Meeting called to order at 9:00. Those present are Commissioner Clark, Commissioner Young, Chairman Hancock, Prosecutor Mark Taylor, Emergency Management Rebecca Squires, Clerk Colleen Poole; Audrey Moon is clerk of the board. Pledge of Allegiance led by Audrey Moon. Prayer offered by Colleen Poole.

**DUE TO COVID-19 COMMISSIONER MEETING WILL BE HELD IN PERSON OR ON ZOOM.**

JOIN ZOOM MEETING VIA WEB: HTTPS://ZOOM.US/J/512530026
JOIN ZOOM MEETING VIA PHONE: +1 253 215 8782 US
MEETING ID: 512 530 026 +1 301 715 8592 US

**COMMISSIONERS**

- **PUBLIC HEARING – JEFFERSON COUNTY SUBDIVISION ORDINANCE AMENDMENTS**

  9:01:49 AM  Chairman Hancock said today they are here to look at the subdivision amendments and adoption. Has asked Planning & Zoning to go over a brief overview of the changes with the amendments.

  9:02:18 AM  Erik said the original ordinance was approved in December 2020. Modified 110-92 and 110-30. These revolve around community wells and traffic. In December they needed a community well for any subdivision smaller than three acres. After some pushback did open this back up after receiving additional comments. During the public comment the concern was that community wells do not cause groundwater contamination. Potential is with the septic systems. With work meetings they determined to add a requirement for a community septic requirement for subdivisions with more than ten lots. “For the protection of the public health, safety and welfare, if any proposed subdivisions, or previously approved subdivisions whose main electric or gas distribution lines were not yet completely installed as of December 22, 2020, consists of ten or more lots, then it shall be connected to either a Central Septic System or a municipal wastewater treatment system, unless the owner or applicant proves beyond a reasonable doubt with verifiable and replicable nutrient pathogen studies, or other performance-based studies, that the effluent from the proposed or previously approved subdivision will not adversely impact the waters of the state and the waters of the United States.” In putting this together they did a lot of research with State, Federal and local comprehensive plan. Found a lot of supporting information on having the central septic system. Proposing to adopt an Appendix A which is Idaho Department of Environmental Qualities Nutrient-Pathogen Evaluation Program for On-Site Wastewater Treatment Systems This is the document that will be reviewed when a subdivision is presented it lists the criteria on when they can prove beyond a reasonable doubt that the septic system will not have any adverse effects on the water. Next amendment is on 110-93 for streets and alleys. The second main concern during the public comments from February was the issue with traffic. An area was added requiring a traffic study for all proposed subdivisions stamped by an engineer. This benefits the applicant and helps Planning & Zoning Commission because they have the numbers that show the impact on the roads. Lastly they updated the central septic definition to be consistent with the state. So the amendments are on 110-92, 110-93 and the definition section. Kevin said Appendix A has the reference material for all counties.

  9:06:41 AM  Commissioner Young asked Erik on the traffic study he may have missed this but is it inclusive on all subdivisions even three or more. Erik said this is for all subdivisions. Commissioner Young said a subdivision with three lots still needs a traffic study. Erik said this is something when presented to the Planning & Zoning Commission can waive. Kevin said the thought behind it is just because this is a three lot subdivision it could be around other subdivisions. It is adding to the roads. Chairman Hancock said the question is it does not define that there is an out. It says this will be required by all. Should they say something to as needed or determined by the Planning & Zoning Commission? Kevin said the traffic study they can dictate the level. If they do a traffic study based on a small subdivision the requirement would be much less than a large subdivision would be. Chairman Hancock said made him confused once they said the Planning & Zoning Commission can waive that and then said studies differ based on the size of the subdivision. They won’t waive this then. Kevin said the traffic study will be based on the amount. Commissioner Young asked if they have a documented criteria for the traffic study. Kevin said this is in the transportation plan. Chairman Hancock asked if this is the County’s. Kevin said it is in the updated one. This is a standard with ITD. Chairman Hancock said this brings up a good question they need to make sure they know what they need to meet. Not sure where this is defined. Kevin said the requirements change from time to time and they do not control these. Can get with Dave for the future. Chairman Hancock said this may need more detail in the future.

  9:11:09 AM  Chairman Hancock opens this public hearing will allow those signed up to have five minutes.

