

**Madison County  
Planning & Zoning Commission**

Public Hearing Minutes  
October 13, 2016

Chairman Rick Robertson called the meeting to order at 7:05 p.m. Those attending were Matt Hartline, Anthony Merrill, Rick Robertson, Doug Sakota, Bill Squires, Aaron Swenson, Christy Swenson, Ed Williams, Brent McFadden, Troy Evans, and Judy Coy. Those excused were Arlene Anderson, Mark Hansen, Mike Munns, and Shane Sutton. The Pledge of Allegiance was recited and roll call was taken.

September 22, 2016 Work Meeting Minutes

Chairman Robertson asked if there were any changes to the meeting minutes for the September 22, 2016 work meeting. After discussion about the headings on the Land Use Table changes and the motion to change the Land Use Table a motion was made by Aaron Swenson to approve the minutes as presented. The motion was seconded by Ed Williams. Motion carried. Anthony Merrill abstained from voting due to his absence at the meeting.

**PUBLIC HEARING**

Chairman Robertson opened the public hearing at 7:05 p.m. He then asked if there was any conflict of interest with any of the commission members. No conflicts were mentioned from any of the commission members. Chairman Robertson then asked if the Public Hearing Notice had been posted appropriately. Judy Coy stated that the dates the notices had been published in the Standard Journal newspaper and that the notices had also been posted in the appropriate buildings. There were no news media present.

**Variance Permit for Kyle Bradshaw construction of a single family residence in an Agricultural zone.**

Kyle Bradshaw made his presentation as follows: 2261 North 6000 West, Rexburg. The reason we are here tonight, we have a nine acre piece of property next to my parents that we would like to build a home on it . We feel it is basically waste property, nothing but sage brush and rock a few cottonwood trees on it. The reason for the home is that we spend a lot of time out there at my parents. I have a few side businesses that I run from there. Training horses and also building furniture and cabinets. We are renting a home now and would like to build a home there.

Aaron Swenson: So this is already a split off lot, currently a nine acre lot. Do you have any idea when this was split off?

Kyle Bradshaw: It was two or three years ago. Two years ago.

Aaron Swenson: As part of the bigger subdivision or just a lot split.

Kyle Bradshaw: It was just a lot split my dad actually refinanced his house and it was separated at that time.

Bill Squires: Has it ever been farmed?

Kyle Bradshaw: Never been farmed. Nope. Like I say it is pretty much lava rock and sage brush. There is one little spot where we can get a foundation in.

Chairman Rick Robertson: Any other questions? Thanks Kyle. We will turn the time over to Brent then for the county.

Kyle Bradshaw: Thank you.

Brent McFadden: This is an out view of the area. That is actually my house. My father-in-law used to own all of this. Back to here they rezoned that. That was waste ground, we used to use it as a dump, that is where we hauled our garbage, down there. It was lava rock. They already know that. They had to clean it up when they moved down there. Perrenoud's bought this from my in-laws and Scott's dad sold it to Bradshaw's. There used to be two lateral ditches that ran down, one on this and then north from this was Perrenoud's and the south one was my father-in-laws. It has since been torn out. There has already been a five acre split. It was a thirty eight acre piece at one time and they have already split out five acres. There is thirty two acres left there now. With the nine acres taken out of there, that takes it down to twenty seven acres. Because of the five acre split there was eleven acres that was tied up so there really have not got enough acres to do another split. Administrator's point of view is if we are to protect farm ground what better place to put a home than on ground that is unuseable for farming, which that is. It is totally unuseable. It has absolutely no value for anything other than a home. Right now the only one that has water rights back there is Scott on the backend and I think Lloyd had a few on his property. That is a more close view of it. There is a view of their property as it stands now, as you can see.

Ed Williams: I'm wondering where they will build a home there?

