Jefferson County
Planning and Zoning Public Hearing
May 6, 2021 6:00 PM

Planning and Zoning Commission Present: Warren Albertson - Chairman, Ryan Ashcraft, Heath Lewis, Michael Clark, and Lane Steel.

Staff Present: Mark Taylor – Prosecuting Attorney
Kevin Hathaway – Planning and Zoning Administrator
Jenny Kerr – Planner
Erik Stout – Assistant Planner
Samantha Farr – Administrative Assistant

6:09:11 PM Chairman Albertson opened the meeting. Steel led the Pledge of Allegiance. The staff was introduced.

Clark moved to approve the minutes from the April 1, 2021 Planning and Zoning meeting. Lewis seconded. All in favor.

6:11:44 PM Ashcraft moved to approve the written decisions for the Conditional Use Permit for Abel Ramirez, Conditional Use Permit for Sharlene Lupton, Final Plat for Zach Giles South Fork Business Park, and Zone Change for Steve and Alicia Billman from the April 1, 2021 meeting. Clark seconded. All in favor.

6:12:14 PM No ex parte communications disclosed. Albertson read the proceedings of the public hearing.

6:18:20 PM Clark – In looking at the agenda, I would make a motion that we modify it and reverse the order, to allow the last two items to be heard first, based on what we expect to be the length.

6:19:03 PM Lewis seconds. All in favor. The items will be heard in reverse order from the agenda.

6:19:25 PM Public Hearing No.1 Variance/ Applicant Robert Lyon/ Located in Monarch Springs at 4111 E 168 N, Rigby, Jefferson County, ID/ To build a shop closer to the road than the required setbacks

6:19:31 PM The Staff report was read by Planner Jenny Kerr.

6:20:31 PM Presenting: Robert Lyon (4111 E 168 N) – I am asking for a variance to build shop where I originally had it planned. My yard is professionally landscaped. I set aside a plot for that shop. I aligned
the shop with the front of the house, figuring that would be the most appropriate place for it. If I have to move it back, the shop would push into my landscaped back yard. I’m a retiree on fixed income, I can’t afford to make those changes.

6:22:10 PM  **Clark** — What is the required setback? **Lyon** — I think the question is, since I’m at the end of 168 N, it makes a turn and they’re calling that turn a cul-de-sac. The setback for a cul-de-sac is different than from the street. Most of the shop is aligned with the street setback. The setback from the cul-de-sac is 100’, which would require me to move it back probably another 10-15’.

6:23:32 PM  People in the back were having a hard time hearing. The sound system was adjusted. Lyon repeated his request so the people in the back could hear.

6:25:33 PM  Lyon indicated the cul-de-sac on the map as well as his house and the area of the shop. **Albertson** — Are your measurements accurate on the map you have with the 80’ from the site? **Lyon** — That’s what I measured. I couldn’t find a center marker of the road, but there was a center mark on the cul-de-sac. **Albertson** — Did Road and Bridge declare it a cul-de-sac? **Lyon** — Someone came out and told my builder that I would have to move it back. I had the stakes where I had planned on putting it. I never talked to them that was just what I was told. **Albertson** — It is a 0.6 acre lot? **Lyon** confirmed 0.616 acres.

6:28:01 PM  **Ashcraft** asked a question that would be discussed later regarding the setback table.

6:28:53 PM  Public Testimony Portion Opened:

In favor: None

Neutral: None

Speaking in Opposition: None

Rebuttal: None

6:29:30 PM  Discussion of the Board: **Ashcraft** — I would like to ask where the reference to setbacks to cul-de-sacs are.

6:30:24 PM  **Lewis** — The cul-de-sac is the only thing screwing it up. If the cul-de-sac is kind of vague, I don’t see a problem.

6:30:54 PM  **Kerr** — It isn’t in our ordinance. We’re checking if it’s in the Road and Bridge Ordinance. It is on our building permit, but that is not an ordinance.

6:31:25 PM  **Albertson** referenced the **setback table 3.3.20** for this acreage. According to the applicant’s measurements, he has approximately 80’6” from the center of the road to the front of the shop by the map.

6:31:41 PM  **Clark** — **Section 3-3-3-1**. I’m not finding where it actually defines a cul-de-sac. I would argue that we could argue the definition of a cul-de-sac. To me it looks like a curve.

6:32:22 PM  **Albertson** — The common thought process is a cul-de-sac is basically a dead end road, where this one is not.
Clark found the definition for the cul-de-sac defining it as connected to a street at one end only. Clark and Steel clarified the centerline of this road.

Clark – The setback does work if it’s from the road centerline. Kerr – Yes. Clark – I’m not sure there even needs to be an application for a variance. Albertson – That’s my thought. By that definition, this isn’t a cul-de-sac. Hathaway – That’s the issue we had. It’s an odd location. If you evaluate it on the cul-de-sac requirements in the Road and Bridge ordinance, I think that’s where it shows it. It does show the 100’ to the center of the cul-de-sac on our building permit, based on the change in the Road and Bridge ordinance. That was our conundrum. We didn’t have a definitive answer.

