

MINUTES OF THE MEETING OF THE PLANNING AND ZONING COMMISSION OF CARIBOU COUNTY, IDAHO HELD THURSDAY, FEBRUARY 4TH, 2021.

ROLL CALL SHOWED THE FOLLOWING PRESENT: Glayd Christensen – Vice-Chairman  
Reagan Phillips  
Scott Hayden  
Nolan Koller  
JoAnna Ashley, P&Z Admin

ABSENT: Wendy Pelayo - Chairwoman

ALSO PRESENT: Charles Watson Jared Cantrell Jonathan & Kristine Housley  
Nathan Hale Max Nichols Paul Mendenhall  
Lora Burell Keith Bitton Kathy Rasmussen  
Barbara Greene Marlowe Mickelson Beth Rasmussen  
Ian Pitcher

6:00 PM Acting Chairman Christensen opened the meeting. Chairman Christensen asked if there was a motion on the minutes. Scott Hayden moved to approve the January 7th, 2021 minutes, seconded by Regan Phillips. All in favor, motion approved.

6:05 PM Chairman Christensen opened the public hearing to give consideration to the application of Charles (Chuck) Watson, a representative of Barry Basset, the land owner, who is requesting approval of a Conditional Use permit for a Saw Mill in the Agricultural Zone. The Conditional Use would allow the installation and use of a Commercial Saw Mill and all accompanying placement and operation of equipment, storage of materials, etc. The land is located at 1150 Hegstrom Rd., Grace. P&Z Admin Ashley provided an overview of the application (see attached) and stated that no public comments had been received concerning the matter.

Chuck Watson said that his intention is to build a cover over the saw mill. Currently they build boards for hatchet throwing and provide local people with lumber as they request. He said he tries to keep the wood piles cleaned up and organized and doesn't have any intention of letting it become messy or disorganized.

Chairman Christensen closed the public hearing. The Commission had a brief discussion, and after determining that the application met the requirements of the code, and as there was no opposing opinion against the proposal, Regan Phillips moved to recommend the Commissioners approve the application as drafted; seconded by Scott Hayden. All in favor, motion approved.

While there was time before the next hearing P&Z Admin Ashley provided the Commission with her research in finding and new definition for "Prime Farmland" in the code. After the Commission reviewed her findings, they said they would like to wait to get input from the future County Agricultural Committee before making a decision.

6:25 PM Chairman Christensen opened the public hearing to give consideration to the application of Jonathan & Kristine Housley, who are requesting approval of a Conditional Use Permit in A-2 Agricultural Zone in the Soda Springs Area of Impact. The Conditional Use Permit would allow them to construct a house that would exceed the maximum height of twenty-five foot (25'), by eighteen feet (18') for a total building height of forty-three feet (43') from the lowest ground elevation at the walk-out basement to the highest pitch on the roof. The Conditional Use would allow the home to be built with two stories as well as a bonus room above the garage. The property in question is located at 1572 Larsen Rd., Soda Springs. P&Z

Admin Ashley provided an overview of the application. She stated that the request has since been revised to ask for a variance of eleven-feet (11'), instead of eighteen-feet (18') as the final draft of the house plans show the house will be thirty-six-feet (36') at the highest point of the house.

Dr. Jonathan Housley, 341 S 3<sup>rd</sup> W, said he concurred with the summary that P&Z Admin Ashley had provided.

Jared Cantrell, 1570 Larsen Rd, Soda Springs, said his house is located south of Dr. Housley's driveway and west of the proposed location of the house. He had concerns with the driveway improvements and causing water to drain onto his property. He said that he felt like Dr. Housley should be required to put in a ditch or drainage system to collect and direct the water so it does not affect his property. He said that on the south side of the driveway the road elevation has been raised two feet and on the north side approximately three feet. Chairman Christensen asked if there was anything in the code that would govern Mr. Cantrell's request. P&Z Admin Ashley said that there was nothing in the code to govern it.

Dr. Housley said that the hearing tonight was about the height of the house not his driveway. He said the driveway is still being developed and he felt that if his neighbors had concerns, they should address them with him and that this was the first he had heard of the concerns. Mr. Cantrell stated that was not true and he had spoken to Dr. Housley about it previously while Dr. Housley was on his tractor. Dr. Housley said it was mentioned but he had not talked to him about it.