  9:12:27 AM  Chairman Hancock says they have two signed up in favor Landon Thurgood and Ty Belnap. Then one in neutral Jim Bernard and four against Andrew Rawlings, Dylan Anderson, Diane Grover and Michael Haycock. Will start with those in favor and go down.

  9:12:58 AM  Landon Thurgood 130 N 4080 E. Is here to voice perspective among constituents. Has posted things on Facebook for these things. The thing they see is the amount of growth in the county if they look at the first six weeks of 2021 from 2020. The amount of building permits increased two and a half times. Need to think about this in fifteen years. Constituents he has spoken with and the path forward with subdivisions is to have a community well and septic. From their perspective this will keep the groundwater quality and quantity. Glad to hear is this takes into consideration for a study on roads. The City of Rigby has asked the county to adopt the same development requirements as the cities. Wider roads and sidewalks. Cities are asking for this not sure if this body is pushing it. Thanks them for taking traffic into consideration. In the future also need to look at the school capacity and handling additional growth. There are developers that have put money forward for growth. Sometimes they have to renegotiate in business. Some of these end up being a pass through cost to customers. If the impact fees affect developers it will affect the cost of lots and landowners. One piece of information that was provided with no name or return address is there are people on this board that have personal relationships and business dealings with developers. This was given to him from a constituent within the county. Some view this as a conflict of interest. This is not his perspective but is of some of their constituents. As he said in the last public hearing they need proper prior planning so in the...
future they do not have poor performance. Step in the right direction. Need to look at growth in a responsible and balanced approach. Need to look at a developers and those that have lived in the county for twenty years. Some of them might not want to see development. In the last public hearing that the Boards over this ordinance have talked with different organizations. Wished they could have more public here so their opinions can be voiced. This is what he is trying to do is get people more involved. Will help voice concerns for those that cannot attend.  

9:17:53 AM  Ty Beinap 221 N 3900 E. Appreciate being here and having this public meeting. Wants to offer his support of the subdivision ordinance that is currently written. On a few points. First off on sewage management thinks this is good they defined a specific criteria. Based off of state and surrounding counties and ones that have faced this themselves. This is good work that the Commission has sent them. Based on community wells in his opinion it has been confusing. Does not believe anyone indicated that the well would be the source of water contamination. In some ways thinks this was skewed. The well itself will not contaminate the water. When denser populations begin to happen cross-contamination of surface water does. Additionally it is the availability of water. This year water is not a guarantee. Above surface water specifically groundwater. Figure each subdivision is taking water off of the ground system which is feeding the groundwater system for domestic wells systems. Have to ask when is there a crossover where adversely affecting the groundwater and domestic wells are going dry? Knows this has happened in areas. Also supportive of the transportation study. The impact of traffic on the infrastructure. Do not have to look too far to see the congestion they have in the county. Will not get better as 1,000 or more cars are introduced as a result of subdivision developments. Lastly would like to support the idea if subdivisions have not been built even if it has been approved if there is no building it should be subject to the current subdivision requirements. Of the subdivisions that will not be compliant if what written is not approved. Would be compounding a problem that has developed over time. The zoning ordinance would like to emphasize that this only allows one acre lots and would like the Commissions to play close attention to this unless they will be in the city impact area.

9:22:37 AM  Jim Bernard 337 N 4500 E. Stands neutral thinks there are some good items in this. The traffic study would like to nail this down on what the specific traffic study is. Like to know exactly what they need to do. Has tried to support the ordinances. Changes that were made are very necessary to keep an organized development going. Hears everyone’s concerns and read these on Facebook. Appreciates what Landon is doing but honestly if people cannot come in and put their names on something have keyboard warriors that want to accuse people of things should actually come in and comment themselves. Read the lies and that the developer is the only one making money. Sees the growth in the county. See the construction workers. See people eating out. See people buying gas. Not just the developers making money. A lot of time the realtors make more on the house than the developer did on the lot. Some of this needs to be straightened out. On the ordinances that Ty brought up the subdivisions have already been approved and have RFP numbers. Have the ability to sell these lots. People want to invest in lots. What do you tell someone that bought lots years ago how will the county handle that? Will have lawsuits with this. Signed a plat with no termination date. Now they want to change their minds. These were approved in accordance with the State of Idaho and District 7 Health Department. Needs to be a hard look. Going forward if they do not move forward within a certain period then they sometimes have phases how do they move forward with those. Does not want to pay lawsuits that could result from someone that bought a lot ten years ago. This really needs some consideration as what they do about that. Everyone wants to come down on the developers but he supports doing the NP Studies. Do not want to move people here and turn his back. Lives here and has a long time but growth is going to come. Make good communities. They have standards and the state has this for sewer and water. Really want to protect the water, septic systems and the area. There are some items that he supports and other items is he unsure how they will invalidate subdivisions. Rebecca mentions they have one in favor over Zoom. Chairman Hancock said they do have another for this over Zoom.

