

BEFORE THE ELMORE COUNTY PLANNING AND ZONING COMMISSION

In Re: CUP-2015-09: This matter having come before the Planning and Zoning Commission of Elmore County, Idaho (the “**Commission**”), the 20th day of May, the 3rd day of June and the 17th day of June, 2015, for a public hearing, held pursuant to public notice as required by law, on a request for a Conditional Use Permit (the “**CUP**”) to subdivide an existing five (5) lot subdivision into a fifty-three (53) lot subdivision (the “**Application**”). Property is in the W1/2 NE1/4, Section 15, Township 3 South, Range 6 East, B.M., and is zoned Agriculture and in the Mountain Home Area of City Impact (the “**Site**”). The Commission heard from the applicant in support of the Application. The Commission heard public testimony from impacted individuals against the Application. The Commission received additional written testimony and information against the Application. Upon conclusion of the public hearing, the Commission duly considered all that was presented to them.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

FINDINGS OF FACT

If any of these Findings of Fact are deemed to be conclusions of law, they are incorporated into the Conclusions of Law section. The following findings shall be based upon the record for the Application and those facts which are in common knowledge or of which there is general public awareness.

I. The Commission finds that Application is comprised of:

A. Application form prepared and submitted by Jim Carrie, doing business as Intermountain Development (the “**Applicant**”) for the CUP; and

B. Those supplemental letters, email messages, documentation and memos submitted by the Applicant or its representatives, whether submitted in response to questions from employees (the “**Staff**”) from the Elmore County Land Use and Building Department (the “**Department**”) or the Commission in connection with Application to the Commission.

II. The Commission finds that the Applicant is:

Jim Carrie, doing business as Intermountain Development
P. O. Box 624
Mountain Home, ID 83647

III. The Commission finds the following as to the procedural matters pertaining to the Application:

A. The Applicant participated in a pre-application meeting with the Department and Central District Health Department on September 11, 2014.

B. The Applicant conducted a neighborhood meeting on March 31, 2015 as required by Elmore County Zoning and Development Ordinance (the “**Zoning Ordinance**”) Section 6-4-3.

C. The Applicant submitted the Application and the Department required fee of \$800.00 to the Department on April 3, 2015.

D. The Department deemed the Application complete on April 9, 2015.

E. The Department mailed notice of the public hearing to neighboring property owners within one-thousand (1,000) feet of the Site on April 24, 2015 pursuant to Zoning Ordinance Section 6-4-5.

F. The Department mailed notice of the public hearing to agencies on April 24, 2015 pursuant to Zoning Ordinance Section 6-4-4.

G. Notice of the public hearing was published in the Mountain Home News on April 29, 2015 pursuant to Zoning Ordinance Section 6-4-5 A.

H. Notice of the public hearing was posted on the Site on May 11, 2015 pursuant to Zoning Ordinance Section 6-4-5 B.

I. The Commission opened the public hearing on May 20, 2015 and received verbal and written information regarding the Application. The Commission determined the Application required an adequate master site plan. The Commission tabled the public hearing to a date certain of June 2, 2015 to allow the Applicant to submit a master site plan.

J. The Applicant submitted a master site plan and additional information to the Department on June 2, 2015.

K. The Commission continued the public hearing on June 3, 2015. The Commission determined that the Staff and the Commission had not had adequate time to review the master site plan and additional information submitted by the Applicant. The public hearing was tabled to a date certain of June 17, 2015.

L. The Commission continued the public hearing on June 17, 2015 and received verbal testimony regarding the Application. At the conclusion of testimony the Vice-Chairman closed the public hearing. The Commission proceeded to conduct deliberations on the Application.

M. The Commission moved to **deny** the Application. The motion to **deny** the Application was passed on a 4-0 vote.

O. Commission Member Ed Oppedyk was recused from the public hearing, deliberations and vote due to his residence being within the notification distance for the public hearing.