Regan Phillips asked why the house height needed to be so tall. Dr. Housley said it was a large house and the pitch needed to be such so the snow would adequately fall off the roof. Further, if the basement were to be enclosed the height of the house would not be an issue. However, as it is a walk-out basement the height must be measured from the ground level of the walk-out basement to the highest pitch. Regan Phillips asked if it was him, Dr. Housley, who chose not to do an enclosed basement. Dr. Housley said it was their choice. Regan Phillips asked for clarification of the proposed location of the house in relation to Mr. Cantrell's. Dr. Housley said that Mr. Cantrell would be looking at his house from his backyard. He pointed out that south of his house is a rather large shop that sits on top of the hill and is significantly taller than his house would be.

Chairman Christensen closed the public hearing. Based on the findings and that the application was in compliance with the ordinance, Nolan Koller made a motion to recommend the Commissioners approve the application for a variance of eleven feet (11') to the twenty-five-foot maximum building height, allowing the house to be built thirty-six feet tall (36'), seconded by Scott Hayden.

Voting showed:

Aye: Nolan Koller  
Scott Hayden

Nay: Regan Phillips

Majority in favor, motion approved.

6:35 PM Chairman Christensen opened the public hearing to give consideration to the application of Nathan Hale, owner of Whiskey Creek Ranch, LLC, who is requesting approval of a Conditional Use permit that would expand the use of the current family recreational complex, to allow the property to be utilized 62 days a year for the commercial accommodation of up to six (6) guests at a time. The family recreational complex is located at 301 Bench Lago Rd, Grace. P&Z Admin Ashley provided an overview of the application and found that with the information she had available to her the application met the requirements of the code and was in compliance with the Comprehensive Plan.

Nathan Hale, 301 Bench Lago Rd, Grace, said they moved into the valley 10 years ago. With the property they own they have tried to offset the expenses by way of the farm however, they have not broken even in the past 10 years. He said that he has had requests through the years to host weddings, and other activities, of which he has declined. He felt that the property would have the best opportunity to increase revenue by hosting commercial hunts since that is the primary use of the property for recreation purposes today. He said the 62 days would not all be consecutive. What he would want to start with is three hunts a year, one in October, one in November and one in December. Usually three-day hunts, come in the night before, hunt three days and leave the final day. They would primarily hunt pheasants but ducks could be a part of that activity. If they were to expand it would go to potentially 10 hunts, which would be 40 days. None of this would be consecutive, instead spread throughout the year. He says the hunting takes place primarily from September through January, so that would be the span of time for when they would host the hunts. He said his understanding was that this conditional use was just to allow him to charge people to stay at the cabins and the lodge and allow people to stay in the facility, for potentially up to 62 days a year. P&Z Admin Ashley added a point of clarification. When Mr. Hale had submitted his application, he said they had established the hunting preserve for some time and therefore, it was assumed by the staff that all was done correctly. After receiving a couple of phone calls concerning the hunting preserve on Mr. Hale's property, Mrs. Ashley looked into it further. After reviewing County records and communicating with Idaho Department of Fish and Game it had been determined that Mr. Hale had indeed been correctly applying for his Shooting Preserve permit, however at no point had he applied for the conditional use for the shooting preserve, which has been required by the County as long as Mr. Hale has owned the property. She had brought this to Mr. Hale's attention and he planned to apply for the required conditional use for the shooting preserve. As a result, Mrs. Ashley wanted to clarify that the shooting preserve was not part of the public hearing this evening and instead there would be a public hearing to specifically address that at a later date. Tonight's public hearing was to specifically address allowing Mr. Hale to commercially accommodate guests on his property. Nolan Koller asked if he would intend on hosting any large events like weddings. Mr. Hale stated that was not his intention to host.

Max Nichols, 104 Hwy 34, Grace, said he is neither for or against the application. He said he owns his own property, a home and has water shares. He says he has a water share with Whiskey Creek Water User Association. He requested a 60-day moratorium on the decision so that they could discuss the matter with the state in regards to the water system. This would allow them to ascertain the impact of the proposal. He said they have 24 hookups of which Mr. Hale has two of them. He said Vaughn Mickelson is president of the Whiskey Creek water user association, and he planned to reach out to Mr. Mickelson regarding the matter. He said no one should be harmed in this process and all facts need to be on the table.

