in a "subdivision" as defined in this Zoning Ordinance.

REQUIRED FINDINGS FOR ONE TIME DIVISION OF PROPERTY PURSUANT TO ZONING ORDINANCE 10-3-6:

A. Required Findings: In order to grant a one-time division, the Director shall make the following findings:

1. The one-time division created no more than two (2) parcels; and
2. The one-time division created larger than one (1) acre parcels; and
3. The parcel or lot being divided was created prior to January 20, 1994, or a parcel of land that was of record in the Elmore County recorder's office after January 20, 1994, and the boundaries of the parcel being divided have not changed except as specified in this Ordinance; and
4. That if the property was reduced by governmental action that the property was following the minimum property size requirement of the applicable zoning district and Ordinance prior to the decrease in property size; and the decrease in property size was caused by acquisition through prescription, purchase, or other means as provided in Section 10-3-5 (A); and
5. The subject property requesting a one-time division is not a platted lot within a subdivision.

Staff Response: Staff finds that the proposed One Time Division Request meets all the requirements of §10-3-6(A) except §10-3-6(A)4, which requires that the property meets the minimum property size requirement of the applicable zoning district and Ordinance. The parcel where the proposed One Time Division Request is located is 4 acres in size. The parcel is located within Agriculture base zoning district and the North Mountain Home Aquifer Recharge Overlay

zoning district, which requires in §7-2-38 and Table 7-2-38 that the minimum parcel size in this geographic boundary of the overlay be 5 acres minimum. Therefore, this parcel does not meet the requirement of §10-3-6(A)4.

NORTH MOUNTAIN HOME AQUIFER RECHARGE OVERLAY DISTRICT REQUIREMENTS OF ZONING ORDINANCE 7-2-38:

A. The City of Mountain Home and residents of the North Mountain Home Aquifer Recharge area have requested supplemental regulations in the form of a Community Development Overlay (CDO) regulation to allow a greater opportunity to manage land use development consistent with community values. The Elmore County Zoning Ordinance includes a CDO provision specifically for the community north of Mountain Home. Please refer to the Elmore County Zoning map for the North Mountain Home CDO boundaries. The North Mountain Home CDO provides a minimum lot size of five (5) acres as shown in Table 7-2-38.

B. Technical studies shall be required for all proposed developments with densities greater than one (1) dwelling unit per five (5) acres or as directed by the Elmore County Planning and Zoning Commission. However, Elmore County reserves the right to have final determination in this matter. All subdivisions and any residential development with a density greater than one (1) dwelling unit per five (5) acres must be connected to an approved central sewer system as a condition of approval. Development requests will be processed through the conditional use review procedures.

C. No development shall be allowed if there is any potential for adverse impacts to ground or surface water or which would increase or contribute surface drainage to the Mountain Home Reservoir as identified through a technical study where such negative impacts cannot be mitigated or eliminated.

Table 7-2-38 North Mountain Home Ground Water Aquifer Recharge Area Overlay District		
Community Area	Lot Size Requirement	Development Requirement
North Mountain Home	5 Acre minimum Lot	5 Acre Minimum Lot Size

Staff Response:

As can be seen in these requirements, the purpose of the North Mountain Home Aquifer Recharge Area Overlay District is to preserve parcels that are larger than 5 acres to allow for better recharge of ground water around the largest city of Elmore County – Mountain Home. The Zoning Ordinance is very specific in outlining that any density greater than one (1) dwelling per five (5) acres should be reviewed very carefully by all decision makers of Elmore County. It is very clear in its requirements that adverse impacts to ground or surface water should be avoided. Therefore, staff originally denied this proposal.

However, after considering the hardship that this requirement has caused the Appellant, staff proposes a Variance Application to the requirement §7-2-38(A) of the Zoning Ordinance. The Zoning Ordinance §7-2-38(B) suggests a conditional use permit process, when considering densities greater than one (1) dwelling unit to five (5) acres for any development and provides Elmore County the right to have a final determination in this matter. Considering the ground and surface water concerns expressed at the February 22, 2024, Public Hearing and after reviewing

Exhibit A, staff recommends that a Variance application be sought as a condition of approval for this One Time Division Request.