Lewis – I don’t think a variance is required. Hathaway – You would need to make some motion to allow that. Clark – I would make a motion that a variance is not required in this situation due to the definition of cul-de-sac. I believe that the setback on his application is sufficient.

Taylor – I would get the whole board to vote on whether or not it’s a cul-de-sac.

Clark – I make a motion to determine that this is not a cul-de-sac. Albertson – I don’t know what was used, by definition, this is not a cul-de-sac. Hathaway – It is a turn around, that’s why it’s designed there.

Taylor – The board has an application in front of them. It would need to be considered for a variance if it is a cul-de-sac. If it’s not a cul-de-sac, it does not need to be considered. If it is a cul-de-sac, it needs to be considered. If you are finding that it’s not a cul-de-sac, put that on the record. Then, on that basis, dismiss the application. There should be a vote on whether or not you agree it’s not a cul-de-sac.

Albertson – I can see the possible argument based on the road numbers. It’s the termination of 168 N, but there is still a thru-way to the next street.

Clark – It specifically says connected “at one end only.” I would say I see 2 ends. Clark moves that the board find that it’s not a cul-de-sac and based on that definition the application should be dismissed. Therefore, the applicant doesn’t need a variance. Steel seconds.

All in favor. Motion carries. Application is dismissed.

Clark – Should the applicant be refunded, since the county put the burden on the applicant? Hathaway – You can recommend that to the commissioners, they would be the ones that would have to authorize that.

Clark moves to recommend that the fee be refunded. Lewis seconds. All in favor.

Public Hearing No.2 Variance/ Applicant Robert M. Lugar/ Located in Cottonwood Hollow at 494 N 4154 E, Rigby, Jefferson County, ID /To build a shop closer to the road than the required setbacks

The Staff report was read by Planner Jenny Kerr.

Presenting: Robert Lugar (494 N 4154 E) – I’m requesting the variance to the county setback requirement in order to construct a shop on my garage/property, due to the setback of 80’ and covenants that confine me of a setback of 50’ from the setback from my property line. Maybe covenant
verbiage in the preservation of native trees. As well as the shape of my lot and the topography, I can’t locate and construct it where I’d like. When we purchased the property in 1992, it was a private road. It is a dead end road. At that time we were not subject to the 80’ setback requirement. Albertson – Since you moved there, this road has been accepted by the county? Lugar – Yes, but we moved in 1992. I can’t tell you when that was done, but it was a private road. Ashcraft – Where would you have the entrance/driveway to the shop? Lugar indicated on the site plan. Ashcraft – It looks like there’s trees there. Lugar – There are small cottonwoods that would need to be moved, we’re trying to keep our large spruce tree. Indicated on the satellite map where the shop would be. Albertson – So the front would be 33’ from the centerline? Lugar – My letter says 30’, so I apologize for the discrepancy. I’ve been out there recently and it’s probably going to be closer to 40’.

6:47:41 PM Public Testimony Portion Opened:

In favor: None

Neutral: None

Speaking in Opposition: None

Rebuttal: None

6:48:06 PM Discussion of the Board: Lewis – The lot to the north, just a few months ago, his neighbor was asking for the same variance, because those lots are kind of weird and that road is not highly travelled. I don’t see a problem with it. The shop we approved is a lot closer than what he is asking for. Hathaway – Some things that are a concern, you probably need answers to to make this decision. The location of the septic isn’t indicated. It’s over 1 acre so the setback is 80’, this is showing 33’. The only reason it’s precluded from what we can see from making that setback is the subdivision covenants. That doesn’t apply to the county setbacks. That’s something you want to consider. There’s also the access. We’re not sure where the proposed access would be. It appears it would be closer to the intersection. Typically the distances between driveways is 200’. A subdivision is less because the speeds are less. But that’s something that needs to be considered on the location in relevance to the intersection.

6:50:39 PM Lewis – To answer those questions, we need to ask the applicant on the location of the septic and a definitive answer to where the access to the shop would be. Albertson – He did indicate that it was coming off 4154 E when I asked the question. The only other question is, depending on how you position the shop. If you turn the shop the side setback rule comes in to play. Steel – That’s how we passed that other one. Hathaway – The other point that you should consider. If the road was not a public road when the house was built that’s one thing, but it’s difficult to extend into an already deficient setback. The garage shows that it’s 69’ from the centerline. But this is a new construction, the requirement is now 80’. It seems difficult to accept less than the 69’ that currently exists with the garage. That’s something you would have to determine, if there’s a good reason to do that.

6:52:39 PM Albertson – If the entrance was turned and facing the other direction, it becomes the side. Kevin – It would have an issue of a new driveway and the access, no matter which way you orient the building.

6:53:28 PM Clark – Where is the driveway spacing distances? Are those from the Road and Bridge? Hathaway – The County has a spacing requirement and ITD also has a spacing requirement. The county’s
is between 200' and 250'. This is a subdivision road, that’s a little different. The spacing could be
somewhat less as the speed is less.