9:27:24 AM  Nancy Hansen is over Zoom at 30 N 3700 E. Appreciates the time to speak and the efforts of the Planning & Zoning Commission on this topic. Is in agreement to the specific details that have been made with details on wells and septic requirements. Do feel that these are proper and important to have traffic studies. This puts this so there is no speculation and the decisions are based on fact. Does not agree they should waive any studies. Then everyone that has a subdivision impacts everyone in the long term. Then the burden is upfront. Does agree with where specifically explains upon approval of the final plat they must begin development within two years or they have to be reevaluated under the current ordinances. Feels this is appropriate. Then they will not run into issues where the studies will be null and void. Agree with a prior comment on consideration needs to be made on school capacities. Need to look long term and plan for the future of the county as a whole to make things the best they can. Then they do not have to resolve problems later that they could have prevented with thoughtful planning.

9:29:54 AM  Andrew Rawlings 1000 Riverwalk Drive, Suite 200 in Idaho Falls Idaho. Speaking on behalf of Fall Creek Homes. Has two issues to address. In considering this they need to remember this is a county and not a city. Need to realize that not all subdivisions are the equivalence of a city. Looking at the community well need to understand water rights. The Eastern Snake River aquifer has not allowed any new water rights so they have to be mitigated or transferred. In 2015 they had surface water collusion reach an agreement regarding mitigation. Since that time they have protested every transfer that happens. Most of the issue with community well exempsts certain wells from having to have a water right permit. The Idaho Department of Water Resources still requests a drainage permit under Idaho Code 42-235 and Idaho Department of Water Resources can monitor this use under Idaho Code 42-237A. Community wells do not fall into this exemption. Perhaps they should. If they did this would sidestep a lot of issues on protests and transfers. Drives up the costs and make this less likely that this will happen. There is science behind the numbers and transfer analysis but there is administration litigation. Having every subdivision meet this requirement make this development more expensive. Fall Creek Homes is unique they pay $20,000 to water a park in their development. This is something developers are facing. This shows what they would be putting developers through. This exposes everyone that wants to come to Jefferson County it is driving up home prices. This has protection issues. Some would not be able to use the state domestic exemption where non-platted owners could. The other is the retroactivity. Understanding this could affect 330 subdivisions within Jefferson County. As of May 5, 2021 Planning & Zoning has reviewed an unknown amount of subdivisions and this could affect 28 of them. The police power is a powerful tool but is not sure the commissioners want to evoke that. Do they really want to infringe on personal property rights in name of the police power. Would ask they use their police power reasonably and consider this ordinance.

9:35:17 AM  Mr. Dylan Anderson is representing Teton Heights. Wants to address conflict of interests this is not a quasi-judicial decision they can run on the platform that they are going to do this so there is no recusal when it comes to legislative issues. Main concern is not necessarily what
is proposed this is the retroactivity of this. Clients he represents have subdivisions that are platted. Passing this does not invalidate a plat. This does not change what has been done. The parcels are set. If it changes the rules that they have to live by it can render the parcels useless. There is a regulatory taking. Wants to think practically if they have a lot they no longer can develop like they could due to a regulation. There are standards. Have economic impact of the owner. The extent the regulation with a distinct investment. The last is the character of the government action. These are significant. On economic harm for a property owner if he owns a lot that now cannot unless they have a coalition with the neighbors to build a community well this is economic harm. If they are a developer if they have platted out according to regulations at the time. This is an expectation they put these costs in. If all the work they have done to get approvals from District 7 are now rendered invalid due to a provision in the ordinance that says it has to be done in the last five years. This is arbitrary. Anything done within the last five years should be taken out. Did the commission not know what they were doing five years ago? The thing is there was a lot done ten years ago. District 7 came in and developers spent a lot of money to do these studies. Asked this be part of the record. Look at the studies that have been done. His clients have the Teton Heights Subdivision have records on studies that were approved. This was not in the last five years so is this useless? Thinks that provision needs stricken. Does not think within five years makes any sense. Process of invalidating a plat is not something crucial to his client but the state law requires a hearing. To do a subdivision it is not required to have a public hearing but it does to vacate a subdivision. Mostly Idaho Code 15-1301 to 50-1334. Point out that discrepancy that does not require that public hearing. Statutes govern what is already there.

