Planning & Zoning Commission Meeting

May 17, 2023

Salmon, ID

The Commission opened the regular Planning and Zoning meeting at 7:00 p.m.

Those in attendance were: County: James Malcolm, Cody Settles, Vinn Strupp and Jeff Nofsinger

County Planning & Zoning Staff: Jonathan Ruskell and Lisa Olson

Members of the commission introduced themselves.

**Consent Agenda**

Approval of minutes from April 19, 2023

A motion was made to approve the minutes of April 19, 2023. All voted aye and the motion carried.

James motioned to change meeting agenda as published to let Gary Leuzinger speak first, then go over proposed code changes second.

All voted in favor and motion carried.

**Concerns on Smedley Estates-Gary Leuzinger**

Mr. Leuzinger provided board members with a 10 page hand out with speech and reference materials.

James asked Gary Leuzinger to approach the podium for his speech and give his name and address.

**Gary Leuzinger** 23 Oliver Drive here in Salmon Idaho.

I am here to address the board on the 1 word proposed change to the Lemhi County Development Code and the violating of the Sanitary Restrictions of the Smedley Subdivision Plats by Lemhi County Planning & Zoning. The current wording of one residence per acre while still conforming with applicable sections in the Lemhi County Development Code. The maximum of 2 residences on any one parcel of ground unless otherwise permitted by this code defines the density for large parcels in our R1 Area of City Impact while still meeting the minimum of one acre per residence requirement. The proposed change is to put parcel in place of the word acre.

The R1 Area is located in the unincorporated area of Lemhi County. R1 Zoning was approved with a maximum of 1 residence per acre because all parcels would not normally have central sewer or water services available. The one acre minimum per residence was recommended by the City of Salmon and agreed to by the Commissioners when the residence of the current R1 zone objected to the County P&Z recommendation. Referenced an article in the Recorder Herald on November 22, 2018 “County Commissioners Vote on Bar Subdivision”. It was also recognized at the time approved that there were many unbuildable lots, parcels of less than an acre in the Smedley Subdivisions.

The Smedley Subdivision Plat Sanitary Restrictions must to be considered. The Subdivision Plats Sanitary Restrictions in part states; All water for culinary purposes upon each lot must be obtained from a central drinking water system approved by the Idaho Department of Health and Welfare. Referencing the Smedley Subdivision plat.

Until last year this requirement has always been complied with within the Smedley Subdivisions by requiring one lot for a well and one lot for the sewer. This is what all homeowners in Smedley had been told by Real Estate Agents and Planning and Zoning for at least 20 years.

The current code which included the 1 acre requirement resulted from 13 years of negotiation between the residents of the R1 area of city impact, the City Planning and Zoning and the County Planning and Zoning. The current R1 zoning was ultimately decided by the County Commissioners. Their decision was consistent with the basic Lemhi Development Code requirements of one acre minimum to build a residence without central services which is generally the requirement throughout the county.

Last year, for the first time in the 40 years the Smedley Subdivisions have existed, a lot with less than one acre without central services was approved for a building permit. This upset homeowners both within Smedley Subdivisions and outside the Subdivisions within the R1 Area who felt their ground water would be impacted ant that both the County zoning Ordinance and our Subdivision Plats had been violated.

We have struggled to understand why the County Planning and Zoning made the decision to approve this building permit. We were first told it met all the County requirements. We were then told that the County Planning and Zoning would issue a building permit for any parcel that the Health Department approved. This ignores both the 1 acre density in the zoning and the sanitary restrictions on the plat. We were later informed in writing by the county attorney (letter transcribed later in minutes) that the Subdivision plat defines the density allowing a permit to be issued for less than an acre. This would be accurate only if the letter had not ignored the Plat Sanitary Restrictions requiring centralized water to build on any lot.

We recently met informally with Polly and Commissioner Bowerman. We had a brief discussion about private property rights. I believe the following to be true:

1. As stated in the County Attorney letter the Subdivision Plat usually prevails over a zoning requirements.
2. The plats were approved over 40 years ago and only the one building permit has been approved for less than one acre without centralized services.
3. Within the Smedley Subdivisions the County has always required two lots (one separate lot for a private well and one lot for a sewer) because the County cannot legally issue a building permit on one lot without violating the sanitary restrictions of the plat.
4. Because all subdivision lots are a 1/2 acre or slightly larger, the plat sanitary restrictions provides a legal basis for the county to deny a building permit on any single lot.