REQUIREMENTS FOR A VARIANCE PURSUANT TO ZONING ORDINANCE 7-3-13 AND IDAHO CODE 67-6516:

In order to grant a variance, the Board shall make the following findings:

1. The variance shall not grant a right or special privilege that is not otherwise allowed in the base zone; and
2. The variance relieves an undue hardship due to characteristics of the site; and
3. The variance shall not be detrimental to the public health, safety, and welfare

Idaho Code 67-6516. VARIANCE — DEFINITION — APPLICATION — NOTICE — HEARING. Each governing board shall provide, as part of the zoning ordinance, for the processing of applications for variance permits. A variance is a modification of the bulk and placement requirements of the ordinance as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other ordinance provision affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots. A variance shall not be considered a right or special privilege but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest. Prior to granting a variance, notice and an opportunity to be heard shall be provided to property owners adjoining the parcel under consideration and the manager or person in charge of the local airport if the variance could create an aviation hazard as defined in section 21-501, Idaho Code. Denial of a variance permit, or approval of a variance permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby. (Emphasis added).

Staff Response:

The State of Idaho Local Land Use Planning Act (LLUPA) and Elmore County Zoning Ordinance provides for variance in size of lots only upon showing of undue hardship. Considering that the Appellant may have purchased this property based on inaccurate information provided by the Department (Exhibit A) and the hardship that it has caused the Appellant, staff proposes a Variance Application to the requirement §7-2-38(A) of the Zoning Ordinance. Staff proposes that in order to proceed with a favorable decision for OTD-2024-02 by the Commission, the Appellant agrees to apply for a Variance application with the Department and pay the established fees.

STAFF RECOMMENDATION:

Based on the nature of the circumstances surrounding this One Time Division and the development proposed, Department staff recommends that the Administrative Decision be **REVERSED**, and that the One Time Division be **GRANTED** for OTD-2024-02, contingent on the Appellant applying for and obtaining a variance pursuant to Zoning Ordinance §7-3-13 from the Commission and the Board of County Commissioners, and satisfying the development requirements set forth in Zoning Ordinance §7-2-38 for densities greater than one (1) dwelling unit per five (5) acres, including but not limited to the proposed conditions of approval listed below.

PROPOSED CONDITIONS OF APPROVAL FOR OTD-2024-02:

1. The Appellant shall apply for and obtain a Variance from the Commission and Board of County Commissioners for the requirements of Zoning Ordinance §7-2-38 and the minimum lot size

of the Property, RP03S06E117250 in the Agriculture (AG) zone prior to recording this One Time Division with County Recorder.

2. The Appellant shall abide by all requirements of Zoning Ordinance §7-2-38 for proposed developments with densities greater than one (1) dwelling unit per five (5) acres in the North Mountain Home Aquifer Recharge Overlay District on the Property.

3. The original 4-acre parcel, the Property, shall not be further subdivided or divided into any parcel less than two (2) acres.

4. No more than one (1) home will be constructed on each two (2) acre parcel in order to limit the impact to the aquifer recharge overlay zone.

5. All residential development must be connected to an approved central sewer system by the Central District Health Department.

6. All development requests will be processed through the Conditional Use review procedures as required by §7-2-38 of the Zoning Ordinance for proposed developments in the North Mountain Home Aquifer Recharge Overlay District.

7. Appellant shall provide technical studies to demonstrate that no potential for adverse impacts to ground or surface water, which would increase or contribute surface drainage to the Mountain Home Reservoir, will be created by this development, that cannot otherwise be mitigate, as required by §7-2-38 of the Zoning Ordinance for proposed developments in the North Mountain Home Aquifer Recharge Overlay District.

8. All requirements of Title 10 Chapter 3 regulations in the Elmore County Zoning and Development Ordinance for a One Time Division must be satisfied, completed, and approved by the Department.

9. The Appellant shall obtain all necessary building and development permits from the Department before any construction commences.

10. The Variance shall comply with the standards set forth in Elmore County Zoning Ordinance § 7-3-13.

11. The Variance shall comply with Idaho Code § 67-6516.

12. The applicant shall keep the property up to date with all taxes related to the uses of the property.

13. Failure to comply with any of the above conditions of approval may result in the revocation of the approval of the One Time Division Request.

