

Madison County Planning & Zoning Commission

Public Hearing Minutes March 24, 2016

Chairman Rick Robertson called the meeting to order at 7:00 PM. Those attending were Rick Robertson, Aaron Swenson, Ed Williams, Mike Munns, Mark Hansen, Arlene Anderson, Shane Sutton, Doug Sakota, Matt Hartline, Christy Swenson, Bill Squires, Brent McFadden, Troy Evans, Judy Coy, Ted M. Erickson, Elvira Erickson, Aneita Weeks, Erica Bates Alldredge, Byron R. Bates, Leta Bates, Adam L. Alldredge, Janette Clark, Mark R. Alldredge, Ron Lagerstom, Mark Mortensen, Mel Mortensen, David Munns, Carla Clark, Shawn Clark, Melissa Clark, Kyler Clark, Ryan Clark, Tracy Clark, Jamie Clark, Tiffanie Clark, and Kirsten Ruebush. Anthony Merrill was excused. The Pledge of Allegiance was recited and roll call was taken.

March 24, 2016 Meeting Minutes

Chairman Robertson asked if there were any changes or additions to the meeting minutes from the March 10, 2016 work meeting. Bill Squires requested that a sentence be changed or deleted. It was noted that the sentence would be deleted. A motion was made by Ed Williams to approve the minutes with changes as noted. Mike Munns seconded the motion. All were in favor with the exception of Matt Hartline, Bill Squires, Shane Sutton, Aaron Swenson and Christy Swenson who abstained from voting due to their absence at the meeting. Motion carried.

The minutes are taken as nearly verbatim as possible from the recording.

HEARING

Chairman Robertson opened the public hearing at 7:06 PM. He then asked if there was any conflict of interest with any of the commission members. No conflicts were mentioned. Chairman Robertson then asked if the Public Hearing Notice had been posted appropriately. Judy Coy stated that the notices had been published in the Standard Journal newspaper on March 11th and 18th, 2016 and had also been posted in the appropriate buildings. Brent McFadden noted that the public hearing notice had been posted on the property in question.

Byron Bates – Conditional Use Permit for a Hardship Dwelling

Byron Bates: 5896 South 2000 West. I don't have a formal presentation I just came in to appreciate this thing being moved up and not held on longer. We had looked into several ways of helping our son and daughter in law actually daughter and son in law move into a home. We looked at purchasing a home out there in Lyman and some other things and we, it looked like this was the best way to go. We asked, we didn't rely on our expertise, we didn't know what the rules were, we did ask here at the city and we received information from here. When we finally got the building permit I thought it was ok to proceed. We incurred costs that actually is, when I was asked originally I made an estimate that was around \$20,000, it was actually closer, much closer to \$30,000 that we have incurred in being of assistance to helping them do this. Based on what we believe was advice we received here, and we are just very concerned. We wouldn't have risked any money if we had felt that we were in noncompliance. We definitely wouldn't have done it, and the other issue was I don't like the idea of maybe making neighbors feel like we are not friendly with them or that we will have some kind of an issue later. But I would just

like to say that my main concern is that we wanted to help them find the most economic way do this and we did nothing except keep everything above board. We asked questions and we tried to act on exactly the answers that we were given and just find a way through. I didn't realize this kind of a thing was even possible, a meeting like this. But we will certainly do whatever we are told to do, but it is at some substantial cost to us and I think that is my total presentation. Do I answer questions?

Chairman Robertson: Does the commission have any questions for Mr. Bates?

Bill Squires: So did you buy the mobile home for them?

Byron Bates: We let our son and daughter in law purchase this home and it has good bones so we have to renovate it. It has got two by six boards on the exterior and we have just this summer put siding on Ted Erickson's home. We are going to do the same thing with their home. We were planning on doing the same thing with their home. That is about three thousand that we will put into that. If we were to not be able to do it, there would be immediately, the gas company would require a thousand and ten dollars from us for not signing up a customer. I am sure that there will be something that we don't know that we are not in compliance with but we have had to rely on other people to know that. If you had to come to me about replacement in printing, you probably wouldn't know the answers yourself, but I would and so that is how I proceeded here is I sort of tried to do my best to listen to and honor the advice that those people that were here, I certainly wouldn't have risked a hundred dollars if I thought it wasn't a functional thing and wasn't going to be able to happen. I would not like to risk the friendship of our neighbors and friends so hopefully we can find a way through all of that.

Chairman Robertson: Mr. Bates could we have you explain the hardship on this for the conditional use permit.

Byron Bates: Well I don't know what that means other than it's a hardship to lose that amount of money. That is probably more than our annual income and for us to get that much in savings it took multiple decades worth of effort on our part. And we certainly wouldn't have risked it if we thought it was possible that it could just go for naught.