Changing one acre to parcel as proposed will change density. This would make the R1 Zone inconsistent with other unconsolidated areas in Lemhi County. It also invalidates the intent of the density requirement in the R1 Area of City Impact. One acre was recommended by the city and approve by the commissioners. The word parcel does not describe a specific density, is less understood, is inconsistent with other parts of the Development Code (references the table on page 83) and will change the intent of the approved zoning. This one word change that changes density constitutes a zoning change and be subject to all requirements of the Zoning Ordinance.

The plat sanitary restrictions and state statutes are being ignored by building on a single lot in Smedley Subdivisions without central services. References Chapter 10-Platting Standards of the Lemhi County Development Code page 68. “Plats shall meet all requirements of Title 50, Chapter 13 of the Idaho Code ‘Plats and Vacations’. The attorney’s letter (to be read later) is also acknowledged here because it does not address the plat sanitary conditions as required by I.C. 50-1301-I.C. 50-1329. Our attorney’s opinion is that the county cannot use one part of the plat to establish density, while ignoring the other part of the plat that requires centralized water to build on that same lot.

In the interest of time and to demonstrate the application of the referenced statutes to the plat sanitary restrictions I will only discuss the last statute referenced here (in handout).

I.C. 50-1329 Plats and Vacations-Violation A Misdemeanor. Any person, firm or corporation who constructs, or causes to be constructed, a building or shelter prior to the satisfaction of the sanitary restriction, or who installs or causes to be installed water and sewer facilities thereon prior to the issuance of a certificate of approval by the director of the department of environmental quality, shall be guilty of a misdemeanor. Each and every day that such activities are carried on in violation of this section shall constitute a separate and distinct offense.

I have reviewed the application of this statute with the Sheriff’s Department. He agreed that if the person was in violation he would be charged.

In your future decisions please consider the many years of participation in this process by our R1 Zone residence.

Does anyone have any questions?

No one had any questions

Thank you for your time.

**James**: Thank you for your concerns.

**Discussion on Proposed Changes to Lemhi County Development Code**

**James**: Ok now let’s get to the code changes.

All looked over proposed changes to the codes that were discussed at the April 19th meeting.

**James:** The change on here is just changing the title “Recreational Vehicle Living Quarters & Recreational Use” adding “Recreational Use”. Does anyone have a problem with this?

No one has an issue with the change.

**James:** The next change is adding teepes, tents and yurts to a use of 14 days. Any objections to this?

No one has issues with change

**James**: With this next change from acre to parcel it is confusing after Mr. Leuzinger’s speech.

**Jonathan:** If you had a parcel with 80 acres you could build 80 houses with the one acre per residence rule. Right now you can build two houses on a parcel. In Elk Bend there are several houses on less than an acre. All have complied with the sanitation and setback requirements.

**Jeff:** You can’t change it from one subdivision to the other with a requirement of one acre. You would have several lawsuits.

**Cody:** I am familiar with the situation at Smedley and there has to be 100 feet between a well and a septic.

**Vinn:** I’m also confused as to using parcel instead of acre. Acre seems better understood.

**Jeff:** When you reference your property it’s always termed as a parcel for surveys and taxes. That’s how it’s always been.

Discussion continues on the differences between acre and parcel and which would be the best wording for the code.

All finally concur that parcel would be a better choice.

**James:** I feel with this change that it’s necessary to reference the letter from Paul Withers concerning Smedley Estates and reads letter out loud:

April 21,2022- To Whom IT MAY CONCERN:

It is my understanding you to have voiced concerns to the Lemhi County Building Department about the issuance of a building permit for Lot5, Block 8 of the Amended Smedley estates Subdivision Phase Two, based on your belief that the construction of a residence on that lot would violate the Lemhi County Development Code, Ordinance 2021-2, addressing building density within the area of City Impact.

I do not believe that ordinance applies to the building permit application in question as that permit is for the construction of a residential home in a platted and approved subdivision. The developer of Amended Smedley Estates Subdivision submitted a subdivision application and plat which was approved by the Lemhi County Board of Commissioners in April 1999. Approval of that subdivision included, among other things, the approval of the proposed density of the subdivision. That approval was not challenged withing the allotted time for such a protest. The recording of the subsequent plat for the subdivision memorialized all of the approved subdivision lots, including Lot 5, Block 8, including the density of the development which allowed the construction of a residential hone on that lot. Since the ability to construct a residence on that lot was already approved, the issuance of a building permit is permissible as long as the structure in question is otherwise in compliance with the applicable requirements. While there are requirements in the Lemhi County Development Code to which the building in question must comply to have the building permit issued, the density of the development is not one of those requirements as that was already approved.

Sincerely, Paul B. Withers, Lemhi County Prosecutor.

Motion made by Jeff to adjourn, Cody seconds

**James** moves and seconds to adjourn meeting, all respond with saying aye.

Meeting adjourned at 8:15 pm

Lisa Olson