

**FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS  
OF THE MADISON COUNTY PLANNING AND ZONING COMMISSION**

***Re: Trevin Ricks Conditional Use Permit***

Testimony was taken during the May 10, 2012 public hearing and January 10, 2013 to consider the Trevin Ricks' request for a Conditional Use Permit to have a detached garage with rentable living space in a Transitional Agriculture Two zone. This building would be located at approximately 5388 W. 1650 W. on one acre in the Lyman area. At issue is a section of the Unified Development Code, Chapter 115 of the Madison County Code book, section 115-63 Lots, subsection (6), Number of Dwellings that reads as follows:

There shall not be more than 1 dwelling constructed on each subdivided lot. With a conditional use permit a detached garage may be allowed to have a living space with no more than 3 bedrooms. This will be counted as a separate living space for septic sizing, but septic must be part of the primary residence's septic system. This living space may only be occupied by a single family and shall only be allowed if in conformance with the covenants of the subdivision.

At the prior May 10, 2012 public hearing, there was testimony that this proposed use is in conformance with the covenants of the subdivision. There was also testimony that this proposed use was not in conformance with the covenants of the subdivision. After taking public testimony the Commission voted to table this request for further discussion between the property owners to resolve the covenants, to change the covenants, or to get a ruling from the District Court as to the validity of the covenants and what they do or do not allow as to this proposed use.

After the May 10, 2012 public hearing, recorded documents were presented to the County that the majority of the homeowners in the Benson Subdivision changed the covenants to exclude the Ricks' lot. This matter was brought back before Madison County Planning and Zoning on October 11, 2012 at 7:15 p.m. to un-table the request and make a decision. That entire meeting was recorded to allow for preparation of a transcribable verbatim record of the hearing. No media were in attendance at the meeting.

The following members of the Madison County Planning and Zoning Commission ("Commission") were present at the October 11, 2012 public hearing: Chairman Bill Squires, Vice Chairman Anthony Merrill, Ed Williams, Jolene Sutton, Dean Peterson, Doug Sakota, Kevin Willmore, Matt Hartline, Mike Munns, and Millie Andrus. Those unable to attend were: Kay Burrell and Rick Robertson. The Madison County Planning and Zoning Administrator Brent G. McFadden, Coordinator Shauna J. Ringel and legal counsel Troy Evans also attended.

An open meeting was called to order by Chairman Squires. Shauna J. Ringel acted as clerk for the meeting. Chairman Squires questioned Mr. McFadden as to whether or not notices of the hearing had been properly published, posted and provided. Mr. McFadden stated all required legal notices had been given. The Chairman asked if there were any conflicts of interest. None were stated.

A summary of this discussion at the hearing is attached hereto and incorporated herein (see attached May 10, 2012 and October 11, 2012 minutes).

Administrator Brent McFadden informed the Commission that he had received a letter from Mr. Ricks' attorney concerning changing the covenants of the Benson Subdivision and a recorded document effectuating this change. There was opposition from at least one homeowner that this is not allowed. Mr. McFadden reiterated the Commission is not involved in covenants and does not decide the legality of such issues, and the homeowners were asked to do one of three things which Mr. Ricks complied with. That a motion is needed to un-table the Trevin Ricks Conditional Use Permit so a decision can be made by the Commission. That this is an open meeting, and not a public hearing. No additional public testimony was allowed at this hearing.

Kevin Willmore made the motion to un-table the Trevin Ricks Conditional Use Permit. Doug Sakota seconded. The vote was unanimous.

Matt Hartline made the motion to approve the Trevin Ricks Conditional Use Permit because they met one of the requirements set forth by the Commission on May 10, 2012, to change the covenants, and the Commission is required to act on all applications. The motion was seconded by Vice Chairman Anthony Merrill. A vote was by roll call and was unanimous. Brent McFadden stated there would be an annual review and a yearly fee of \$25.00, to be sure that Mr. Ricks is compliant by renting out the detached living space. This was approved as conditions on this permit.

On November 13, 2012 the Board of County Commissioners approved the findings of fact from Planning and Zoning. Thereafter, the Board met again on December 10, 2012 to discuss the errors in the published notice for the October 10, 2012 hearing. Based upon that conversation, the Board unanimously decided to retract their November 13, 2012 findings of fact, and send the entire matter back to Planning and Zoning to have another public hearing in order to clear up any discrepancies.

Based upon these instructions, the Madison County Planning and Zoning Commission held an additional public hearing on January 10, 2013 at 8:00 p.m. at the Commissioner's Room in the Madison County Courthouse, Rexburg, Idaho to re-consider the Trevin Ricks' request for a Conditional Use Permit to have a detached garage with rentable living space in a Transitional Agriculture Two zone. This building would be located at approximately 5388 W. 1650 W. on one acre in the Lyman area.