Aaron Swenson: So, just so I am clear on what has happened is you, between you and your son and your daughter, you worked out an idea to put this back here and you came to the county and the county gave you a building permit.

Byron Bates: Well we asked the county ahead of time and there were several things that were difficulties. It has been over a very long period of time now so my memory may a little foggy. At no time did I ever misrepresent myself to any one, and I know that. I knew there were some difficulties that we had to work out. When my wife and daughter went in to get the permit, when they were able to secure the permit, I thought we were ok. I wanted to think that they told us that we had to make sure there was a full garage on it. That we couldn't just have a car port and so that was another additional expense that I can try to think of how to get it taken care of. And at the moment we were just going to have them park underneath where we used to have a sister in law's boat until we could get them a full garage. But yes, and then the kids were unaware that we would purchase their home. We let them make the choice and do the very best they could with the money that they had saved and when they chose one that had to be renovated we went

ahead and put that amount of money into the bank account so that they would have enough money left over to do some other things. When we looked at Cleona Simpson's house the cost was rather high for us to accomplish but we might could have accomplished it, possibly not immediately. But it also required a well and it required a septic tank and other things like that. So this did seem like the better choice, the better way to go.

Aaron Swenson: But you proceeded with the understanding that you thought this was above board. Your family was ok with it.

Byron Bates: Yes, and we did talk with people and they were pretty good about explaining things, I thought, and I thought I was pretty good about understanding. For noncompliance, that bothers me a little bit, but I don't, I'm not sure what to do at this point because we have gone so far down this financial place.

Aaron Swenson: No, that is fine I am just trying to understand how we got from point A to point B. How many acres is the property.

Byron Bates: It is .88 acres so we probably have a noncompliance.

Rick Robertson: How long do you plan on leaving it there?

Byron Bates: I don't have a definite period, but it is moveable, it can be moved.

Rick Robertson: Could be a temporary situation.

Byron Bates: It could possibly be, yes.

Mike Munns: I believe that picture with the line around it is a miss representation of the property.

Brent McFadden: Yes the let me explain that. We have not done the corner perpetuations in that township. So, the Ortho Photo doesn't always line up with the parcels.

Mike Munns: Could we get a definition or drawing of where the lines goes.

Brent McFadden: It actually goes, if you look at the, everything would shift to the west to line up with the road.

Byron Bates: So, that little roof that is rectangular that is the back of the property.

Brent McFadden: That is their house. The front of their property would be right along the edge of the road. This is, the latest program works, and all I can do is highlight the parcel and it will circle the parcel. The parcel is not lined up properly. If you look at the church's property line it is right through the parking lot. We need to have it all shift over here to the road.

Byron Bates: If you will just follow that long narrow building, the back edge of it that is the property line.

Brent McFadden: Yes their property line is right down there. It runs down here, and along this parcel, and this property, and this here.

Matt Hartline: Where is the house located right now? As far as the.....

Byron Bates: Would you like to see a picture. This is a photo. This is different. This is looking from the driveway, our driveway off of the front road. And here is the green house, and if you go back here there is the house, there is the house looking back here. If you keep backing up, this is the south end looking north. This is looking toward the east and then if you look at the south end looking toward the road you see our house, and then the road out here and then Donnelly's on the other side of the road. Does anybody else want to see?

Rick Robertson: Mike.

Mike Munns: So if I understand what you are saying Byron, is that you loaned the money to your children to buy or purchase?

Byron Bates: No we have given it to them. No they already purchased it. They purchased it with their own money and then we put the same amount in their bank account.

Mike Munns: So the building itself, that you are putting there, belongs to your children.

Byron Bates: Yes

Mike Munns: Ok.

Shane Sutton: If I understand you correctly Mr. Bates, the trailer house or the mobile home is already behind the house.

Byron Bates: Yes, yes it is. Oh, in fact why don't you look. This is looking out toward our house and the road. This is the same looking to the east. Here you are looking to the east and here to the west. Does anybody else want to see it? So this is our house the foundation looks just like a regular trailer home with the skirting on it. It is very nice. Does that make sense?

Rick Robertson: Mike you had a question.

Mike Munns: Could we get our legal to give us a definition of hardship?

Troy Evans: That is a good question, there is no definition in the code, you just have to use what you see, it is different for everybody, you will just have to use what you think it is. I could look it up in the Webster's dictionary if you want but there is nothing that defines it.

Bill Squires: I looked it up. Want me to give it to you? Severe suffering or privation due to tolerable levels of hardship.

Aaron Swenson: What are the consequences of the conditional use permit being denied?

Byron Bates: The money just vanishes. It is all gone. We have spent it for nothing.

Aaron Swenson: You still own the home though right.

Byron Bates: Yes

Rick Robertson: Any more questions from the commission?