9:41:03 AM   Diane Grover 489 N 4108 E, Rigby Idaho. Has lived in this county like Mr. Bernard a long time. Mark asked if Dylan Anderson is their attorney. Diane said yes, Mark said that he has had five minutes. That is the rule. They can speak for themselves or have an attorney speak but they do not get ten minutes. Each person or party had five minutes and Mr. Anderson represented his client and took the five minutes.

9:42:57 AM   Michael Haycock is a resident he is not an owner of Fall Creek Homes. Thinks this is all ridiculous. 131 N 3725 E in Rigby. Is simply against this. Jim Bernard made good points. No one is against proper planning. Think what they are against is things that are contrary to the land use handbook and practicality. Invalidation of a plat is a ludicrous idea. Is not sure how they can revoke property rights. As a citizen of Jefferson County is incredibly against this. All of this and the bureaucracy needs to be rethought and planned for. The moratorium has just been causing more issues within the county.

9:44:16 AM   Chairman Hancock closes the public comments.

9:44:33 AM   Commissioner Clark said the first comment on the subdivision is they do not invalidate the plats they are still there will just have additional requirements with the additional growth in the county. The subdivisions that have been platted for years some have not had any work done on these. Need to bring these to current standards. As they look at the ordinances going forward they will be on an equal footing with the standards they want today. A lot of talk on community wells. As they look at the county and the growth there are lawsuits with these changes. They are trying to do the best for the county with the way this is written.

9:46:35 AM   Commissioner Young appreciates their comments. It appears they have two sides. Feels the current ordinance will not restrict property rights. The attorneys made some remarks one was in passing that they cannot get water rights for community wells but there are other mitigations available and they are still able to do individual wells. Same as individual septic system if the developer can show no harm will be done these can still be done as well. It is not saying this absolutely has to be a community system. Need to show they can develop these without causing harm to the environment.

9:49:03 AM   Chairman Hancock said the attorneys made a valid point on the studies meeting the same criteria as the previous study that was already done. If they meet the requirements from the study does not think it needs redone. Understands the issues with water rights. They will protest any community well. Most have the ability to buy the water rights when they buy the land. There is some give and take. Developers get water rights with the land. There have been issues where this has not happened. Not saying they cannot have individual wells. Need to talk about the effect on property rights. Hope Mr. Taylor can answer for the older subdivisions. Asks for his insight.

9:51:12 AM   Mr. Taylor said the purpose of the retroactive application is a lot of the subdivisions happened before the growth. The thought was this area was rural and would stay rural. Nothing prevents them from fixing mistakes from the past. It is appropriate to avoid liability to make sure anything that is built in the future protects their water. Mr. Anderson did talk about police power. They have to protect their groundwater from contamination. The current subdivision ordinance brings them up to standard with EPA and others. They are catching up with being in compliance. There is an issue but as Commissioner Young pointed out they can still do individual well and septic if they can provide they will not contaminate the water. Wants them to prove they will not harm the public. This is well within the police powers.

9:53:54 AM   Commissioner Young addresses one thing from Mr. Thurgood and a lot of misinformation. Currently has no dealings with current developers. Commissioner Clark said he does not have any ties to developers either. Chairman Hancock said in an earlier meeting had been accused and this was checked out by an attorney. This was investigated by the attorney. Mark said this is attorney client privilege he will not disclose this but he can if he chooses. Chairman Hancock said the investigation showed he had no conflict of interest. Does own land and has purchased some so it would not be developed. Bought a piece next to him so they would not have the homes the other owner wanted to add. These lands are used as farms. Does have dealings within the county. There is no underlying misuse of his authority in his county. Have had developments in the past.