Paul Mendenhall, 391 Hwy 34, Grace, said that him and Nathan are good friends and will be at the end of this too. He said he is also on the Whiskey Creek Water User Association system. He had concerns regarding liability with allowing commercial use of the system. He said he was also concerned about a change of lifestyle and the commercial use affecting residential values. He says Nathan and his family and friends hunt currently. He is opposed to increasing that use to commercial for outside people. He said in the mornings on the weekend there can be lots of shooting and in the afternoon lots of helicopters and noise. He does not want it to increase. He says he has no complaint with how he uses it currently and for his family but does not want an increase of the use.

Lora Burell, 2215 N Lago Rd, Grace, had questions regarding how the application was written. She submitted her typed comments to P&Z Admin Ashley. She asked regarding the hunts, if they will take place outside of the 6.7 acres where the buildings are located? She says that she understands that his hearing is just for the 6.7 acres but future impact for hunting would include more than the 6.7 acres. Are the paid hunts going to take place on surrounding ground? And if the hunts are going to take place on the surrounding

ground, does six hunters exceed the capacity of what is safe for the area being hunted? How will the use be regulated for six hunters so that there is a clearly defined line? She also wanted to clarify the definition of a hunt. Is a hunt one week of time and six people for only one week? Is it three, three-hour hunts throughout the day with six hunters per hunt? She also wanted to address concerns regarding the helicopter use and the impact it has on surrounding agricultural endeavors. Additionally, will the helicopter be used in accommodation of the commercial hunts? Increased hunts could bring more noise, with increased use of the helicopter. She felt that it was important to have adherence to the code and preservation of the agricultural uses in the area. She hoped the Commission would make a decision that will be positive instead of detracting to the surrounding land owners.

Keith Bitton, 397 Fish Hatchery Rd, Grace, said he mirrored concerns regarding surrounding landowners and concerns regarding hunters, hunting where they are not supposed to be hunting. He did not want to deal with issues of trespassing.

Kathy Rasmussen, 2080 Super View Dr, Grace, asked if there is an annual renewal for the permit? Will the conditional use be null and void if the land is sold, and would the property be allowed to be split?

Barbara Greene, 282 Bench Lago Rd, Grace, said she lives right next to the hunting ground and she hears the shooting all the time when they do go hunting. They hunt along the creek which is right across the street from her house. She says there's the helicopter that flies in and out. When they hunt it's not just a single shot, but several people shooting at once. It is disruptive to her way of life. She says they're hunting right now, and what is going to be the impact if he is allowed to charge for this and to bring more people in?

Marlowe Mickelson, 2037 Super View Dr, Grace, said one of his concerns is the Whiskey Creek Water User Association. Does changing this to a commercial effect what they, as the association, must do in treatment of the water? He said his dairy has been on the system for longer than he has been alive. If they have to do something such as chlorinate the water, he felt that could affect his family. He said he has an issue with the helicopter. He said owns over a mile of property along the river and where Whiskey Creek pours into the river, he has been in his tractor when the helicopter has flown in. The helicopter has been close enough he could hit it if he threw a rock at it. Further he had concerns about bringing people in on the helicopter with this hunting. He felt like the helicopter was flying low enough that it was affecting his personal property rights. He has concerns with increasing the use of it.

Beth Rasmussen, 2080 Super View Dr, Grace, expressed concerns regarding the helicopter and asked if there was an airport? Will they bring more helicopters in with this change? She said they had tried flying a drone but they were not allowed to because of his helicopter use. She felt his use was infringing on her rights. She also expressed concern about the water system and how if he's hosting 30 people, that will increase his use of their water system.

Ian Pitcher, 2244 N Lago Road, Grace, said his biggest concern is how it will affect their livelihood and the area. He says he lives there for solitude and peace. He says if he didn't want that he would live in Pocatello where he works. He feels that this will increase the noise and effect their way of life and said he agreed with other thoughts shared.