Byron Bates: If someone would like to go through these they are sure welcome to. This is just showing the position of the house mostly. You are welcome to look at it if you have a question.

Rick Robertson: The zoning here is Trans Ag.

Brent McFadden: Although it is in what the comprehensive plan calls a Town Center. On one of the sheets I gave you, it explains what that entails.

Byron Bates: Am I finished?

Rick Robertson: Yes. Do you have a presentation for us Brent?

Brent McFadden: Just that, these are off of our computer program, the Arc Map. I am just trying to give you some idea. That is the Bates property. Like I said, the Ortho Photos don't line up with the parcels because we have not done the corner perpetuations out in this township and I don't have the money to do it this year so I have been trying to do a township every year at a cost of about eighteen to twenty thousand dollars to the county. But I don't have the budget for it this year. Anyway that is the Lyman church house to the south of them. Clark's own the property around them. I don't know the name of the people across the street. Anyway, these are taken off of Google Earth. That is the house looking to the east on the Archer Lyman highway. That is kind of looking toward the church parking lot and that is looking at Clark's house, and this is looking across the street to the west. That is just giving you a view of it.

Christy Swenson: Did you say this is actually part of the Lyman town site?

Brent McFadden: It is part of the Town Site and sits within the Town Center. If you look it up in the back of your code book. The Town Center allows that you can have two dwellings per acre. But they are .88. So it doesn't really fit. I mean it is undersized anyway. Just to let you know that if they had had a whole acre this would have been permitted because it is in the Town Site. That is what Ralph went on. He looked at it and knew it was in the Town Center and he didn't do the math to figure it. He just looked at it, thought that looks like an acre, and so he issued the building permit. Then I had calls on it to stop, and told them they needed to come in and get a conditional use permit. After hearing his testimony I think what he was actually doing was a detached garage apartment, which we allow. That is not what I understood and so I had them come in and do this as a hardship. The reason, well Bill remembers, it used to be a mother in law unit that we had and we changed that because it wasn't always a mother in law. It could have been the daughter in law. We have had family members, younger family members, people that had an accident that needed to be taken care of and came home, so we changed it to a hardship, but we did not do a definition because we didn't know what the hardship was going to be. So it fits in the back, we issued the building permit for it and then I stopped by and told them that they were going to have to prove that there was a hardship. That is why we are here tonight.

Matt Hartline: Are we looking at an individual septic and well?

Brent McFadden: No, they will have to do a joint septic system. I talked to Kathleen today, they have an application to expand and replace the old septic system with a new one that will work for both houses. Both living spaces. We will put it that way.

Bill Squires: Brent is this a hardship or is this another house being put in as a living space?

Brent McFadden: You are going to have to decide that. The hearing tonight is for a hardship. You are going to have to decide whether he has got a hardship or not. I can't decide that. There is no definition as Troy said on a hardship.

Doug Sakota: Who issued the original building permit?

Brent McFadden: The original building permit was issued by the Building Inspector.

Doug Sakota: When was that?

Brent McFadden: I have no idea on the dates. A month or so ago.

Mike Munns: Does the Building Inspector have the authorization to do that or is it issued through you?

Brent McFadden: Well I, yes you are right, either way we should have gone through this route.

Leta Bates: The permit was issued on December 7th, 2015.

Brent McFadden: He may have said something to me Mike and I just missed it.

Byron Bates: It wasn't purchased until after the permit was issued.

Brent McFadden: It is my fault, and I am the boss, so I am in error.

Doug Sakota: I have a legal question. Is that permit legal or is it nullified?

Troy Evans: Well it was at the time it was issued, I mean when it was issued by the proper authority and that's what it is, the problem is he didn't look closely enough at what the acreage was. Is it illegal now, I don't know, I would have to look that up.

Mike Munns: Does the.... who's responsibility is it to show the legal description of the property?

Brent McFadden: They brought in a legal description but it had no acreage on it. I looked it up today and I found that it was .88. I went through and did the calculations. Actually I did the calculations .87 something but when I looked it up on this and click on it, it shows up at .88 acres.

Mike Munns: Did the deed show?

Brent McFadden: The deed shows no acreage. And I'm sure that what Ralph was doing was issuing it on a detached garage apartment which we allow under a conditional use permit. So it still should come through us one way or the other. To you as a commission.

Rick Robertson: Any more questions? Judy it looks we have two letters of correspondence.

Brent McFadden: I will read them.

Madison County Planning and Zoning
Re: Byron Bates Conditional Use Permit

17 March 2017



To Whom It May Concern:

As close neighbors of Byron and Leta Bates, we wish to express our support for the issuing of a Conditional Use Permit to allow for a mobile home on their property. The Bates are the best of neighbors and we can foresee no disadvantage to the neighborhood if a permit is issued. We also know the proposed residents of the mobile home and are confident that they will keep the property in order and will be peaceable and respectful members of the community. The location of property is such that nearest neighbors are hundreds of feet away, and we expect that most of them will not even notice the presence of a few new residents.