IV. The proposed use of the Application as follows:

A. The Commission finds the proposed use is to subdivide an existing five (5) lot subdivision, recorded as Frontage Road Estate Subdivision, into a fifty-three (53) lot residential subdivision called Blue Sage Subdivision.

B. The Commission finds the Application's request for fifty-three (53) lot residential subdivision is not consistent with additional information submitted by the Applicant. The Applicant submitted a copy of a nutrient pathogen study that was submitted to Idaho Department of Environmental Quality requesting forty (40) lots.

C. The Commission finds that the submitted master site plan proposes fifty-seven (57) lots, comprised of fifty-three (53) residential lots and four (4) common lots.

V. The Commission finds the following pertaining to the Site:

A. Site Description: Portion of the W1/2 NE1/4, Sections 15, Township 3 South, Range 6 East, B.M. A common way of locating the property is from Sunset Strip turn onto Frontage Road. The Site is located approximately one (1) mile on the right.

B. Parcel Numbers: RP003210010010A, RP003210010020A, RP003210010030A, RP003210010040, RP003210010050A

C. The "Owner" of the Site is:

James and Sharlene Carrie
P.O. Box 624
Mountain Home, ID 83647

D. Applicant's Property Right in the Site is: Owner, doing business as Intermountain Development

E. Site Characteristics:

Property Size: The site contains approximately 65.44 acres.

Existing Structures: None

Existing Vegetation: The vegetation consists mainly of grassland and sagebrush.

Slope: Relatively flat and less than 10% slope.

Flood Zone Status: FEMA defined Zone X located outside of all know flood zones.

Irrigation: None of the property is being irrigated utilizing surface or subsurface irrigation water rights.

VI. The Commission finds the current zoning of the Site as follows:

The current zoning for the Site is Agriculture in the Mountain Home Area of City Impact pursuant to the adopted zoning map, Ordinance 2013-02 and adopted Mountain Home Area of City Impact Map, Ordinance 2010-01.

VII. The Commission finds the surrounding land use and zoning as follows:

Land uses to the south are residential subdivisions. Land uses to the north are Interstate 84 and rural residential. Land uses to the east are rural residential. Land uses to the west are agricultural farming.

VIII. The Commission finds the existing services as follows:

Access Roads: Public roads NW Frontage Road on the north and Martin Drive on the south. Private roads NW Eagley Lane on the east and Taylor Lane on the west.

Fire Protection District: Mountain Home Rural Fire Protection District.

Sewage Disposal: None

Water Service: None

Highway District: Mountain Home Highway District (the "**Highway District**").

IX. The Board finds the following as the applicable law for consideration of the Application:

- A.** Comprehensive Plan. Elmore County 2014 Comprehensive Plan, adopted as Resolution 562-15 on January 20, 2014 (the "**Comprehensive Plan**"); and
- B.** Zoning Ordinance, adopted March 21, 2012 as Ordinance 2012-01; which was subsequently amended on September 19, 2012, as Ordinance 2012-03 and on July 14, 2014, as Ordinance 2014-01; and
- C.** The Local Land Use Planning Act, Idaho Code § 67-6501 *et seq.*; and
- D.** Other applicable local, state and federal laws and regulations, including but not limited to the City of Mountain Home Comprehensive Plan and City of Mountain Home Zoning Ordinances as required pursuant to Zoning Ordinance Title 7, Chapter 1.

X. Comprehensive Plan.

- A.** **The Commission finds** that the Site is located within the Mountain Home Area Of City Impact and the Comprehensive Plan of the City of Mountain Home is the planning document governing the Site pursuant to Zoning Ordinance Section 7-1-4 A. **The Commission further finds** that the City of Mountain Home provided written comment over their concerns for the Application but City of Mountain Home staff did not prepare and present a staff report providing analysis of the City of Mountain Home Comprehensive Plan pursuant to Zoning Ordinance Section 7-1-5.
- B.** **The Commission finds** that the Department staff provided information regarding the City of Mountain Home Comprehensive Plan.
- C.** **The Commission finds** the City of Mountain Home provided no analysis of the City of Mountain Home Comprehensive Plan, therefore the Comprehensive Plan for the County was utilized in making the decision for the CUP pursuant to Zoning Ordinance Section 6-27-7 A.2.
- D.** **The Commission finds** that the Comprehensive Plan Future Land Use Map has the site classified as rural residential / mixed use.