There were no additional comments in opposition. P&Z Admin Ashley said she would provide a point of clarity to address the concerns regarding the Water User Association and Mr. Hale's right with the system. She provided for those in attendance two letters that were submitted with the master plan and building permits for the cabins when they were applied for in 2010, those are permit numbers 1806, 1807, 1808 and 1809. The letters included in these permits read as follows:

“October 4th, 2010

The Purpose of this letter is to verify that Nathan Hale Residing at 301 Bench Lago Road 1 Grace Idaho is a member of the Whiskey Creek Water Users Association. Mr. Hale has a legal  $\frac{3}{4}$  inch hook up with full Privileges under his rights as a member of the Association.

Best Regards

Steve Harrison Secretary  
Whiskey Creek Water Users Association”

“10-11-10  
Ralph Hopkins  
Caribou County Building Inspector Soda Springs, Idaho

Dear Ralph,

As the President of the Whiskey Creek Water User Association I am writing this letter on behalf of Nathan Hale & Whiskey Creek Ranch, LLC. The water users association would first like to confirm that Nathan Hale/Whiskey Creek Ranch, LLC is a member of the user association with legal rights to one culinary hookup on the Whiskey Creek culinary water system. The board members have reviewed his request and have agreed to allow water delivery to proposed residents site plan provided a meter is installed to measure the amount of water being used. The intent of the meter is to insure the amount of water being used for all buildings remains at or below the amount of water the State of Idaho allows for a single culinary hookup.

Sincerely,

Joseph Frank Swensen  
President  
Whiskey Creek Water User Association”

Mr. Hale said there would not be any expansion of the system and it would still be in conformance with the master plan that was approved at that time. A question was raised regarding the master plan. P&Z Admin Ashley showed that the master plan included the cabin, trailer, 2 RV spots, pavilion as well as additional structures. Regan Phillips wanted to know if legally, this would fall within the water users association and their by-laws and where does that fall in regards to the Planning and Zoning Commission. It was asked if changing it to commercial would change the laws for the water. Mr. Hale said that all of them in attendance run commercial operations with their commercial agricultural businesses, his would just be a different use. There was a debate regarding the implication of commercial and the effect it could have on the water, ADA requirements, etc.

Regan Phillips asked how Mr. Hale came up with the number of 62 days. Mr. Hale said that the intention was to start small and then expand as the demand increased. He did not want to limit himself to the smaller beginning number. P&Z Admin Ashley explained that when Mr. Hale applied for his application, she recommended that he apply for the maximum amount he could perceive requiring when the business was at capacity of operation. The reasoning being, once published, the applicant could not request for more than what was listed in the application, but they could always request for less at the public hearings. Further, any expansion beyond what is approved would require an additional conditional use permit. Regan Phillips

asked for further clarification for the number of days. P&Z Admin Ashley explained that application would allow Mr. Hale to have say, 20, three-day, weekend for a total of 60 days. Or he could have 18, three-day hunts and two, four-day hunts. There was debate and concern regarding the 62-day requirement and when they would take place. There was a question regarding who would police the conditions of the conditional use. P&Z Admin Ashley said she is the code enforcement official for the County, as a result she would be the one to look into questions regarding compliance. Regan Phillips had questions regarding the helicopter use and how it is governed. P&Z Admin Ashley stated she had contacted the Federal Aviation Administration's, Salt Lake City Flight Standards District Office (FSDO), in advance of the meeting due to calls expressing concerns about the helicopter. She said that the representative of that office said there weren't any regulations that would address the concerns people had called her about. Mr. Hale said he would like to speak to the neighbors' concerns regarding the helicopter use as he is concerned that they are concerned and he apologized. He said he has an airborne control permit which allows him to hunt coyotes from the helicopter. He says the Sheriff's office is aware as well as Fish and Game. He notifies those agencies when goes out. He says they do fly low to the ground when looking. He said if his neighbors do not want them to fly over their property he would not do so. He told Marlow Mickelson it was duly noted he did not want him to fly over his property so he won't anymore. Beth Rasmussen said she did not want him flying over her property. Nolan Koller asked what color Mr. Hale's helicopter is. Mr. Hale said his helicopter is gray and that there are several others who own helicopters in the area, Doug Wheeler has a blue, green and others, for a total of four. There are others who have them as well. Regan Phillips asked how shooting the coyotes works with trespassing laws. Mr. Hale said he has to have permission to hunt private land. He has the right to hunt and land on all the public land such as BLM and Forest Service. He said that he cannot take anyone for pay on the helicopter. The hunters will not be flown in or out on the helicopter. He cannot be compensated to take a person on the helicopter and it would not be used for these commercial aspects of hunters and is not part of the conditional use. He said there's roughly 20 people at a time at his facility. He said in regards to the concerns with the water, he's never exceeded the daily volume allocation of his single culinary connection and further he is the only member of the water association who has a water meter. These hunts would decrease the number of people present at any other given time as there would just be the six hunters and then his support staff. He said that every person who enters his property signs a liability waiver form that protects him and his neighbors. He pointed out that the surrounding residences have people on their properties without liability waivers. Max Nichols said that his concern was about the commercial use. Mr. Hale said that he felt like the concerns regarding the water user association were outside of the scope of the conditional use application. There was concern about the liability implications. Mr. Hale asked if any of them could legally direct him to the laws they believe are being affected by this change. There were none cited. Mr. Hale said his attorney has looked into all of the legal requirements regarding the proposed operation and effects it could have. The only thing legally his attorney found was the requirement of the conditional use. Nolan Koller raised concerns about the state requirements. P&Z Admin Ashley reference that in past conditional use when concerns were raised about potential state or federal requirements, the condition was placed stating that the conditional use would be approved as long as the applicant was in compliance with all federal and state regulations. These concerns being addressed tonight fall outside of the purview of the County to regulate and enforce. Therefore, placing the aforementioned condition would address these concerns.