6:54:28 PM  Clark — Do we know what the subdivision requirement is? Hathaway — It’s a county road,
so you would have to evaluate it based on that. You could argue the access to the subdivision. You could
considered where the county roads intersect, which I think would be reasonable because they are two
county roads that intersect. I can see you modifying that somewhat, related to speed that supposed to be
traveled.

6:55:22 PM  Lewis — It’s a dead-end road and not a lot of traffic. The subdivision restriction being 50’,
we don’t worry about that, do we? Albertson — Not the restrictive covenant, that’s not ours to enforce.

6:56:36 PM  Clark — Look at 3.9.2. (a) It is directly related to the lot layout and positioning and reflects
back that are some arbor type trees that they want to retain. (b) Obviously other property owners have
buildings in relatively the same position relative to the roads. As I look at this, I can count 6 or 7 other
properties that have multiple driveway entrances within 35’-40’ of each other and some within a stone’s
throw distance of the intersection. The 200’ doesn’t apply to the adjacent properties. (c) This one could
be argued regarding spacing. It’s not injurious to the surrounding. There are trees that provide more
detriment than the shop. (d) This is a little harder to argue. I think based on going to our zoning ordinance,
in most of the cases, it falls within the circumstances for granting the variance.

7:00:55 PM  Albertson — I would argue that I don’t think it’s the minimum. Referenced setbacks. You’re
asking for 42’ worth of a variance. I would say we want to save the trees, trees are good. But are the trees
necessary?

7:02:03 PM  Steel — The other one we did, the driveway was a shared driveway and it was a side and
it was almost not a variance. If this one could be turned to include the driveway. I don’t know if we can
use that one as a reason.

7:02:49 PM  Albertson — I would argue if you turned the shop, it would be the side setbacks. The doors
in relation to the setback are challenge. The variance would alleviate the hardship of having to cut down
the trees.

7:04:36 PM  Lewis — If he turns it, it could put the side closer to the intersection. Steel — Unless it went
the other direction. Albertson — The corner appears to sit on the 50’ setback of the covenants. Even if you
turn it, you’ll still have a problem with the setback from the 75’ rule. Regardless of the way they’re facing,
it still needs a variance.

7:06:30 PM  Ashcraft — I would argue condition 3.9.2 (a). It sounds like these conditions apply to all
the other properties, the misshaped lot size, the trees, the streets. It sounds like other properties have
been able to get by that. I have a little bit of trouble with (a). All the other properties have those
characteristics and have been able to build shops. (b) I agree with that, that’s it’s to reserve his property
rights that others have. (c) I think he’s met that. (d) I also struggle with, if it’s the minimum. No one wants
to build a smaller shop, he didn’t say why he needs that size of shop. Given that, I’m at the same place.

7:08:10 PM  Lewis — Most of the other properties have had a variance or had a building permit closer
that what he’s asking for, from what I’m seeing. If you drive through that neighborhood, there’s a lot of
shops or garages a lot closer to the road than what he’s asking for. Maybe that’s from when it was a
private road.
Steel – We do have to consider this a new construction applicable to the new standard.

Lewis – Do we need to clarify where the septic is? Lewis moves to reopen the public testimony portion. Clark seconds. All in favor.

Lugar indicated on the map where the tank and drain field are. Clark – Do you have the replacement area designated? Lugar – I’m not aware of the need for a replacement area. Clark – It is a part of our ordinance. It does require a set-aside replacement. Lugar – For homes older? Clark – Any home, but this is a new construction. Does the placement of a replacement field effect where you would place the building? Lugar – I would say the replacement would be adjacent to the existing field.

Public testimony portion is closed.

Lewis – If we move it back, that pushes the shop back into the septic. We can argue it both ways. Albertson – There’s room for a replacement, but the trees may not survive.

Steel moves to deny the variance based on 3.9.2 (a) and (d).

Ashcraft seconds.

Roll-call vote was needed. Steel votes aye. Clark votes nay. Ashcraft votes aye. Lewis votes nay. There are two votes aye and two votes nay. Chairman Albertson would vote to break the tie.

Albertson chose to render his decision at a later date in written form. He has 28 days to render his decision in written form.

Albertson asked if counsel had anything on the next hearing. Taylor said he didn’t have anything at the time as far as the law. He counseled the commission to look at the facts and think about what they’ve been working on recently.

Public Hearing No. 3 CAFO / Tom A. Dunlop / Located approximately at 699 N 3200 E, Menan, Jefferson County, ID/ To propose a Confined Animal Feeding Operation (CAFO)

The Staff report was read by Planner Jenny Kerr.

Presenting: Tom Dunlop (130 N 3744 E) – I represent Jeff Smith, the owner of the property. I am the General Manager of Smith Cattle, the farming operations and the trucking operations.

There were additional issues with the sound.