Brent McFadden: I think there home is going to go right down in this area. That is the shop that he works out of with his dad. His dad has a saddle shop on this end. That is Lloyd's house and this is Knapp's house. And then they break horses out there. They have corrals out in there. And there is a little bit of hay ground there. And that was when my father-in-law owned it they raised spuds and grain on it. That is the only piece of that whole back that is farmable. Three or four or six is what my father-in-law figured was back there was six acres. You can see that there is a ditch here that comes here off of Scott's ditch. That is a waste ditch for when either they forget to shut the pump off they forget to shut the head gate down at the road off and if flows down here and there is always a pond down here back in the old days when they subbed that they ran their sub irrigation water, their overflow and then they would help keep the sub up. They used it for sub and then cattlemen used, they run this out here is all BLM land and they run, there is two divisions of it. There is this division and a north division that they run every other year cattle on and they used to water out of that pond. They have since put a well out there now. My ditch was the bigger ditch and it is no longer there. They cut it off at my property line. Pretty much that is it. The property was posted, I did that myself and it was published in the paper twice.

Bill Squires: Any written comment?

Brent McFadden: No we've not had any written comments. If you remember this they came before us before and these people contested it so we didn't go through with it. They are no longer contesting it.

Kyle Bradshaw: We have a letter from them saying that they are ok with it.

Brent McFadden: Really and truly if you look at it there are no water rights with it. There is no way for them to get water down there. The way these work is that ditch is private. The head gate is private. I have a head gate at my ditch where it used to run through mine. I am the only one that has access to that head gate. So and I cut it off years and years ago and when Raybould's bought this piece from my mother-in-law or well from the in-laws they took that ditch out. That ditch is completely gone. So you are looking at thousands of acres out here to the west that nobody is ever going to build on because it is BLM. You are looking to the south as Randy Brown's farm it will never be anything but farm ground. There is one hundred and sixty acres here to the east that is Raybould's and there is a forty acre piece here that is Scott's. And I don't see Scott ever selling it. But that is what is there. So density wise ya it is higher density than what it is zoned for and that is why the variance, but there is going to be nothing else build out there.

Matt Hartline: They did show the permanent easement going through there to provide the driveway.

Brent McFadden: Ya BLM has given them.

Matt Hartline: To Lloyd and also Knapp I think you said that road. Where it cuts through the corner of the BLM?

Brent McFadden: I don't know don't get into that. That road has always been there. It was a road that led down and past my father-in-law's, into this field. That is how they used to get into it. But that road that goes into their place actually if you follow that road out across the dessert it goes clear to Hamer.

Christy Swenson: I have a question for Mr. Bradshaw. If the zoning wasn't in place three years ago when you tried to split this lot off is there a reason why you didn't try to get in closer to the 6.2 parcel instead of the 22.601 and 9.398.

Brent McFadden: It wouldn't have mattered anyway because he only had the five acre tied up six acres of the thirty two acres which left him less than thirty two that he needed for the other parcel anyway. He can split it as many times as he wants we just won't give anymore permits for it.

Matt Hartline: How many years ago was that original piece split or not the original piece but the part west of the farm ground?

Brent McFadden: West of the farm ground.

Matt Hartline: Ya you've got a five acre one and a six acre one.

Brent McFadden: Well there is the five acre and then there is thirty two acres. And then he took out of that thirty two he took another nine and a half.

Matt Hartline: Ok but off of the county road. If you could.

Brent McFadden: Over here.

Matt Hartline: Yes.

Brent McFadden: That was originally my mother-in-law sold that, those two parcels to Lloyd before the ordinance went into effect. They are grandfathered lots, both of those.

Matt Hartline: So we aren't dealing with any of the lots.

Brent McFadden: No those are grandfathered, they were there prior to the inception of the ordinance. And both of those down off of 5000 north on the north side are owned by Bob Ellsworth.

Scott Perrenoud: Bob has sold one half.

Brent McFadden: I know I had somebody call me and ask me about it. Any further questions?

Aaron Swenson: So I guess the reason we are here is because it does conflict with the county ordinance of sixteen acres. How exactly does a variance work and what allows us to do this.