Max Nichols had concern that the condition in the code for approval had not been met, 13.08.05.A.01. "The proposed use would not adversely affect surrounding properties to a materially greater extent than would a permitted use in the district." P&Z Admin Ashley pulled up the code governing the agricultural zone and showed all of the uses which were allowed. She pointed out that there would have to be proof that this request would more adversely affect the property than those already allowed. Chairman Christensen pointed out that in previous application there had been a condition placed that would allow a one-year trial of the conditional use, during which the neighbors could request a second hearing if issues arose. Something

similar could apply to this application as well. Regan Phillips asked how many acres Mr. Hale owned in the vicinity of the cabin property. Mr. Hale said roughly 900 acres and all of it would be utilized for the hunting. There is another 165-acre piece along the Bear River. Regan Phillips asked if those are being included in this application. Mr. Hale clarified that they are not part of this application, but yes would be utilized for hunting. P&Z Admin Ashley pulled up a map showing Mr. Hale's property in the vicinity of 6.7 acres, which have the cabins. Regan Phillips stated it was obvious that there were disenchanting neighbors and he felt Mr. Bitton's concerns were valid about trespassing. Nathan Hale said he would have a guide and a guide dog that would accompany the guest hunters, maps are provided and the perimeters of the hunt are clearly defined. He said that with the hunt they have to keep track of how many birds are shot, and they have to release more birds than they shoot. Regan Phillips asked about ducks. Mr. Hale said that ducks are a migratory bird and would be limited to seven ducks per person as required Federally. Ian Pitcher asked if the pheasants are banded? Mr. Hale said that they could have a mark in the nose or a band. However, prior to release those are removed. Regan Phillips asked whether the number of friends and family was normally 20 and was that high or low. Mr. Hale said he has four daughters, four sons-in-laws, seven grand kids and friends and family that can accompany them, a family reunion there can be up to 200 people. He said he has hosted business clients and that he has hosted the BYU Board which was approximately 12-15 people. Beth Rasmussen asked what would happen if Mr. Hale sold the property. P&Z Admin Ashley said there can be conditions placed that govern what would happen with the sale of the land. Nolan Koller asked if the water was a pressurized system. Max Nichols said it is a gravity flow system. Lara Burell asked if the support staff are figured in with the six hunters. Mr. Hale said they were not; his support staff is separate. Regan Phillips said per the numbers Mr. Hale provided there could be roughly 225 people on the property at once. Mr. Hale said, that would not be possible. He would not host the hunters at the same time as when he hosted his family and friends. Regan Phillips asked if the conditional use was just the 6.7 acres or all the land for hunting. P&Z Admin Ashley said this application is specifically just for the facilities and does not have anything to do with the hunting on the surrounding property. Mrs. Burrell asked if this conditional use is approved but the next one, for the shooting preserve, isn't approved, then what would happen with this one. P&Z Admin Ashley clarified that this could be approved whether or not the shooting preserve is approved. Mr. Hale said that even without the shooting preserve permit he could still hunt his property and have others hunt his property. He said the hunting will continue without the shooting preserve. He says currently they typically hunt with a minimum of eight and nine people. Earliest they hunt is 9:00 am and are done by 5:00 or 6:00 in the evening. Regan Phillips said he has an issue with the numbers of the application regarding the number of hunters and the number of days. He says that with support staff that is more than six people. Mr. Hale said that the dog handler is not paying to hunt the land, therefore not part of the application. Mr. Hale said he pays employees all the time and the only change would be the paid hunters. Mr. Hale pointed out however, that other people in the area have hosted friends, family, and reunions on their property so he does not feel what he has used his property for is out of place with his neighbor's uses.