9:56:51 AM   Chairman Hancock said moving on they want to address lots that have been sold. Comment made on the sold lots. One of the things just so the public is aware have spoken with the Planning & Zoning Department. Had an issue six years ago where they had a developer that went broke but had sold the lots without completing the subdivision. These lot owners could not get building permits. So they have ran into this already. One thing they have discussed for the future is to protect the public is to request performance bonds if they want to sell lots in an undeveloped subdivision. This would protect the public. They are concerned with property rights.

9:58:57 AM   Chairman Hancock asked on the affected time. Asked Mark to address this. Mark said the five year time limit this was after Planning & Zoning discussion to not change standards and rules but to change circumstances. A study done ten years ago may have the same criteria but the groundwater levels could be different and the amount of subdivisions within the area. Look at the circumstances within the last five
years. This is not arbitrary it is about circumstances that may have changed. This is saying the studies and circumstances they have studied may have changed. Five year period of time is reasonable. Beyond this circumstances could have changed. By having a set timeframe it is the same for everyone. Commissioner Young asked if this gives the latitude on studies that have not changed. Mark said this would become arbitrary and capricious. If it’s older than five years they have to look at it again. Chairman Hancock said the question comes that some of this is an expense to the developer. What if the study is the same? Is there some criteria they can input for the study to still be valid? Mark said this would be something they can bring up at another time. Would submit this to the Planning & Zoning Commission. Any changes to the language requires another public hearing. Commissioner Young thinks they need to address this. This is a living document that will still be changing. Chairman Hancock does not know the amount of studies that have been done. Has a procedural question for Mr. Taylor.

10:03:59 AM  
Recess

10:10:47 AM  
Commissioner Clark said there was some concern on phases. If they have one phase done the second phase would still fall under the previous ordinance. His understanding is this is on subdivisions that have not had any work done other than the plat. Commissioner Young said they had an exception as well if they have laid electrical lines. So if they have started work it would be an exception. On the memo the ordinance does not apply to the area of impact either. Chairman Hancock said the area of impact has its own guidelines and this would not apply. This would fall to what is in the area of impact agreement. Bought a subdivision thirty-five years ago but nothing had been done. Would have to have current standards. Asks for any more discussions. Wants to point out from a procedural standpoint from legal counsel is this is a living document. Can make changes to this it would go to the Planning & Zoning Commission if they find necessary changes for the future. Wants everyone to know that. Does think they need to address the type of traffic study. Things do change so this will be looked at again. As far as what they have currently before them this is where they are at. Asked for any further comments from the Board. Will tell them that Planning & Zoning Commission has taken this very seriously. Has tried to make this based upon facts and not subjective reasoning. This is what they attempted to do with this ordinance. Appreciates the time and effort on the improvement on this ordinance.

10:15:42 AM  
Commissioner Clark thanks the Planning & Zoning Commission for all their work. Appreciate the people that he has visited with. Would like to invite anyone that has an issue to contact them. They are trying to do the best for everyone within the county. Would like people to reach out with their concerns so they know the issues within the county. Appreciates the comments and encourage people to continue reaching out. They are trying to look out for the best interest of the entire county.

10:16:54 AM  
Chairman Hancock said many things are being updated. They are looking at the traffic study for the county. Different zoning requirements. Will amend the subdivision pulling out commercial. Have a lot of different areas. Have a lot of things that are being looked at with the growth. This needs to be done in a way where it is planned. Do not want to have the total bottle necks. Doing the best they can and appreciate their input.

10:18:22 AM  
Commissioner Young acknowledges the Planning & Zoning Commission their importance of their work cannot be understated. Have very capable energy among them. Do like a lot of things that has been changed in the ordinance. Gives them latitude for exceptions. It is trying time for the Planning & Zoning Department. Need this to be safe and organized. Knew they were going into high growth this will be an ongoing process. Going to continue making progress and updating things.

10:20:17 AM  
Motion by Commissioner Young to approve the amended subdivision ordinance. Second by Commissioner Clark. Roll call taken. Commissioner Clark – aye, Commissioner Young – aye, Chairman Hancock – aye. Motion passed.

10:20:55 AM  
Chairman Hancock thanks everyone for being at their public hearing. This will go into effect today and the moratorium will be lifted for subdivisions.

10:22:16 AM  
Motion by Commissioner Young to adjourn at 10:22. Second by Commissioner Clark. All in favor – aye. Motion passed.