It is our understanding that the county has already issued the Bates a preliminary permit, and that the eminent decision to be made by the Planning and Zoning Commission is whether, on the basis of a concern expressed by a neighbor, to extend this permit. We cannot even imagine that there would be any concern about this issue, but regardless, it is our opinion that the Bates acted in good faith on this permit and incurred a significant expense in preparing the property for electrical, water, and sewage hookups. We believe that the county has a moral if not a legal obligation not to rescind the permit already issued, and that doing so could make the county legally liable to reimburse the expenses the Bates family has sustained.

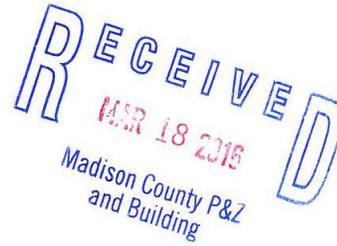
Sincerely,

Handwritten signatures of Jeffrey Andersen and Lori Andersen in black ink.

Jeffrey and Lori Andersen
6007 S 2000 W
Rexburg

15, March 2016
6018 South 2000 West
Rexburg, Idaho 83440

Rexburg County Commissioners
159 East Main
Rexburg, Idaho 83440



Regarding Byron Bates property

Dear Sirs:

I am very disappointed in the disagreement of the "Issue of a Conditional Use Permit".

Mr. and Mrs. Bates did get a permit before they started fixing up a home for some family members. They are trying to help their family members as we all should be doing. I think it is wonderful for families to work together in helping each other. We all should be doing the same.

What a wonderful example the Bates are to the community.

Sincerely,

A handwritten signature in blue ink that reads "Aneita Weeks".

Aneita Weeks
6018 South, 2000 West
Rexburg, ID 83440

THOSE IN FAVOR:

Ted M. Erickson, 5846 South 2000 West, Rexburg. My only question is if they received a building permit, legal and above board, and went to work on it. Now you come in and say it's not good after quite a bit of expense and trouble. That is my only comment. I had building permits too, are you going to come back and say you should have put a different roof on that one. Thank you.

Elvira Erickson, 5846 South 2000 West, Rexburg. We are neighbors. In good faith that the permit that was issued is legal so that could go ahead with their project. (microphone was whining) I don't think that I want to talk.

Aneita Weeks, 6018 South 2000 West, Rexburg. I am a neighbor from across the street. The thing I really admire in them is they were trying to help their family out. And this is the thing that we all should be doing is working to help our family and be good family members. Thank you.

Erica Bates Alldredge, 261 East Main, Rexburg. My husband and I are the ones who own the house. I hope, I would like to say that that we didn't start this process to be a hardship. We had looked at several different ways that we could improve our life style including perhaps purchasing a house. We looked at several different options in that category and decided that it was out of our means. We feel very strongly about living within our means and not going into very much debt. And so we thought about the possibility of putting a trailer home on the back of my parent's property. When we had this idea we decided to go to the county office to make sure it was even going to be legal to do. Before purchasing a home we went and got the approval from the building inspector that it would be legal. I would like to point out that at the time he actually pulled out the map and knew that it was .88 of an acre. But he said that it was still probably legal if we could get the proper permits and approvals for it. The main concern of which being was from District Seven Health. So we went and talked to Kathleen Price. She looked at the property and came and did a soil test and we did get the approval to put the house in. It wasn't going to harm the environment or anything to have that extra septic system there. After that we got the building permit from the building inspector as well and because we had District Seven's approval we were able to get the building permit for that as well. We were not told that we needed to have a hardship in order to do this process and we really tried to make sure that we had all of our legal boundaries covered before moving forward and purchasing the house. In fact we were all set up to purchase another house but we wanted to make sure it was, and that everything was going to be legal. So by the time we got the approval to do it that house had been sold and we ended up getting another one. From the very start we wanted to make sure that what we were doing was perfectly legal and we went to the county specifically to find that out. It is a little bit disconcerting that we could. We had several delays in getting the house back there and it is a little disconcerting that we could have been living in the house for three months before even finding out that this hearing was necessary. We are just hoping somehow that we won't have spent all of the income that we had saved for several years in order to improve our living circumstances because we certainly have a hardship now. Thank you.

Rick Robertson: The next name that we had on here was Byron Bates. Did you choose to say any more Byron?

Byron Bates: No.

Rick Robertson: It just shows on here that you are in favor because of cost involved. Cost incurred. We have your wife, Leta Bates.