XI. Zoning Ordinance.

- A.** **The Commission finds** that the Site is located within the Mountain Home Area Of City Impact and the Subdivision Ordinance of the City of Mountain Home is the document governing the Site pursuant to Zoning Ordinance Section 7-1-4 C. **The Commission further finds** that the City of Mountain Home provided written comment over their concerns for the Application but City of Mountain Home staff did not prepare and present a staff report providing analysis of the City of Mountain Home Subdivision Ordinance pursuant to Zoning Ordinance Section 7-1-5.
- B.** **The Commission finds** the City of Mountain Home provided no analysis of the City of Mountain Home Zoning and/or Subdivision Ordinances, therefore the County

Zoning Ordinance was utilized in making the decision for the CUP pursuant to the standards and findings found in Chapter 27 of the Zoning Ordinance.

C. The Commission finds that in order to approve the CUP application, the following findings as set forth in Section 6-27-7 of the Zoning Ordinance shall be made.

1. The proposed use shall, in fact constitute a Conditional Use as determined in Chapter 8, Table 6-8-11 (C), Elmore County Land Use Table, as contained in this Ordinance;
2. The proposed use shall be in harmony with and in accordance with the Elmore County Comprehensive Plan and this Ordinance (Title 6);
3. The proposed use complies with the purpose statement of the applicable base zone and with the specific use standards as set forth in this Chapter;
4. The proposed use shall comply with all applicable County Ordinances;
5. The proposed use shall comply with all applicable State and Federal regulations;
6. The proposed use shall be designed, constructed, operated, and maintained in such a way as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity; and that such use shall not change the essential character of said area;
7. The proposed use shall not be hazardous or disturbing to existing neighboring uses or impede their normal development;
8. The proposed use shall be served adequately by available public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewer, or that the person responsible for the establishment of the proposed conditional use shall be able to provide adequately any such services;
9. The proposed use shall not create excessive additional requirements at public cost for public facilities and services and the proposed use shall not be detrimental to the economic welfare of the County;
10. The proposed use shall not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
11. The proposed use shall have vehicular approaches which shall be so designed as not to create an interference with traffic on surrounding public or private roadways;
12. The proposed use shall not result in the destruction, loss or damage of a natural or scenic feature of major importance.

D. The required findings of Section 6-27-7 of the Zoning Ordinance, stated as questions, follow in bold text, followed by the Commission's findings:

1. Does the proposed use in fact constitute a Conditional Use as determined in Chapter 8, Table 6-8-11 (C), Elmore County Land Use Table, as contained in this Ordinance?

The Commission finds that a Residential Subdivision requires a conditional use permit in Table 6-8-11 (C).

The Commission finds in addition to a conditional use permit, additional requirements for the proposed use under the Application are found in the Zoning Ordinance, Chapter 28.

2. Is the proposed use in harmony with and in accordance with the Elmore County Comprehensive Plan (“Plan”) and this Ordinance (Title 6)?

The Commission finds that the application is in harmony and accordance with the following objectives and goals of the 2014 Elmore County Comprehensive Plan:

Land Use Objective #6: Encourage orderly development of subdivisions and individual land parcels, and require development agreements when appropriate.

Land Use Objective #11: Continue to update the County-wide Zoning and Development Ordinance to protect property values and avoid mixing of incompatible uses.