The entire meeting was recorded to allow for preparation of a transcribable verbatim record of the hearing. No media were in attendance at the meeting.

The following members of the Madison County Planning and Zoning Commission (“Commission”) were present at the public hearing: Chairman Bill Squires, Vice Chairman Anthony Merrill, Ed Williams, Mike Munns, Rick Robertson, Matt Hartline, Dean Peterson, Kevin Willmore and Doug Sakota. Those excused were: Millie Andrus and Jolene Sutton. Planning and Zoning Administrator Brent G. McFadden, Coordinator Shauna J. Ringel and Legal Counsel Troy Evans also attended.

The public hearing was called to order by Chairman Squires. Shauna J. Ringel acted as clerk for the meeting. Chairman Squires questioned Mr. McFadden as to whether or not notices of the hearing had been properly published, posted and provided. Mr. McFadden stated all required legal notices had been given. The Chairman asked if there were any conflicts of interest. None were stated.

A summary of this discussion at the hearing is attached hereto and incorporated herein.

Trevin Ricks, 5383 S. 1650 W., Rexburg gave the presentation on behalf of his Conditional Use Permit. The presenter was asked questions by the Commission.

After hearing the presentation by the Planning and Zoning staff, and from the applicant on behalf of the Trevin Ricks Conditional Use Permit, the Chairman asked for those in favor, in neutral, or opposed to the proposal to come forward and be heard. Chairman Squires reminded the citizens in attendance that they must sign up on the appropriate lists if they wished to speak. Mr. Ricks stated the differences with other owners in the subdivision as to the covenants had been worked out to everyone’s approval.

Those in favor were:  
Shane Ruebush, 1893 W. 5350 S., Rexburg

Those in neutral were: None  
Those opposed were: None  
No written correspondence was received.

There being no further comments, the public hearing was closed. The Planning and Zoning Commission noted that any recommendations they would make would be tentative, pending final approval from the Board of County Commissioners. The Commission then deliberated the Trevin Ricks request for a Conditional Use Permit to have a detached garage with rentable living space in a Transitional Agriculture Two Zone.

Having given due consideration to the application and evidence presented, the Planning and Zoning Commission hereby makes the following findings of fact:

## **FINDINGS OF FACT**

1. The final public hearing on this matter was held January 10, 2013 to take the testimony on a requested Conditional Use Permit. This proposed amendment is consistent with the goals and objectives of the Comprehensive Plan.
2. Notice was published in the legal County newspaper, the Standard Journal, December 27, 2012 as required. The published notice included an appropriate and accurate summary of the issues to be heard. Copies of the notices were made available as requested and were provided to political subdivisions within the planning jurisdiction at least 15 days prior to the hearings. Copies of the notice were sent to all residents within the 350 feet, as required, on December 20, 2012.
3. At the beginning of the hearing, Chairman Squires asked whether proper notice of the hearing had been provided. The Planning and Zoning staff answered in the affirmative, discussing what notices had been provided. No conflicts were raised by any of the Commissioners.
4. The Public hearing was scheduled at 8:00 p.m. all as set out in the published notice, as described above.
5. The meeting agenda was available prior to the meeting, and the public hearing followed the order of events listed on the agenda. The Planning and Zoning Administrator gave an explanation of the subject of the public hearing. An opportunity was provided for the applicant and members of the public to present testimony, which was followed by members of the Planning and Zoning Commission. Public testimony was closed after all present had been given an opportunity to submit oral or written testimony. No time limits were imposed on oral testimony.

## **CONCLUSIONS AND RECOMMENDATIONS**

1. Notice of the open meetings were held to consider approval of the Conditional Use Permit was published and provided as is required by Idaho Code §§ 67-6509 and 67-6511.
2. The public hearings were held to consider approval of the proposed Conditional Use Permit and was conducted in accordance with the requirements of Idaho Code §§ 67-6509 and 6511 as well as Unified Development Code, Part II, Article V, Sections 101-135 through 101-141, regarding conditional use permits.
3. Per the standards applicable to conditional uses, section 101-137 of the Unified Development Code, the following findings are made:
  - a. The proposed use of the detached garage does constitute a conditional use per Unified Development Code, Chapter 115 of the Madison County Code book, Section 115-63 Lots, subsection (6).