Leta Bates, 5896 South 2000 West, Rexburg. Thank you. I probably won't do this very well, I'm sorry. I have never been in trouble and this has been the most horrible three weeks of my life, sorry. When Erica and I went to the building place to get the permit Erica was with me with her daughter. We repeatedly told the person who was helping us that we didn't know what we were doing and that we appreciated his help and we told him that it was for her. He was making notes the whole time, he didn't say is this your building permit, he said it went through some kind of a committee or something of some sort and so when it came through then we went forward in full faith that this was an ok process to do. We had no idea. It wasn't a hardship at the time. So now that we are asked to prove that it was a hardship the only thing that we can prove is just that it's very very expensive for us. My husband mentioned that it is more than our annual income, the amount that we have spent so far. And we do have income tax information if

you want to look ours and our son in law and our daughter. They don't make very much money. We are just trying to help them to have a place to live and that is all we were trying to do. We weren't trying to rent the house to them. It was just a place for them to be. We appreciate your consideration and apologize for causing a problem.

Adam Alldredge, 261 East Main Street, Rexburg. I m a brother to Mark Alldredge. So the only thing that is missing is, do they just need a little bit more property. Does it just have to be one acre. Could they just buy a little bit more and be within the legal ramifications. That is just what I am trying to figure out, because if that is the only thing standing in the way then we could just solve it easy like that. But I don't really have much to say. There has already been a lot said but it just seems like the easiest thing to do is just make it an acre, buy a little bit more. Thank you.

Janette Clark, 26 North Maple Avenue, Sugar City. I don't, I know the Bates. I know them quite well. I go to their house periodically. The last time I went by there house I knew that the trailer was there but going to their house I couldn't see it. So it seems to me like it's there but as far as esthetics I don't think anybody would really know it is there. It just seems to me that if when the county has given their approval and the Bates and Alldredge's have gone forward in good faith that the county should certainly honor it's permit and let them, give them the permission to continue. Thank you.

Mark Alldredge, 261 East Main, Rexburg. I am the husband of Erica. Hoping to move into the house. We don't plan on leaving the house in the condition it is in currently in. My wife has spent time making up the mock ups of what we want the house to look like. We want it to be beautiful. We want our daughter and possible future children to grow up in a good home next to their grandparents and great grandparents. We want a place, a good community. With the money that we have spent if we were to have to move the house, all of that money. Would we have to get a new building permit and a new, I was thinking of all the cost that we would have to accrue again. We would have to buy two acres, find two acres. It would be a struggle to find. We would like to live up around the parents. We don't know what we would do at this point if we have to move the house. We want it to be a good home. We would make it look beautiful. We have been working on the inside. I hope you guys ok it.

Ron Lagerstrom, 6070 South 200 West, Rexburg. I live four houses south of the Bates. My wife would like to talk but her voice is actually worse than mine. As deep as mine is right now her's is that much higher. I knew that the Bates were looking to do this well before any physical thing was done. I even challenged Leta. I said I don't think you can do that and she said no, we have gone and we've got the permits it's all legal. I was really surprised. I was like man, I'm surprised. I actually challenged her twice and she let me know that she had gone and met with the building and zoning and everything had it's I's and T's crossed and everything looked good. I guess that is one of my biggest struggles is if the county gave them permission and then the county takes that away. Shouldn't the county incur the cost to replace what the Bates have put out. I will also say that I have looked for three days to try to figure out where this house was in your back yard and even then I couldn't see much. Maybe I am blind. I looked at it from every angle but I can't legally, without trespassing. And it is not an eyesore in any way that I have been able to see. The Bates are the pillar in our community. Truly people that everyone admires. Whether they are on one side or the other of this entire thing. That is the hardest part here, the last thing we would want to do is to harm feelings of neighbors. That's it. We have had two people die within that strip within a very short time so feelings are tender. This is really

poorly planned timing. I would put my board of approval that the Bates as a neighbor will be able to follow through. If not I really would ask do they have a legal right to go at the county for the county to incur the costs, is that a yes or a no. Ok thank you, that is all I wanted to know.

Mark Mortensen, 5852 South 2000 West, Rexburg. Mainly the only issue I have is they have issued the permit and they have spent the money so if they can't proceed then I don't feel they should have to fork out the money to move it or whatever. That is my view.

Mel Mortensen, 1709 West 5500 South, Rexburg. I have heard just the rumors flying around about this project. I have the same question. It is more than just costs, it's the liability here probably cause for a lawyer. I bought a permit last fall for a shop which is an AG building and I am a little bit concerned. You know they, you just tell them where it's at and you don't give a lot of details and we are almost ready to pour cement and I sure don't want the neighbors starting to complain and not wanting the building in front of them or whatever for a tenth of an acre. I am with a lot of the other neighbors, you really have to look to know this house is back there and if it's not going to affect the ground water and it might not be there forever I would say the county is staying out of trouble.