Brent McFadden: Well if you read the variance thing I put in there it is for lot size. We've done these before. We have done them corner of pivots so people can build a home on them. We have done it for a parcel in Burton that they had a ditch that ran through the property which wouldn't allow any of them to have two acres. The rest of it went across the ditch and the guy that is farming over there but the other side was waste ground so we allowed that through a variance. We allowed them to build a home. That is what we have done before. There is a precedence for what we are doing.

Chairman Rick Robertson: Thanks Brent. It looks like we have got three individuals that have signed up. One in favor, one neutral, and one opposed. Does anybody else wish to sign up that didn't get a chance? We can start then. The first one on here is in favor we have Lloyd Bradshaw. Lloyd indicated that there is a letter from the neighbor will one or the other of you bring it up. I keep saying Kristy.

#### IN FAVOR

Lloyd Bradshaw: 6750 West 5000 North, Rexburg. I didn't have a whole lot to say other than what Kyle has kind of said. I am Kyle's father and like Kyle said we do a lot of things together there and so having him live closer would really be helpful especially to me. Getting a little older and doing some of the chores and stuff around would really be helpful to have him there and we do a lot of things together. We have been around that property for quite a few years and I really agree with Brent that you know it is an ideal place for a little home but to do anything else with you know agriculture wise or anything it is just, it is just not there. So we would just like to

give our support to Kyle that we think this is a real feasible thing and would harm no one and really benefit us especially Kristie and I. We are kind of starting to be a little go south in the winter too and so having somebody there on our place to kind of watch things would really help us out. Thank you.

October 12,2016

Madison Co. Planning and Zoning Board,

We are writing this letter in support of Kyle and Kristy Bradshaw to build a home on the nine acres next to our property at 6750 West 5000 North Rexburg, Idaho.

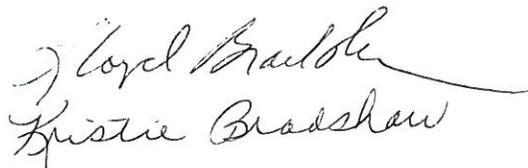
This area is zoned Agriculture but the land where they want to build has never been farmed.

It would be helpful to have some of our family living close to help us as we are getting older.

If they build on this land, we feel it would not affect any agriculture land in the Plano area.

Submitted by,

Lloyd and Kristie Bradshaw

Handwritten signatures of Lloyd Bradshaw and Kristie Bradshaw.

To Whom It May Concern;

We, Craig and Kelly Knapp, have no objections to Kyle and Kristy Bradshaw building a home, which shall be their primary residence, on approximately 6-7 acres of land currently owned by Lloyd Bradshaw. The land in question lies partially adjacent to the north side of our acreage and the BLM. The land is also bordered partially by Robert and Annette Ellsworth on the opposite side.

Craig and Kelly Knapp  
September 5, 2016

Handwritten signatures of Kelly Knapp and Craig Knapp.

## NEUTRAL

Shane Ruebush: 1893 West 5350 South, Rexburg. I am neutral because, two reasons. One I have no idea what the request was prior to coming in other than it was published that there was a variance request. Second reason is because I believe they should be able to build on the property. I don't know why there would be a restriction in that regard. My neutrality comes in the fact that this is for a variance and when I read the variance it says the variance is a modification of and it talks about a few things parking spaces, heights of buildings, setbacks, other ordinance provisions affecting the size or shape of a structure for the placement of a structure upon lots, or the size of lots. Further down it says, may be granted to an applicant only upon showing of undue hardship because of characteristics of a site. I don't know why they applied for a variance. I personally would have said go for Transag or something where they could have had a more higher density, and more flexibility in the future. Personally I think that would be a better option for them. That way they can go ahead in the future and not have to come in and ask for another variance for some other issue that they would like to do. That is my personal feeling on the matter. Beyond that I would say if we had even more of an easement on the zoning all together and looked at it and came up with better plans especially for property like this that doesn't have the same value in terms of agriculture or other uses other than to have people construct buildings on it and live on it as is appropriate. So ultimately I propose that you don't go with the variance request but go to rezone it so that they can have future uses. Thank you.