Tom Dunlop – We’re here asking for permission to build a CAFO. This is the first step in our process. I’d like to touch on some reasoning for that parcel. It’s close to HWY 48, so the traffic is only one residence between the highway and the facility that is not ours. In research over the summer, talking to individuals, that site wasn’t flooded in ’97, those houses were not flooded. The drainage is controllable. That’s the reason for that portion of the parcel being chosen. It is capable of having a lined pond. We can address the stipulations of the county and state rules for a CAFO. I know there’s been some questions. This is a rough representation of that. It will require more engineering to be done. I would like to have the
approval of the county before I spend money on engineering, building, estimates, and so forth. We’re following all the rules that we’ve been given to use this property to aid our other property in the county.

7:23:51 PM Albertson – What time of year did the siting committee come? Dunlop – I believe it was mid to late February.

7:24:10 PM Lewis – Is the current feedlot at capacity? Dunlop – The built facility, no, we have empty pens. The need for this is that one is a finish yard. Our intention is to build a grower yard. This would be cattle under 900 lbs.

7:24:53 PM Steel – You have that the water table is 6 to 3.5 feet, but your pond at 5 ft? Dunlop – That’s why it has to be lined.

7:25:17 PM Lewis – Is the proposed feedlot going to be all year round. Dunlop – Possibly yes. Albertson – Is it bringing the green calves in and then move them on to the next lot? Dunlop – That’s correct, or they could be going to grass, depending on the situation.

7:25:49 PM Ashcraft – With a feedlot, sometimes a cow might die. How do you handle that? Dunlop – We currently take them to the dump. They won’t be on site, they will be removed in a timely fashion.

7:26:19 PM Lewis – How many head do you plan on putting in there, total. Dunlop – I think we’re requesting 6100 for the county acreage allowed. I can’t say that’s how big we’ll go, but that is the requirement of the number of head/acre.

7:26:49 PM Albertson – How close to Spring Creek? Dunlop – It’s on the other side of the property, against HWY 48. Indicated on the map. We would try to stay this way to minimize impact on the neighbor to the north. There’s some measured out pens. There’s some fine tuning to be done in that map.

7:27:55 PM Albertson – The pen size is going to roughly 200 x 200. Dunlop – Roughly, because of them being green cattle, we may go a little larger. Those cattle are more delicate and need a better environment than older cattle. Albertson – And the Department of Ag will ultimately decide the maximum head in each pen. Dunlop – I believe so. There are a lot of regulations involved in this now.

7:28:56 PM Albertson – Has it been determined what the liner would be? Dunlop – I believe in this situation it would not be able to be clay, it would have to be rubber. That would be determined by engineer and the regulations of the State of Idaho. We discussed a non-permeable synthetic liner.

7:29:50 PM Albertson – As far as the waste product, looking at the nutrient plan that will all go off site? Dunlop – Yes, currently we export a lot of manure, it has a lot of demand.

7:30:18 PM Clark – Do you know what the high water marks during the ‘97 flooding? Dunlop – I don’t. It was first hand from people who live in that area during ‘97. They showed me where the levy broke and where it went back in the river. The original owners we bought the house from said that house was not flooded. Spring Creek went up to the top of the road and a lot of other areas were flooded a little bit higher.

7:31:20 PM Ashcraft – Staff has reported that CAFOs should be in Ag zones, but land use table says not in the Ag-10. How do you reconcile that? Dunlop – In my original discussions, I did not understand that. We are not developers. We’re not interested in building houses, so we didn’t look at the zoning.

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We’re interested in raising cattle and farming. If we made a request to change the zone, I would have to get authorization from Mr. Smith to do so. We’re here to raise cattle and farm. We had no other intentions when we bought the property. It just happens to be zoned this way.

7:32:53 PM  Albertson – To answer that question, an applicant has a right to pay the fees and ask for what they want. Ashcraft – I understand that, I wanted to see if he had an argument for that at this time that he wanted to put forward.

7:33:43 PM  Dunlop – That’s the best explanation I can give.

7:34:04 PM  Hathaway – The edge of the parcel adjacent to the river is zoned Recreational Open Space. Hathaway and Kerr indicated the portion of the parcel that is zoned recreational as well as the floodplain.

7:35:12 PM  Ashcraft – Is that the part that’s referred to? The 305 contiguous acres? Dunlop – That’s the entire piece.

7:36:03 PM  Public Testimony Portion Opened:

In favor: None

7:38:04 PM  Neutral: Natalie Schmidt (186 N 4032 E) – I am a realtor with Archibald Real Estate. I was asked to say what it would do to the property values of people in close vicinity to the feedlot. In studies done in other states, within in mile 40% decrease in property and a 10% decrease in the home. There’s not one done in Idaho. I talked to the County Tax Assessor’s, what they do as an adjustment on land in previous circumstances where it’s been needed, it’s a 30% decrease on any land parcel and a 15% decrease on any improvements including homes, shops, anything that adds value to the property. Clark – Does that give information for distances from it? Schmidt – Jefferson County didn’t give me a distance. In all the other studies, it was a mile.

Albertson and Kerr clarified that letters were submitted as well as the same person signing up to speak and that they had the option to have that letter read in or to speak. All letters read and unread would be added to the record.