THOSE OPPOSED:

Carla Clark, 5878 South 2000 West, Rexburg. Well I happen to own the ground all around them. I'm next door neighbors. And I just can't believe that neighbors can do this to neighbors. I have lived in our home for over forty five years. I've tried to keep my house and my yard nice so my neighbors don't have to be ashamed of where they live and to live by me. My husband died just a month ago and if there is any reason I have to sell my house I think my property value is going to go right in the toilet. If you come to my yard and my house that is all you can see is that trailer right next to me. And I just, I don't feel like that this is right I mean I just. I have enjoyed living by the Bates and the Erickson's like I said ever since we have been married and I just feel like I don't approve it. It just looks terrible from my yard. You look at from my side of the fence and it just it really is not a pretty sight.

Shawn Clark, 5065 South 2000 West, Rexburg. I am the oldest son of Von and Carla Clark. If I read this Notice of Public Hearing right, conditional use permit. To me conditional use permit is something that is temporary and is not going to be there forever. But from what we have been hearing they don't plan on this trailer moving any time soon. It says right in here .88 acres. You can pull up the Madison GIS and you can look on there and bring up their property and it tells you right on there .88 acres. Why didn't Mr. Robison do that when they were in there for that permit. Another thing is before my dad passed away and he seen this start to happen he made several attempts to call the planning and zoning to talk to them. He left messages and never had a phone call returned to him. On February 11, 2016 he passed away. So this turns to me because we are going to take care of our mom. So I made several calls with no phone call returns which is pretty disheartening. So I work in the industry and I know kind of where to go so I called another individual who made the phone call and got the ball rolling. So everybody is pointing fingers at who called, it was me. I made the phone call. I don't think it's right. There is many things that have been brought up. The one thing is the permit wasn't issued before District Seven was contacted and because they said it was ok and the permit was issued. What is District Seven have to do with a Madison County permit being issued. I have never heard that before. I heard you go in and get a permit and then you go to District Seven and get your sewer permit I

have never heard them contacting them to be able to get a permit. We have been here plenty there is a lot of us to talk I'm going to leave it at that. But I thank you.

Melissa Clark, 5065 South 2000 West, Rexburg. I am the daughter in law of Carla Clark that lives right next door. And I just wanted to say that I understand the Bates trying to help their family, anyone would want to do that. I can totally understand that. But the issue is that the law says they have to live on acre in the town square like that to have two house dwellings and they don't live on an acre. They live on .88. So basically yes maybe the permit was issued not understanding that it was not a full acre. But now that it has come about that we realize that it is not a full acre it is still ok for them to go ahead. So when the next person comes along and they don't live on an acre but this one passed and they bring this example up is it just setting a precedence. Also with the cost and stuff there are two trailer courts not even a mile away from where their trailer is parked right now. So they could purchase their own trailer and put it in that trailer court. So there are multiple options that they could have that would maybe be the same cost as what they have right now. Even though people may not be able to see it from the road like my mother in law said. It is seen very well from their property and the back yard from where she lives. And my problem with it all is with the law thing that it is supposed to be on one acre it is not on an acre. So.

Ryan Clark, 4104 East 230 North, Rigby. I am the second son of Von and Carla. I live in Rigby. I am out of the county but however I have um a very personal responsibility for the area around as my name appears on the property. Um what I see here is we have an issue of a permit to .88 acres that is required for a one acre lot. You can go through all of the records of the, you don't hear the developmental code. The developmental code called out on a one acre lot for a two building home. If the planning and zoning at this point approves this building with a two union home on less than an acre we are setting a precedence that will open the door for anybody else that moves in a trailer or something down the road on quarter of an acre, half an acre, eighth of an acre so on an so forth. So this is a big decision that you guys have to make today. Um is it right is it justified is it lawful. And in my opinion um the Bates were were lead astray by our group here at the county office that should have taken a better diligent effort to look and see what the size and statute of the land were before they issued the permit. If if that this is a legal question I had for our attorney if this is approved does the Clark's have a stand against the county for approving a permit for less than an acre lot.

Troy Evans: I don't have an answer for that because you have to have standing. I couldn't answer that without actually looking it up. There was an adjacent neighbor do they have standing I don't know.

Ryan Clark: That is a yes or no question.

Troy Evans: I said I don't know.

Ryan Clark: Thank you

Tracy Clark, 4104 East 230 North, Rigby. I am a daughter in law to Carla. And my thoughts on this are you live in the country, we moved over to Rigby and are out in the country in a little subdivision but when you are in the country you want land. That is the purpose. Otherwise you stay in the city. You stay in town where there is people all around you. You live in the country

you have land. Carla has, Carla and Von probably a little over five acres. It was mentioned selling the land. Why should she give up her land that they have had for years to accommodate for somebody else. Right next door are the grandparents. They have the same amount of land so the thought is to me I agree with not allowing it because it is under the covenanted um the space but, on the other side there is plenty. It is the grandparents land. So why not the grandparents that have the land. There is already a double wide over on the other property. Why not over there and that to me could be settled. And if there is moving costs I agree if the district if you guys made the error you should cover costs. To me that makes it a little bit simpler so they are not hit with all of this because of an error on your part. So that that is my feeling.