Chairman Rick Robertson: Thank you Shane. We have one more than has signed up that is actually opposed. Scott Perrenoud would you come up please and state your name and address?

## OPPOSED

Scott Perrenoud: 4297 North 5725 West, Rexburg. I own the forty acres adjacent to Lloyd's piece. I do not border the proposed change. I do have a concern with water. I would like to present this to you right now. This is an agreement signed by Lloyd and Kristie Bradshaw and my father and mother back in 2004 when they sold this property to Lloyd. There is a ditch and I don't know whether you can see it or not but it starts in the corner of Raybould's and runs basically the full length of this entire piece. It starts about right there comes across comes down behind Knapp's on down, comes down into this corner and dumps into the BLM pond out here. This ditch had two fold when it was built and it has been there for over fifty years continuous use. It is registered with the Water Resource Board in Idaho Falls and cannot be changed altered or any changes made to it without written permission from them. It gets down in this corner, and it gets pretty narrow. I will agree with Bradshaw's this whole side is nothing but rock and this is my ditch, there is not much room to build down on this end. It is worthless ground. But my concern is Kyle built a home here at one time on this tract one. He left the home and now he is coming back and wants to change the variance so he can build again. This concerns me. Also the problem is when he left Knapp's bought it, Knapp's do not understand this agreement and if you will read it that is tied to the property not to Lloyd. And so they move in, they change to channel, they plug the water off, I can't get water down into this pond on the BLM because of what is going on with these homes. And the biggest problem is it comes down here and supposedly Mr. Ellsworth draws water out of there and that a problem that we won't talk about here. But anyway because Knapp's have plugged the water off Bob's is not getting his fair share

of water he is taking me to the lawyers twice and threatened to sue me because I am not giving him enough water down there. I am really at a loss. If I lose access to this ditch and that is what I am afraid that this variance is just a way to get around doing away with that ditch or altering it or something. That is my only concern. I really don't care if Kyle builds down there because when he built the first time I had no problem with Kyle. It all started when he left. And the biggest problem is not anything to do with tract of land. But it needs to be mentioned, I think if already has, when my parents sold that, when they bought it from Mark Peterson they got no water. When they sold it they sold it with no water and there is no ditch, no conveyance to get water down there. That water that runs down that ditch they have no right to. And that is where the problem comes.

Bill Squires: So tell me, where are you at on this, where is your property?

Scott Perrenoud: I have the forty acres of farming ground on the west side and it is just about straight across from parcel two.

Bill Squires: Ok so you lost the water when parcel two went in and was resold to Knapp's?

Scott Perrenoud: Well I have not lost any water. Keep in mind this ditch is a drain waste water ditch. And so when my pump shuts off I kick water down there. I need some way to get rid of my waste water and we use that ditch in connection with Mark Peterson way back when. And then..

Brent McFadden: His parcel is this right here this forty acres.

Scott Perrenoud: And so that is why we have been using that ditch. And at the time when we bought it from Mark they were still using water down that ditch and we had to sign an agreement to honor their water rights through there so when we sold it to Lloyd we did the same thing although Peterson's don't use it anymore. But I still do.

Bill Squires: So right now is there a problem right now with the Knapp home cutting water out to you right now? How did that even happen?

Scott Perrenoud: She just took upon herself to do it.

Bill Squires: What did she do?

Scott Perrenoud: They have actually dug a deep pond to collect the water and they plugged the channel off and so now I can't get water down to the end.

Bill Squires: And why wasn't this fixed back when it happened?

Scott Perrenoud: We tried. Mr. Ellsworth went to the Water Resource Board. We have tried. But there is no way to police it out there. They just move in and do what they want. That is my big concern. I am afraid that this is going to lead to a mini-subdivision and now I've got four of them dealing in the ditch. What is going to happen when I get a couple more? They are already trying to say that it is a community ditch and they want me to give them water two days a week.