- b. The proposed use is in harmony with the Comprehensive Plan to allow development and private use of one's property.
- c. The detached garage is designed, constructed and operated in harmony with the neighborhood, and as an attached garage, will not change the essential character of the area.
- d. The use is not hazardous or disturbing to existing uses. The issue brought forth during a previous public hearing was whether or not there was a violation of the covenants. From the January 10, 2013 public hearing, testimony was received indicating all the homeowners had resolved the covenant concerns previously brought forth. No testimony was received that this proposed use would be hazardous or disturbing to others.
- e. Public facilities are not affected by this use as the detached garage is in the county and on a private well and septic. It will not increase costs for public facilities, nor will it be detrimental to the welfare of the community.
- f. The proposed use for the detached garage will be used as a rental for a single family. As such, it will not involve activities, processes, materials, etc., that will be detrimental to property owners. Nor will it produce traffic, noise, smoke, fumes, glares or odors.
- g. The vehicular approaches to the property are adequate as the increased traffic would only be one or two cars more.
- h. The proposed use for the detached garage will not result in damage, destruction, or loss to scenic features. The detached garage is located in a subdivision and there was no testimony concerning this issue.

4. A transcribable verbatim record was made and kept of the Public Hearing held to consider approval of the Conditional Use Permit, in accordance with the requirements of Idaho Code § 67-6536.

5. The proposed Conditional Use Permit is an appropriate exercise of the planning and zoning responsibilities established by Idaho Code § 67-6501 *et seq.*

6. Approval of the proposed Conditional Use Permit change is in the best interest of the people of Madison County, Idaho.

7. These Findings of Fact and Conclusions of Law are maintained and submitted in accordance with Idaho Code § 67-6509.

8. Previously, on October 26, 2012, the Commission approved this Conditional Use Permit based upon Mr. Ricks changing of the Benson Subdivision covenants. Based

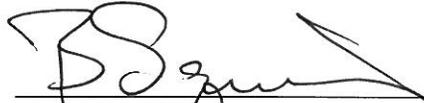
upon the new testimony heard on January 10, 2013, the homeowners in the Benson Subdivision have resolved their differences as to the covenants. As such, the Commissioners moved to now approve the Conditional Use Permit based upon the homeowners resolving this matter amongst themselves as to the covenants in that subdivision. Further, that it is approved because it met the requirements of Idaho Code and Madison County Ordinance. Doug Sakota made the motion to approve the Trevin Ricks Conditional Use Permit. Vice Chairman Anthony Merrill seconded the motion. The vote was unanimous.

**CONCLUSION**

Based upon the foregoing Findings of Fact, Conclusions and Recommendations, the planning and zoning procedures conducted throughout the county, the comments received at the public hearing held thereon, and the deliberation of the Planning and Zoning Commission, the Commission hereby recommends approval of the request for a Conditional Use Permit for the reasons stated herein.

Dated this 12<sup>th</sup> day of February, 2013

Planning and Zoning Commission  
Madison County, Idaho

  
\_\_\_\_\_  
Bill Squires, Chairman

Attest:

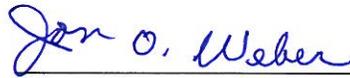
  
\_\_\_\_\_  
Brent G. McFadden  
Planning and Zoning Administrator

**Adoption of Findings of Fact by the Madison County  
Board of County Commissioners**

Based upon the foregoing Findings of Fact, Conclusions and Recommendations of the Planning and Zoning Commission, and based upon the Madison County Board of County Commissioners (Board) review thereon, pursuant to Unified Development Code, Part II, Chapter 101, section 101-105 through 101-141 and Idaho State Code § 67-6509, 67-5511 *et seq.*, the Board hereby approves the Findings of Fact and Conclusion of Law presented by the Commission and approves the action based thereon.

Dated this 11th day of February, 2013

**Board of County Commissioners<sup>1</sup>**

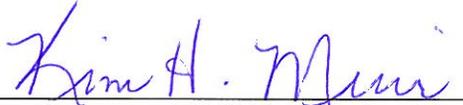


\_\_\_\_\_  
Jon Weber, Commissioner



\_\_\_\_\_  
Todd Smith, Commissioner

Attest:



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Kim H. Muir, County Clerk

<sup>1</sup> Commissioner Kimber Ricks removed himself from this and all other proceedings had in this matter due to a conflict of interest in that he is related to the applicant.

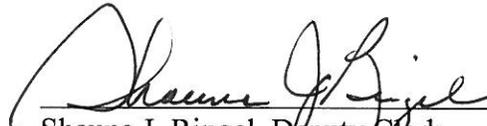
**CLERK'S CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 12<sup>th</sup> day of February, 2013, I mailed a true and correct copy of the foregoing to the parties named below, by the means shown, and addressed as follows:

Trevin Ricks  
5383 S. 1650 W.  
Rexburg, ID 83440

( ) Hand Delivered  
( ) Facsimile  
(xx) U.S. Mail

/s/ Kim H. Muir

  
\_\_\_\_\_  
Shauna J. Ringel, Deputy Clerk