Jamie Clark, 6915 South 3100 West, Rexburg. So are we after the hardship thing here. Is that what we are trying to get approved tonight. So under the hardship dwelling I mean Byron already owns a home. He owns the home right out front of this house. He is the one that is on the letter here. It was applied for the hardship. So my question is, if he is applying for the hardship and he already has a home why does he need a second one. Second, the hardship dwelling chapter states that the must have a crisis in order to be able to move a second home onto this property. There has been no crisis stated other than they are low on money which I ya low on money bad ya is a bad deal but it doesn't fall under a crisis. To me the Teton Dam was a crisis. If you had a fire and your home burnt down that is a crisis. Natural disasters would be a crisis. Um third people move to the country for privacy. Um you first of all you have to pay more when you ah first buy the property out in the country but when you go to sell the property you are under the expectation that you are gonna get that money back if you sell your property. Um when people come to buy your property if there is a double wide trailer sitting right next to your back yard your property value goes down. I know Byron and Leta have expressed how much money they have into this and how devastating its gonna be for them you know to lose this money they have into this um and you jump across the fence if it goes in and my mom decides you know she is living in a great big house all by herself now. If she ever decides to sell that property she has just lost ah you know her property values went down by a significant amount you know so um it comes from both sides of the fence there. Um in Section 101-11H it states that once the hardship is over the trailer must be removed. Um the Bates have put a ton of money into this I doubt that, one bit, you know they moved the trailer on, they bought the trailer, they put in a gas line, they had to have electricity, they have to have a foundation under it stated in that section a temporary foundation but a foundation none the less. Um they have to hook up the water, all of this stuff is very expensive. My point is if they get all of this done and move the trailer in its probably never gonna move. They um, if this is, if this was a hardship case wouldn't they be better off to save the fifty or sixty thousand dollars they are gonna have putting this trailer in behind their mom and dad's house and pay two hundred dollars to hook it up in a trailer court. So um, the Bates are good people, the worst thing about this is that it went this far. If it would have got shut down right when they went in for the permit, you know, if somebody would have said no, wait a minute, this has got to be addressed, this doesn't work, this needs shut down now. Now we got hard feelings between neighbors, friends you know it's a not good. I don't know if you can swear in a county meetings but I just did so.

Tiffanie Clark, 5916 South 3100 West, Rexburg. I am a daughter in law to Carla Clark. Um my biggest concern is what this is doing to Carla's property value and actually since this all started Jamie leaned over to me and he says get ahold of your friend that is a realtor and see what this is actually gonna do to Carla's property value if she goes to sell it. I've got the text on my phone right not going off from her. She said if Carla goes to sell her home it basically affects her, she's

got a horrible view. But she says if she goes to sell that home, it is going to damage her property value. She said, the last comment she said was, definitely plant bushes and trees behind it, those willow bushes grow big and fast, we can come help if you need some help. But it is going to damage her property value if that home is there. I agree with everything that has been said but these people went about getting their permits. I don't think that the fault lands on the Bates, I think that the county is responsible for this. They issued a permit that wasn't issued properly. They've had a ton of time and a ton of money in this, and it's something that never should have gone this far to begin with and it really has, I live in the ward, it's caused hurt feelings and they are wonderful people. People that have lived by each other for over forty years and have gotten along and everything has been fine. This shouldn't have been allowed to happen, and I agree that I think it needs to be removed but I think the county is responsible for recouping some of those costs that have been accrued. So.