Suburban Mountain Home Vicinity – 5 Land Use:

- Encourage new development to comply with the County Comprehensive Plan.
- Continue the land use and density restrictions currently in place for the Mountain Home Aquifer Water Recharge Area.
- Recognize that residential development should occur near the City of Mountain Home...but new development must blend and complement the existing rural lifestyle in the area.
- Development within this area must minimize residential conflicts with agricultural operations and animals.
- Dust control would be a necessary approval criterion for any new development in this area.
- Animal Units should be reevaluated in this area to better reflect the small parcel developments.

Suburban Mountain Home Vicinity – 13 Community Design:

- Encourage and support the continuation and expansion of the Mountain Home Air Force Base.
- Encourage and support the continuation of suburban residential land uses and hobby farms within an approximate 2-mile radius outside the City of Mountain Home. Land areas near Mountain Home but beyond the 2-mile radius should be preserved for agricultural and Ag related developments.

The Commission finds the Application does not comply with the Zoning Ordinance as the Application does not meet all the required findings of Ordinance Section 6-27-7 as specified in numbers 4, 6, 7 & 8 of this section of the findings.

3. Does the proposed use comply with the purpose statement of the applicable base zone and with the specific use standards as set forth in this Chapter?

The Commission finds that the Application complies with the purpose statement of the Agriculture zone in Zoning Ordinance Section 6-5-5 A in that “residential land use is

allowed in the Ag zone subject to site development standards and compatibility with agriculture operation.”

The Commission finds neighboring agriculture uses are limited on site and the immediate vicinity and therefore negative impacts on existing agriculture operations is limited.

The Commission finds the Site has existing neighboring residential land uses that are located in the agriculture zone.

4. Does the proposed use comply with all applicable County Ordinances?

The Commission finds the Application does not comply with the Zoning Ordinance as the Application does not meet all the required findings of Zoning Ordinance Section 6-27-7 as specified in numbers 2, 6, 7 & 8 of this section of the findings.

5. Does the proposed use comply with all applicable State and Federal regulations?

The Commission finds that conditions of approval were proposed to ensure the Application met all State and Federal regulations.

6. Is the proposed use designed, constructed, operated, and maintained in such a way as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity; and will such use not change the essential character of said area?

The Commission finds that the majority of platted subdivisions within the vicinity are on municipal and community water systems. Therefore, the **Commission further finds** that the Application as proposed with individual wells is not harmonious and appropriate with the general vicinity.

The Commission finds that the Application as proposed with individual wells and septic systems creates a higher lot density for the general vicinity compared to the existing lots that utilize individual well and septic systems and therefore is not harmonious and appropriate with the general vicinity.

7. Will the proposed use be hazardous or disturbing to existing neighboring uses or impede their normal development?

The Commission finds that the addition of fifty-three wells can be hazardous to existing neighboring uses because the wells are not required to be monitored and therefore increasing the risk for contamination.

The Commission finds that the lot density as proposed in the Application with individual wells can be hazardous and disturbing to existing neighboring uses that utilize community water systems.

The Commission finds based on public hearing testimony and well data submitted for the record that water well levels have decreased in the area and the additional wells proposed in the Application can be hazardous to neighboring uses.

The Commission finds based on public hearing testimony and written data submitted for the record that some water wells in the vicinity have become contaminated and development proposed in the Application can increase the known hazards in the area.

The Commission finds that based on a letter from the City of Mountain Home the proposed Application will create impacts on existing water users.

8. Is the proposed use served adequately by available public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewer, or that the person responsible for the establishment of the proposed conditional use shall be able to provide adequately any such services?

The Commission finds the following public services shall be provided as follows:

Highways: Site does not have frontage to a highway.

Streets: Site has access to NE Frontage Rd., a publically maintained road. The Application proposed public roads that are to be maintained by the Highway District. The Highway District has not required a traffic impact study. All new roads will only access NE Frontage Road.

Police and Fire Protection: Police protection is provided by the Elmore County Sherriff's Department. The Site is within the Rural Mountain Home Fire Protection District.

Drainage Structures: The Application proposed no drainage structures.

Refuse Disposal: The Application proposed no refuse disposal.