Bill Squires: Have you been doing that?

Scott Perrenoud: No I will not until I am forced to.

Bill Squires: And I'm sure that the family understands that does not apply if they were to build there correct?

Scott Perrenoud: Kristy and Kyle are aware of the situation. I don't think I would have any problem with them. But who is to say whether they sell the home and have somebody else move in or if they come in for another variance and want to split it and get another home.

Chairman Rick Robertson: Just so the commission knows we have the opportunity to put conditions on this. Do you have a comment Doug?

Doug Sakota: Is this regulated by a canal company?

Scott Perrenoud: Yes it is. And I have been with the canal company president and they state that is my private ditch. Nobody else has any right to it and we have tried to convince Mr. Ellsworth of that and he is bound and determined that he is right and he's got Knapp's on his side and they are changing the channel to go around her pond.

Doug Sakota: Who owns the water shares?

Scott Perrenoud: I own all of the water shares that come down there. I have about eighty at that headgate.

Doug Sakota: No one else does?

Scott Perrenoud: No one else does. But that is the discrepancy. I say it is my water and Bob Ellsworth says it's his water.

Matt Hartline: You live at the corner is that correct?

Scott Perrenoud: Yes he is adjacent to this parcel one that we are talking about.

Doug Sakota: You paid for your water shares.

Scott Perrenoud: Yes I have. He has paid for his water shares from day one but as Brent pointed out his ditch was abandoned and pushed in. He has no way to deliver his water down there. And the same with Bradshaw's, Knapp's they had no way to get water down there. They have gone out and bought extra shares of water without the canal company's knowledge and they are telling me why I got twelve shares of water and they are trying to use this water. It is a real problem.

Bill Squires: So really though there is no real basis to me unless the attorneys are telling me they don't have a leg to stand on, this Ellsworth person.

Brent McFadden: We don't get involved in water rights.

Bill Squires: There is a concern.

Scott Perrenoud: I might state that I don't think I will have any problem with Kyle and Kristy. I have had very little problem with Lloyd. They understand what is going on. It is just the new people and Bob is not new but he has sold part of his ground now I have got another one to educate.

Brent McFadden: He has already been talked to.

Scott Perrenoud: I have talked to him with the canal company. I have talked to him but anyway that has no, really no bearing on this meeting and this point. The only thing I am concerned about is I need it to be known that the ditch is established and it needs to be kept there unaltered. I can't stop Kyle from building down there but that ditch is going to have an effect on where he builds and how he builds I am sure.

Matt Hartline: You are putting water there whether there is a ditch or not.

Scott Perrenoud: They can pipe it under their house for all I care but like I say the Water Resource Board is the one that will be called on this if they do any changing. Thank you.

Chairman Rick Robertson: Thank you Scott. Kyle do you have any rebuttal.

Kyle Bradshaw: With Scott's concern we understand the ditch, it's been there for years. It feeds that storage pond, it is waste water. We have no intention of changing the ditch or doing anything with the ditch. Our home will sit in front of the ditch and shouldn't affect the ditch at all.

Bill Squires: When you sold that to Knapp's did they understand the ditch issue? Did you explain that to them?

Kyle Bradshaw: No nothing was said about the ditch. They knew it was waste water and that it fed the BLM pond.

Anthony Merrill: So there is an access to the ditch through your property?

Kyle Bradshaw: Oh no they could come clean the ditch, they could get to the ditch, whatever they needed to do to it would be fine.

Lloyd Bradshaw: That ditch hasn't been cleaned for quite a few years. When they go in and clear areas there that need to be cleaned so that there is no debris or anything in it so it allows the water to pass through there a lot better.

Chairman Rick Robertson: Thank you Kyle. If there are no other comments we will close this part of the public hearing (7:42 p.m.) and the commission will go ahead and look at the factors. Take a minute to look at those. Did you have a comment Ed?

Ed Williams: No.