Exhibit A

Applicant Timeline

Timeline of communication with Elmore County Building Department.

Friday August 11th, 2023. Robbie called the Elmore County Building Department to inquire if 598 Mashburn Rd would qualify for a one-time division of land. He was told by Steven that the property did qualify. This call was over the phone on Friday Afternoon August 11th, 2023.

Robbie and business partner April went and looked at the property on Saturday August 12th, 2023 in the morning. They took into account if splitting the parcel into two parcels would make fiscal and logical sense while taking into account the repairs the existing dwelling unit would require as the house has been vacant for a long period of time and had substantial deferred maintenance. Armed with the information of the needed repairs and that the highest and best use of the land would be to split it and with the ability to do a one-time division of land Robbie made an offer on the property that same Saturday afternoon August 12th, 2023.

Sunday August 13th, 2023 the sellers made a counter offer to our offer.

Monday morning August 14th, 2023 We countered the counter offer from the sellers.

Monday afternoon August 14th, 2023 the sellers accepted our counter offer and we were officially under contract and into the due diligence phase of the purchase. We had 5 business days to conduct our due diligence.

On Tuesday August 15th, 2023 Robbie went into Elmore County Building Department and spoke with Steven and Joel in regard to the qualification of this property for a one time division of land. I wanted to confirm that we were solid as this was a crucial part of our offering price for the property. Both of them confirmed that this property did indeed qualify and that even being in the aquifer recharge zone that wouldn't prevent the one-time division of land from happening. This was the second confirmation I had received from the county building department and felt good to move forward with the transaction.

August 16th, 2023 through August 29th, 2023 finished the rest of the due diligence, which checked out well enough. We prepared for closing and all parties closed on this property on August 29th, 2023.

On August 29th, 2023 hours after getting the notification that we were the official owners of the property Robbie went back into the County Building Department to start the one time division of land application on this property at which point he was told by Casey that that property doesn't qualify for a one time division of land. Steven and Joel were in the office as well when that was said and Robbie said I confirmed twice that this property did qualify and twice was told that it did qualify. Casey said sorry but the ordinances don't allow it. She told Robbie that he could appeal the denial if he applied and if denied by planning and zoning could appeal to the county commissioner. I hope to not have to take this to the county commissioner.

Based upon this information I conclude that the employees of the County Building department abused their discretion to give information. We hope to have this one-time division of land approved based upon this misinformation that we were given.

Exhibit B
Agency and
Property
Owners
Notification



Elmore County Land Use and Building Department

520 East 2nd South Street
Mountain Home, ID 83647
Phone: (208) 587-2142 ext.1254
Fax: (208) 587-2120
www.elmorecounty.org

Mitra Mehta-Cooper
Director

David Abrahamson
Planner

Kacey Ramsauer
Planner & ADA
Coordinator

Johnny Hernandez
Building Official

Colton Janousek
Building Inspector

James Roddin
Administrative
Manager, Code
Enforcement

Kamiah McDaniel
Permit Technician

Alyssa Nieto
Admin Assistant

Date: March 28th , 2024

To: Whom It May Concern

Subject: Notice of Public Hearing

Applicant: Drewskee Estates, LLC

Proposal: Drewskee Estates, LLC for an Appeal of Elmore County Land Use and Building Department Administrative Decision for the denial of a One Time Division of property in the North Mountain Home Aquifer Recharge Overlay District; the property is zoned Agriculture (AG). Case Number: OTD-2024-02. The parcel number is RP03S06E117250. A Common way of locating the property from Mountain Home is to take Old U.S. 30 West for 1.2 miles then turn right onto Canyon Creek Road for 2.2 miles then turn right onto NW Mashburn Road for 0.4 miles and the site will be on your left.

Case #: OTD-2024-02

A continuation of this public hearing will be held before the Elmore County Planning and Zoning Commission on the enclosed application. The hearing is scheduled for Thursday, April 25th , 2024, at 7:00 p.m. in the War Memorial (American Legion) Hall at 515 East 2nd South Street, Mountain Home, Idaho.