Potable, Non-Potable Water, Fire Suppression Water Supplies: The Application proposed individual wells. **The Commission further finds** that individual wells as proposed in the Application can be hazardous and disturbing to existing neighboring uses as specified in numbers 6 & 7 of this section of the findings.

Sewer: The Application proposed individual septic systems.

9. Will the proposed use create excessive additional requirements at public cost for public facilities and services and the proposed use shall not be detrimental to the economic welfare of the County?

The Commission finds that the Application proposed all improvements, required to be built or bonded prior to recording a final plat, be funded by the Applicant and therefore not be detrimental to the economic welfare of the County.

10. Will the proposed use involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors?

The Commission finds that the Application will not create any excessive production of noise, smoke, fumes, glare or odors.

The Commission finds that the Highway District did not require a traffic impact study and therefore no excessive production of traffic is anticipated by the Highway District.

11. Will the proposed use have vehicular approaches which shall be so designed as not to create an interference with traffic on surrounding public or private roadways?

The Commission finds that the Application proposed two new vehicular approaches onto NE Frontage Rd.

The Commission finds that the Highway District did not required a traffic impact study and therefore no interference with traffic on public roads is anticipated by the Highway District for the Application.

The Commission finds that any new vehicular approach to NE Frontage Rd. will have to be approved by the Highway District.

12. Does the proposed use result in the destruction, loss or damage of a natural or scenic feature of major importance?

The Commission finds that the Site is not identified as a natural or scenic feature of major importance.

XII. Idaho Code § 67-6519(4)(c) The actions, if any, that the Applicant could have taken to obtain approval.

A. The Commission finds that utilizing a community water system would make the subdivision more consistent and harmonious with the surrounding subdivisions that utilize a community water system. **The Commission further finds** that a community water system will have to be tested regularly and therefore decreasing the chance of aquifer contamination.

B. The Commission finds proposing larger lots would make the Application more consistent and harmonious with the surrounding area lot sizes.

CONCLUSIONS OF LAW

If any of the conclusions of law are deemed to be findings of fact, they are incorporated in the Findings of Fact section.

1. The Commission concludes that the public hearing notice requirements of Zoning Ordinance Chapter 4 have been met.

2. The Commission concludes that the notice requirements of Idaho Code Section § 67-6512 have been met.

3. The Commission concludes that the Application does not comply with the required findings set forth in Section 6-27-7 of the Zoning Ordinance.

ORDER

Based upon the foregoing findings of fact and conclusion of law, the information contained in the Staff reports and the record for the Application, the Commission voted and hereby **denies** the Application.

Dated this 15th day of July, 2015.

COMMISSION VOTE:

CHAIRPERSON PATTI OSBORN	ABSENT
VICE CHAIRMAN K.C. DUERIG	VOTED AYE
SUSAN FISH	VOTED AYE
BETTY VAN GHELUWE	VOTED AYE
ED OPPEDYK	RECUSED
JEFF BLANKSMA	VOTED AYE
SHANE ZENNER	ABSENT



Patti Osborn, Chairperson

ATTEST:



Alan Christy, Director

NOTICE PURSUANT TO ZONING ORDINANCE SECTION 6-3-2 B

A decision made by the Elmore County Planning and Zoning Commission (the "Commission") may be reconsidered by the Commission provided the reconsideration application is complete and reconsideration fee is submitted to the Land Use and Building Department within ten (10) calendar days of Commission action. The reconsideration shall include new or additional relevant information that was not previously presented or available at the public hearing. Questions concerning reconsideration or deadlines should be asked of the Elmore County Land Use and Building Department.

NOTICE PURSUANT ZONING ORDINANCE SECTION 6-3-2 E-F

A decision made by the Elmore County Planning and Zoning Commission may be appealed to the Board of Elmore County Commissioners provided the appeal application is complete and appeal fee is submitted to the Land Use and Building Department within ten (10) calendar days of Commission action. Questions concerning appeals or deadlines should be asked of the Elmore County Land Use and Building Department.