Speaking in Opposition:

7:39:18 PM  Ed Eames (3222 E 650 N) – Eames handed out papers to the commission for them to reference and to have added to the record as an exhibit. I as a neighbor of 70 years strongly oppose the 6000 head feedlot proposed along the Snake River for multiple reasons. My main concern is water contamination because of said feedlot. It has taken thousands of years to develop and form the Snake River. The Snake River drains rain and snowfall from many watershed areas. Over years and years of the Snake River flooding, the ever changing paths has created pathways and channels known as the river bottoms. If you own property along the Snake River, there is very little soil over the gravel riverbed. Because of this, spring water, groundwater, and drinking water can be easily contaminated. To compound this problem, with spring runoff, the land becomes an enormous natural flood zone, this is an often occurring problem. County records have thousands of slides on file for multiple flood years. I have slides showing the proposed site and surrounding neighbor’s properties. The main entrance road gets soft and needs repairs all the time because of the springs that run underneath the road. Groundwater and static water is consistently 4-6’ in peak irrigation months. Indicated images on slides also included in the exhibit.
They've concentrated on this land and area. Because of multiple years of flooding, it has drawn attention clear up to Butch Otter, JoAn Wood, etc. I have slides of '97 and 2011. If you go to county records, there's a lot more flooding that goes on practically every spring. They go to flood level and they try to maintain it, but sometimes it can’t be. Indicated the boat dock area. The Van Steenkiste home is one of the homes affected by the Big 6 (Smith Cattle Co) proposed site. The Spring Creek flows into the Snake River. Spring Creek, the Snake River, and a tributary of the Long Island Canal system border this property. It’s almost completely surrounded by water. Shows the results of some of the flooding on the slide. There are all of these pictures and thousands more. I picked these because they’re in this area. That’s the view from Roberts in '97, the view is right up HWY 48, that’s the Smith Cattle Co.'s main entrance. If you can see, in the '97 flood, I’m further east and I could throw a stone into the water. It was water from my property clear to Roberts. This is the main slide I would like everyone to see ('97 image of flooding down 650 N in the proposed area). The Sheriff’s Office put their boat in to get down there to look things over. The Snake River floods regularly and the proposed site is surrounded on three sites. The Snake River can and has flooded through the middle of the proposed site. Liquid waste can overflow and contaminate the water, a complete disaster to happen. I would propose a site there is no water contamination threat and very few people. A 10,000 dairy cattle operation exists in Osgood, west of Roberts. It is not impacting people, water, and the environment. A truck road is being completed to that area.

7:50:03 PM   Zach Livermont (678 N 3200 E) – My home is directly south of the proposed feedlot. Indicated his home on the map. I was planning on speaking before Natalie. I want to touch on that. This is one of my main concerns because I live less than 1000’ from the proposed feedlot. I asked Planning and Zoning if that would impact property values. They told me to call the Assessor’s and they gave me the 30% property and 15% home value loss. I looked at my home and the 3 homes just north of the proposed feedlot and we are looking at losing just shy of $200,000 in home and property value.

7:52:14 PM   Justin Fullmer (3225 E 650 N) – I live right off Spring Creek to the east of Livermont’s. Indicated home. Read letter that was submitted prior to the hearing. Asking neighbors closer to the north, they said 10-14’ watermark. I’ve heard tonight that it’s less. Returned to reading the letter. The drawing doesn’t show any liner. It states a clay based liner, non-permeable, in the drawing done by Rumsey engineering. Mr. Livermont’s home was flooded. There was over 2’ of water. I helped them move out and they could on blocks. Indicated on where flooding was on the map from ‘97. Returned to the letter.

7:58:22 PM   Mike Van Steenkiste (659 N 3110 E) – Indicated on the map where they lived. I appreciate the time listening and the community for coming out. In light of circumstances today, it’s nice to have good neighbors and people around you. I feel for Tom and I understand it’s his right, I’m all for cattle and farming, maybe just farming on that piece and not cattle. Ag-10, this is not even a conditional use. It’s not a permitted use, I understand it may be significantly similar. I would argue that 300 cows is not significantly close to 6100. Do you have a copy of the application? Turn to that last page of the application. We can talk about the zoning, but I want to touch on that. I emailed the State and got a copy of the Excel Spreadsheet and broke down how they weight the risk assessment score. On the form, it goes from low to medium risk at 25. A 33.5 trends closer to medium to high risk. It would be a high risk at 38. Within that form, they listed in 100 year floodplain as low risk. You see from Ed’s pictures, we can argue with FEMA, but everyone has been flooded. If you changed it to a 2 (it’s a 1, 2, 3 rating) it would put the CAFO in high risk. If you change the soil depth, which they took their soil samples in February. If you change that to 2 or 3, it would make the site in a high risk area instead of medium. I appreciate your time.
Jenny read in the letter from Avon Wilde. He said extra time, if any, would go to his attorney.

Thad Keetch (771 N 3200 E) – If the land wasn’t flooded in ‘97, the water table would have been high. Where I’m located, sometimes you can dig a 4’ hole and hit water. The pond is showing at 5’ with soil, which is a concern. My property line is approximately 660’ away from the property for the proposed feedlot. My well is less than 1000’ from the property line. The 3rd party to take the waste that is currently being spread out across the property east of the feedlot. That land is flood irrigated. That drainage goes into Spring Creek and then goes into the Snake River. Indicated his property on the map.