Scott Hayden said he felt like six hunters would be reasonable. Nolan Koller said he understands property rights and trying to get along with your neighbor. Paul Mendenhall asked what ideas the commission had to monitor the hunts. It was proposed that Mr. Hale be required to supply the County with exact dates of the hunts in advance of the season. Mr. Hale said that he did not want to give exact dates as it would depend on his guests schedule and therefore difficult to determine that far in advance when they would be. He recommended instead that he simply be allowed to host hunts from September 1<sup>st</sup> through January 31<sup>st</sup> each season.

Nolan Koller moved to recommend an approval on the conditional use with an initial one-year approval of the application, that any rules governing the commercial change are met, Scott Hayden seconded and said he would like to add a condition that the conditional use would become void with the transfer of ownership, Mr. Hale said he had no intention of selling the land but takes issue with the conditional use ending at the

transfer of land, so his heirs would have to apply for it. Regan Phillips said he felt there should be a condition that they not host a reunion at the same time as the paid hunts. Paul Mendenhall asked again how the County would police it from private use to commercial use. Regan Phillips said he didn't have an answer. Mr. Hale raised an issue with the condition that the conditional use would be void if he sold or transferred the land. He asked if the Commission would consider putting the same condition on an Agricultural endeavor. Such a condition would devalue the value of the property as a business. Regan Phillips asked if there should be a condition regarding the hours of operation. P&Z Admin Ashley said that would not be relevant to this application because this application does not govern the hunting. After some more discussion there was a revision to the motion. Nolan Koller moved to recommend the Commissioners approve the conditional use permit as drafted with the following conditions:

1. The hunts could only be hosted from September 1<sup>st</sup> to January 31<sup>st</sup>.
2. There would be an initial one-year approval during which time neighbors could ask for a reconsideration of the conditional use.
3. The change to a commercial use would be in compliance with Federal and State regulations.
4. The conditional use would be void upon transfer or sale of the land.
5. Not to exceed one hunt, with six hunters, per seven consecutive days.

Motion seconded by Scott Hayden. Voting showed the following:

Aye: Nolan Koller                      Nay: Regan Phillips  
      Scott Hayden

Majority in favor, motion approved.

8:07 PM Chairman Christensen opened the public hearing to give consideration to the application of Kirk & Raelene Young requesting approval of a variance of ten feet (10') to the thirty-foot (30') front yard setback requirement in the High-Density Residential Zone (HDR). The variance would allow an approximate thirty-six-foot by thirty-two-foot (36'x32') addition to be built onto the west side of their home and placed twenty feet (20') from the right-of-way edge of the road. The location of the property is 2937 Wood Canyon Rd, Soda Springs. P&Z Admin Ashley provided an overview of the application from the staff report. She said she had received two letters of support, one from Gary Lemarr, 1645 Skyline Dr, and another from Tyson and Heather Christman, 5832 Hwy 36, Ovid, ID who own the land directly south of the Young's property.

Kirk Young, 2937 Wood Canyon Rd, Soda Springs, said they do not have a basement and as his family is growing, they would like a place for their grandkids and kids to stay. It would include 2 bedrooms and a family/game room to accommodate his family.

There was a brief discussion among the Commission. After finding the application met the requirements of the code, Scott Hayden moved to recommend the Commissioners approve the variance as drafted, seconded by Regan Phillips. All in favor, motion approved.

8:20 PM Regan Phillips moved to adjourn, seconded by Nolan Koller. All in favor.