Please review the application and return your written comments to the Elmore County Land Use and Building Department, 520 East 2nd South Street, Mountain Home, ID, 83647, by 5 p.m. on Friday, April 19th, 2024, so your comments are included in the record. If you prefer, please come to the hearing to testify before the Commission.

The Elmore County Board of Commissioners is responsible for ensuring compliance with the Americans with Disabilities Act of 1990 (ADA). Any Person needing special accommodations to participate in the public hearing should contact the Elmore County ADA Coordinator, Kacey Ramsauer, 24 hours prior to the Public Hearing at 208-587-2142, extension 1254, or via email kramsauer@elmorecounty.org, or in person at 520 East 2nd South, Mountain Home, Idaho.

Sincerely,



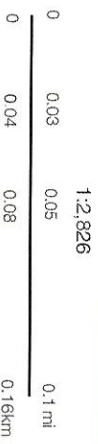
Kacey Ramsauer
Land Use and Building Department
Planner
520 E 2nd S Street
Mountain Home, Idaho 83647
208-587-2142 ext 502

Enclosures Site Plan

Drewskie Appeal



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Exhibit C

Newspaper Publication

ELMORE COUNTY
PLANNING AND ZONING COMMISSION

520 East 2nd South Street
Mountain Home, ID 83647
Telephone 208-587-2142, ext. 502 Fax 208-587-2120

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN pursuant to the laws of the State of Idaho and Ordinances of Elmore County, that the Elmore County Planning and Zoning Commission will the hold the continuation a PUBLIC HEARING at 7:00 p.m. on Thursday, April 25th , 2024, in the War Memorial Hall (American Legion) 515 East 2nd South Street, Mountain Home, Idaho, to accept testimony and consider an application from Drewskee Estates, LLC for an Appeal of Elmore County Land Use and Building Department Administrative Decision for the denial of a One Time Division of property ; the property is zoned Agriculture (AG). Case Number: OTD-2024-02. The parcel number is RP03S06E117250. A Common way of locating the property from Mountain Home is to take Old U.S. 30 West for 1.2 miles then turn right onto Canyon Creek Road for 2.2 miles then turn right onto NW Mashburn Road for 0.4 miles and the site will be on your left. This application may be reviewed before the hearing in the Land Use and Building Department during regular business hours. Any interested person shall be heard at said public hearing and the public is welcome and invited to submit testimony. To provide public testimony, please provide your name, address, and comments via email, physical delivery to Elmore County Land Use and Building Department, 520 East 2nd South Street, Mountain Home, Idaho 83647. Written

testimony must be received by 5:00 p.m. on Friday, April 25th, 2024. You can submit testimony by attending the hearing.

Social media posts are not considered written public testimony. If you wish to provide written public testimony, please provide your name, address, and comments before the hearing by sending it to Elmore County Land Use and Building Department, 520 East 2nd South Street, Mountain Home, Idaho 83647 or email anieto@elmorecounty.org. The Elmore County Facebook page is used for outward communication only. It is not intended as a means for the public to submit testimony on any public hearing matters pending before any Elmore County board or commission. Elmore County's social media is moderated but is not regularly monitored and is not a public forum. Likes, Comments, or Shares posted here are not entered into the record of any public hearing. Public hearing testimony must be either submitted at the public hearing or received in advance of the public hearing by email, mail, physical delivery.

The Elmore County Board of Commissioners is responsible for ensuring compliance with the American Disabilities Act (ADA). Any person needing special accommodations to participate in the public hearing should contact the Elmore County ADA Coordinator, Kacey Ramsauer, 24 hours before the Public Hearing at 208-587-2142 ext. 1254, or 520 East 2nd South, Mountain Home, Idaho 83647 or email kramsauer@elmorecounty.org.

One publication: Wednesday, April 10th, 2024.

Kacey Ramsauer, Planner
Elmore County Land Use and Building Department

Exhibit D

Site Posting



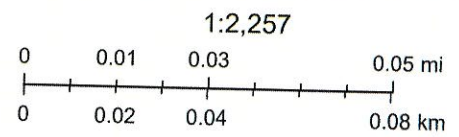
Exhibit E

Flood Map

Idaho Flood Hazard Map



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