Gary Peebler (555 N 3200 E) – I have two properties. One is at 558 N and I mainly wanted talk about the water and contamination of the water. Menan is considered an island, it’s surrounded by water. Whatever goes into the ground is going to hit water sooner or later. The Skaars feedlot, some people who use to work for them. One story that really struck me is they had had cows dying, they couldn’t figure why they were dying. They ran test and they were dying from lack of water. So their water was contaminated. They turned around and tried to put other wells close by and it wasn’t working. In order to get clean water, they went over by the Dry Bed and put a well there so they could run clean water to water the cows. I feel this is going to happen in this area. It’s not just going to contaminate the cows, it’s going to contaminate the people around. They’re not on an island in Lewisville where the Skaar feedlot was. Menan is an island, surrounded by water. If we’re living in the past where we used to contaminate the ground. I used to dump oil on the ground. Now, who would think that you would have to buy water, I never thought that would happen. Water is becoming the big commodity in this world. If we keep contaminating it, then we’re not going to have the water. I feel like we live on a gold mine because of the water. I was also told by a previous working, if you put a feedlot there, there will always be a feedlot there. You won’t be able to do anything else with it once it’s already started.

D. Andrew Rawlings (100 Riverwalk Drive Suite 200, Idaho Falls, ID) – I represent the Wildes and Van Steenkistes. I also have a petition signed by about 125 residents or people who are interested and they’re all opposed. Entered that petition as an exhibit. The issues from me are three things: zoning, the Comprehensive Plan, and water. This is an Ag-10 zone. There is no application to change the zone. It doesn’t allow what’s been allowed what’s been applied for. It only allows a small with a conditional use permit. There’s not a Conditional Use Permit in front of us, I think they have to be paired together. A CUP can only be granted under state law when it’s not in conflict with the Comprehensive Plan. The small CAFO issue is worth considering as well. Under the ordinance, a small CAFO is less than 300 cattle or cow pairs. Referenced CAFO section of the Zoning Ordinance. Applying for a CAFO to feed 6100 cattle by far exceeds what’s allowed in an Ag-10 zone. The argument that somehow because of the acreage there is they should be able to do more, misses the point of zoning. Zoning is about use, it’s not just point of density. An Ag-10 doesn’t allow what has been applied for. I think to say this is similar would be disingenuous since the ordinance disallows the medium and large CAFOs. On to the Comprehensive Plan. These two parcels are mostly in the Ag-10 zone and but they are partially in the RR/O zone. I’ve outlined policies in our letter. I think the most poignant is Policy 13-7. Even aside from the portion of the properties that are zoned RR/C, all of these properties are going to affect the Snake River in addition to the groundwater. Under the Comprehensive Plan his does need to be protected, conserved, enhanced, and maintained. The lot is less than a mile to the Mike Walker boat ramp. It’s difficult to see that a CAFO wouldn’t negatively affect the recreational opportunities of the Snake River. Lastly I want to touch on the water issues. The application notes that there’s currently not a water right at the property that would allow the ground water. The engineer says there is a water right that could be amended and it’s a standard application process. My law firm does a lot of water law and transfer applications, which is what this would
be. The process is standard, but the road you travel is not. I think the water rights transfer would be protested. To amend the water right 256-4187 would be protested by local people as well as larger players like the Surface Water Coalition and the Idaho Groundwater Association, they've struck a bargain and tend to oppose anything that changes water use. That application process isn’t as straightforward as the application makes it seem. There’s a water right issue. There’s also the flooding issue. It affects the surface and groundwater, both of those have been well addressed. The last page of our letter uses GIS software to show wells in that area that the IDWR has data for. The one that is closest belongs to the applicant and is the oldest and deepest, so it has static water set at 15’ based on a well drilled in 1997. All the other wells have static water depth from 12’-4’. With the issues that have been raised regarding the risk assessment. It is an attempt to quantify a subjective assessment, which is always difficult. As close of call between medium and high risk. There needs to be a minimal risk to residences and those around it. I think the commission needs to deny this application. Because it’s the wrong zone and the policy issues of the Comprehensive Plan. I submitted an 11 page letter that goes over these issues. I encourage you to read over that.

8:17:34 PM McKay Worthen (3275 E 650 N) – I live approximately 1 mile from the proposed location. I want to read a study done by the Pew Commission on industrial farm and animal production. A technical report discussed various CAFO studies show industrialization of animal agriculture leads to reduced enjoyment of property, deterioration of surrounding landscape which reflected in declining land values and lowering property tax assessments, issuing strong odors, the degradation of bodies of water, and increased populations of flies are among issues from CAFOs which make it intolerable for neighbors and their guests to participate in normal outdoor recreational activities or normal social activities in and around their homes. I grew up on a ranch out in Medicine Lodge. We had 900 head of cows and we never put them next to our home, we understood that. I’ve worked on a feedlot and understand that they have the right to pursue liberty and pursuit of happiness, we have the same right. This would decrease my family’s pursuit of happiness and our enjoyment. There are a lot of other locations that would be better suited to this type of property. I wish all the best to the Smith Cattle Co., but I hope they don’t end up degrading the value of my property and our pursuit of property.