Bill Squires: Mr. Chairman going through the factors number B there will not be a conflict with the spirit and intent of the Comprehensive Plan. I believe that is correct it will not conflict. Item C with the exceptional circumstances or conditions which have been pointed out as far as rocky ground, not farmable, it's on the corner. I think it fits in with that as well. Letter D injurious to property or improvements of other property owners. I know the Knapp's gave a letter saying that they are ok with it other than the ditch concern I believe as was pointed out that when they do build that ditch will be cleaned out which I think is positive for that land owner. And I personally, from what I understand on the ditch and water, we really shouldn't be too concerned from what I understand with the law. That is my comment.

Christy Swenson: I just wanted to make a comment also to Mr. Ruebush's comment about taking it in the direction of Transag versus a variance. I don't feel that Transag would be appropriate in this instance because I was involved with the issuance of the septic permit on Bradshaw's property for their home and it is a very difficult area for septic as well. I don't think that Transag would be the right approach to this. I do think that the variance was the correct approach on this property

Bill Squires: If there is no other discussion I move for approval.

Chairman Rick Robertson: Say that again please.

Bill Squires: If there is no other discussion I would move for an approval.

Aaron Swenson: Could we maybe add the condition that access to the ditch be allowed and there is no interference something along those lines, would that be appropriate Bill?

Bill Squires: I agree with yes.

Chairman Rick Robertson: Just so you know too for public knowledge there will be no more splits on this. So would you restate that Bill.

Bill Squires: I would move that we accept this proposal based on the factors that have been discussed with the stipulation that the ditch

Chairman Rick Robertson: That the ditch will not be interfered with or.

Aaron Swenson: Will not be altered and will be accessible. Water rights are something we can't really control as a board here. I think we can just put stipulations on the land itself and the stipulations on land that we can put is that access be allowed and the ditch not be altered.

Chairman Rick Robertson: Can we add one more thing in there Bill on that on that motion. So if you will restate all of that again, please.

Bill Squires: I move that we approve based on the factors that were positive for this and the conditions on the ditch.

Aaron Swenson: That the ditch will not be altered and that access will be allowed.

Bill Squires: And there will be no further splits allowed.

Chairman Rick Robertson: Did you get all of that Judy?

Judy Coy: Yes.

Aaron Swenson: They did agree to clean it do we need to put that in there.

Bill Squires: What the comment was that they agree to clean right where he is at.

Aaron Swenson: We can let the neighbors sort that out.

Anthony Merrill: If that is it I will second it.

Chairman Rick Robertson: Will you take roll call vote Judy.

Judy Coy: Matt Hartline.

Matt Hartine: Yes.

Judy Coy: Anthony Merrill.

Anthony Merrill: Yes

Judy Coy: Doug Sakota.

Doug Sakota: Yes.

Judy Coy: Bill Squires.

Bill Squires: Yes.

Judy Coy: Aaron Swenson.

Aaron Swenson: Yes.

Judy Coy: Christy Swenson.

Christy Swenson: Yes.

Judy Coy: Ed Williams.

Ed Williams: Yes.

Judy Coy: Rick Robertson.

Chairman Rick Robertson: Yes.

Judy Coy: The voting is unanimous in favor.

Chairman Rick Robertson: Just so you know too this a recommendation board, this will go to the county commissioners. Brent did you have any more to add?

Brent McFadden: I do not.

Chairman Rick Robertson: At this point then can we have a motion.

Doug Sakota: I move that we dismiss the hearing.

Aaron Swenson: Second.

Chairman Rick Robertson: Did you get that Judy.

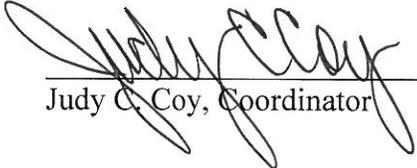
Judy Coy: Yes.

The meeting stood adjourned at 7:50 p.m.

Meeting Minutes accepted by:

  
\_\_\_\_\_  
Rick Robertson, Chairman

Meeting Minutes approved by:

  
\_\_\_\_\_  
Judy C. Coy, Coordinator