8:19:56 PM Nic White (3279 E 650 N) – I live about 8/10 of a mile from the proposed site. The county already has a nuisance ordinance about this. In Chapter 6. Read the purpose of the nuisance ordinance. Referenced the definition of a nuisance and a list of types of nuisances in that ordinance. I live within a mile. The one they have now, during the spring and fall, the odors carry. The wind goes to the northeast, it goes right by my property. There’s times during the evening that we can’t even go outside because of the odor. I think it’s written in our county ordinances that we should look to and adhere to.

8:22:39 PM Amy Gahn was signed up but had to leave prior.

8:25:17 PM Albertson and Kerr discussed which letters were remaining to be read.

8:27:51 PM Kerr read in letters from George & Nancy Simmons, Paula Eames, Debbie Bennett, Tracy Keech, Greg Van Steenkiste, Joan Van Steenkiste, John and Connie Surerus, Virginia Barclay, and Jessica Livermont.

8:49:40 PM There were letters submitted that are outside of the notification area and according to LLupa, they are out of standing, they would be on file, but not read.

8:52:33 PM Rebuttal: Dunlop – I want to address a couple of things. 1. Drainage into waterways is not permitted under state law, federal law, and local law. All the current drainages that are draining the
property that are impacted by the facility will be removed. The only water site on that field that we’re
planning to use will be that pond. It will be a berm protected facility where the water is trapped. The
drainage would be that pond that is trapped. No water can leave unless it’s pumped out and removed. I
understand the concerns. We have a long history in the neighborhood before my existence here. I can
assure that the siting that the Skaars at one time had to change wells, as far as I know and my research
on the property and dealing with the water authorities. All the wells currently on the other property are
pumping water for the cattle. In fact, I drink water from the office from a well on the facility. I don’t know
where that came from. As far as my research in the property, that is untrue. We’re going to stick to
regulations we’re given as far as zoning. We’re put in the position to farm the property, raise cattle, or
execute the Ag-10. If it’s a vested right, then we’ll have to look at something different because, we have
to get the value out of the property and we’re in the livestock business and in the farming business.

8:55:01 PM    Lewis — On the application it says 6100 head. I’m only coming up 388 acres. Lewis clarified
the number of head per acre in the ordinance. Dunlop — It is apparent to me that things changed that I
wasn’t aware of when I started in November and December.

8:56:00 PM    Ashcraft — In your experience, how often does a leak in the lagoon occur? Dunlop — I
haven’t operated a facility with a lagoon. I’ve never had a facility with water quality contamination, but
they’ve been other soil types, so I can’t address that.

8:56:46 PM    Lewis moves to recess. Steel seconds. All in favor.

9:13:51 PM    Lewis moves to reconvene. Clark seconds. All in favor.

9:14:38 PM    Hathaway clarified on the application The question was if a Conditional Use Permit is
required in addition to the CAFO Permit. A Livestock siting permit would be needed to convert an already
existing animal feeding operation to a CAFO. A CAFO application is basically a CUP on steroids. A CUP is a
permit that allows a use on a parcel with conditions. A CAFO is to allow a use on a parcel with conditions.
The difference is the CAFO is a much more extensive application, it has much more regulations. It has
external regulations in addition to the County. The fact that there’s no separate CUP to accompany it is
because it is a CUP/CAFO application. The old application used to say both Conditional Use/CAFO Permit
application. The two permit application requirements are the same, the difference is that we call it a CAFO
application. It meets the requirements of a CUP plus the CAFO application.

9:17:05 PM    Discussion of the Board: Lewis — I appreciate everyone for coming. Being a
farmer/feedlot/dairy guy, I understand where Smiths are coming from. I appreciate the public’s
comments. On the permit itself, the water is a huge issue for me, that contamination on Spring Creek and
the River. No one likes a feedlot or a dairy next to you. They’re great if they’re not next to you. There’s
other places they could go, but this is where they want the operation. The water that surrounds on three
sides, it’s hard for me to overlook that.

9:18:21 PM    Ashcraft — I have a question on the Ag-10, where it’s not permitted. It might need some
further discussion on the Agriculture zones, whether it’s not permitted, the testimony has reflected that.
There is a lot of concern about water and water contamination and the ability to avoid potential
contamination. In the engineer’s report, the high risk factors are all related to water and the moderate
risk factors are related to water. On that final page, the 3s all deal with water. I think it’s a real concern.
I’m not sure if I’m convinced that water safety has been guaranteed.
Steel – I think Ryan didn’t ask the question, but I have the same question. There seems to be question on whether it’s allowed. In one place it does, on the Land Use Table it does not. Also the water is a big concern to me. The cattle operation is not. I live next to a dairy. I built my house there knowing. If you’re offended by the smell, I guess you shouldn’t live in Jefferson County in my opinion.

Clark – I appreciate the testimony from the public. I also appreciate Mr. Dunlop’s good faith efforts to utilize the property. What may have started some of the confusion, in 3.13.10 there’s language that says CAFOs are allowed only in agriculture zones, which is true. It also says only after compliance with this chapter. The land is zoned Ag-10. It talks about the purpose of the Ag-10 zone in Section 3.3.4. It indicates that the intent is that it allows agricultural uses but with residential application in a density of 10 acres per residence. The CAFO section drives to the Land Use Table. In the case of CAFO, large scale CAFOs are permitted in the Ag-20 and Ag-40. Small scale CAFOs are permitted in the Ag-10 zone with a Conditional Use Permit. Maybe some of the confusion is can a Conditional Use Permit be applied to an Ag-10 zone. The application is for a large scale CAFO, which would not be permitted in an Ag-10 area. Because of that, the application does not fit the intent behind the Ag-10 zone. The intent of the zoning is to allow residential uses and allow uses which are compatible with the residential use as well. The large scale CAFO doesn’t fit the zone. The purpose behind the zone is to site and allow compatible uses, from that reason, the application doesn’t fit within the zoning portion. I think it would be beneficial to discuss some of the testimony that has been given. A point that has been brought up is that there is a water contamination issue. It sits on the perched aquifer in this area, it’s about 40’ and then you hit bed rock. If you go deeper you go to the deep wells. The deep wells would probably not be in any danger, but the perched water aquifer would be. We see issues with that around the county. One of the things that we as a commission as a concern is with the water quality, not just with agricultural uses, but humans, we’re moving to performance based studies for subdivisions as well.

I don’t think the threat is enough to deny it, because I don’t believe there’s sufficient modelling to show it would be an issue, however, going forward I think that would be a requirement. There is an issue raised with the water rights, but I don’t think that’s something we consider at this time. It was mentioned that the water raises every year. We’re well aware of this. When some of the home owners that provided testimony wanted to build and we recommended they not build there. I don’t think that’s a reason to deny or approve this application. As Mr. Dunlop mentioned, the draining would be removed. It would be a berm protected facility. I believe that it could be done in a safe manner and it could be tested.

The concerns that I believe are pertinent are of the land application of the manure. A lot of the land is flood irrigated. The runoff from those land application areas do go into existing natural waterways. I believe that needs to be addressed. I find issue granting the permit based on the on the Ag-10 zoning would be my fact of finding. Really with respect to this application. The zoning isn’t designed to allow a large-scale CAFO on an Ag-10.

Albertson – I’m going to take a different line on it. I’m going to go to the CAFO site advisory team risk form. They have it listed as a higher risk as the clay layer isn’t present in the saturated zone. They’re taking the data from NRCS land study. The fact is that soil can change rapidly within any piece of ground. I don’t know if there have been test holes dug that reveal the true profile of the soil. The depth to the ground water, they talk about it being regionally less than 25’. That is a high risk. We’ve heard testimony of 3-14’ static water. I don’t know what it is exactly on that spot. I feel like there is a high risk of contamination of the ground water there. They also talked about no mapped springs within the 10 year time. There was testimony that there were soft roads because of springs underneath the road. The land
that is earmarked for this CAFO has open water on 3 sides. I think we have some limited science on where the ground water actually is and what the soils are and I think you’re running the risk of a contamination issue. I would also like to argue with Mr. Clark, but I can’t. I think the Ag-10 doesn’t allow it. In 3.13.10 new CAFOs it’s ambiguous and left to interpretation. If you go back to 3.13.8, it talks about zones and size thresholds. I feel like in 3.13.10 it is actually superseded by 3.13.8 and that is the threshold of the CAFO size. If you go to Ag-10, a small CAFO is allowed with a conditional use permit only. In that regard, I don’t believe I can argue the Ag-10 zone. I do believe the purpose of the Ag-10 zone is important. It allows people to have a house on 10 acres and allows them to be involved in farming or have some livestock. That’s, what, to me, the Ag-10 zone is designed for. The purpose of the Ag-20 changes drastically in that it provides for a house, but for farming, and commercial agricultural business. I think that’s the big difference between the Ag-20, 40, and 10. That’s why the zoning was done way before we were here. It is what it is. I can’t help the way that is zoned. As I see it, that’s how the ordinance would lead us. We are bound by the ordinance. We have to remove emotion and what we think it ought to be and follow the ordinance.

9:35:16 PM  Clark moves to deny the CAFO. As a basis, I would point to the definitions of Ag-10 zones 3.3.4 and 3.3.5 and the Land Use Table 3.3.3 in reference to the Ag-10 zone. I would also indicate that there is concern about surface and subsurface water. Ashcraft – To support that, according to the engineered plan, in our Comprehensive Plan, Policy 8-14. All of the high risk elements of this deal with water. Albertson – That information is taken from State of Idaho CAFO siting team Environmental Risk Form.

9:37:48 PM  Steel seconds. All in favor. Motion carries.

9:39:01 PM  Lewis moved to adjourn. Steel seconded. All in favor.

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