Kirsten Ruebush, 1893 West 5350 South, Rexburg. Um this is really interesting to me seeing this neighborhood being torn apart. Um the same thing happened to my neighborhood a few years ago. And as far as I can see it is about the same issue. Um the question is what is the building permit issued for? It should state on the building permit what it was issued for. Mr. McFadden says it was probably issued for a detached garage with living space, it should be put on the building permit. Check the building permit. If it was for a detached garage with living space it should, this hearing should not be happening for a hardship case. It should go through with what they applied for. Um so it is my opinion that this needs to be denied, not because I agree or disagree with what is going on here but according to a code. It is, was for a conditional use permit, that is what the hearing needs to be for not hardship. Um if it needs to be denied the county is responsible for this. If as far as I understand Idaho code when you deny it, it gets sent to the County Commissioners, they will look at it, they will recognize the county, Mr. Robison or Mr. McFadden made a mistake and when it is denied again this applicant has the right to seek regress for it. That is all that can happen with this if it is denied. If it was the county's fault it is not appropriate for you to take the easy out and let the county Planning and Zoning administration continue to put neighborhoods and problems like this because they don't read their code and understand what is going on before they issue building permits. Having said that we were all aware, and I am sure these people are not aware that in Madison County code, we have the ability to have an accessory building with living space. It used to be called a detached garage with living space but it is now an accessory building with living space. You can reapply for a conditional use permit after he has built and put in a place and only when he wants to occupy it. At that point there nothing anybody can do to stop this. That is what happened in my neighborhood, that is the problem with this conditional use permit where an accessory building with living space. The county continues to give building permits that put neighborhoods in this problem and in the end, what, there is no condition as long as they do what they are supposed to. Everybody in the county has the right to do this. I don't necessarily agree that. But that is what the law says right now and you can see how it is unfair to people. You need to change this law and quite this happening. If this is supposed to be a conditional use permit you need to issue it before the construction before the permits are given. And take into consideration what people home values are and for that part protected under zoning. Thank you.

THOSE NEUTRAL:

David Munns, 1899 West 6000 South, Rexburg. Ah it hurts me to see this happening to this community. If they were issued a permit, you better stick to what you issued. Or else, change the law. It has caused problems uh huh. Others have applied for similar permits, they have been denied. My son would not have moved and it has caused and hurt a lot. I personally think that I don't want to hurt any feelings, but I personally think that ah in the long run it would be better if their home was put in a different location because of family matters that come up over the years and contention possibly. I've been there. And we moved. I'm not saying that is going to happen with the Bates, I've worked with Byron and the Bates and they are a great family. They are a real asset to the community. And so are the Clark's. I feel that your zoning needs to be changed. I was always of the opinion that two acre lots for a dwelling I was going to do that with the home that Mike has or used to have, my father's place. I come in and I talked to Brent and he says, no you cannot put another home back there. I says why not. Because it don't meet it. You've got to have two acres per deal per home. I said ok so we dropped that idea. Blake went in for the same thing we knocked the home down built another home. The home was still, we were going to use it for an office. That got turned down on Blake's side when he talked to Brent. So they gave up and they have moved all over since. They sold the home and the property. And I feel that you folks better stick with your rules and not be bending this situation. There are several situations out there in Lyman and Archer, I am not going to name any names and you know who they are. That have put homes on less than two acres. And they have been given these permits. And that is not right. There original plan was I have been bearing on this zoning bit. The original plan was two acres and you are granddied in with what is there. Right. From my own. Stick to it guys. I am on an acre and three quarters and I guess I could get a variance or whatever and try this and I'd be in the same boat as Erickson's. And I may have to try to do that in the future here that is coming up with my son. And if that is the case I come in here for a permit, you issue me a permit and the same thing happens. I am going to sue somebody's hind end. But I feel, I guess I'm going to have to say that I want to be on Erickson's side but the permit has been issued in noncompliance and I feel that the county should pay for the costs and for them to move and locate their home on another area and in the long run Byron and your daughter Erica I love both of ya. I feel I've been in this route I have been down that road. Excuse me. I lived by my parents for years it was just too close. There was feelings and problems that would just surprise ya. And I think in the long run, develops contention in the family. Erica and your husband, I forget his name. You will be better off to take this, the county pays for the permit or all of the costs, take your home and move it or sell it and find another dwelling that is near or buy some property close. My house might be for sale. If you would like it. And ah I am just telling you how I feel and how it is and to have. It just disturbs me. Drive around and see all of the different things that happen and then we try to do something and we can't because of that two acre law. I protest it said one acre. This home is not on one acre. Eight tenths right or point oh eight. I think that you guys should bear the burden. I'm that may not be right but the permit sounds like it has been issued in false intentions or understanding or not know where you are at and those people better, that issued them and looked at it, better get their ducks in a row before they go doing these permits and make sure. That's all.

REBUTTAL: No rebuttal was stated by Byron Bates.

The hearing was declared closed at 8:20 PM.

COMMISSION DISCUSSION

Arlene Anderson: Do you have a surface water right on your property there?

Byron Bates: Originally we thought we did but we were informed that we don't.

Arlene Anderson: So you don't have surface water.

Aaron Swenson: Mr. Bates have you ever had the lot surveyed.

Byron Bates: The lot surveyed. We know that we lost some feet to the church parking lot.

Aaron Swenson: The reason I bring that up is, I am not a surveyor but I have a couple of surveyors that work for me and so I am around it, I am an engineer. The acreage on the deed doesn't always mean you have .88 acres. You know with a jigsaw puzzle they put the neighboring parcels together and when it is all said and done you actually have the true survey and sometimes it not .88 acres. I was just curious if that had ever been verified.

Ed Williams: I have a comment. The original building permit was for a conditional use is that right?

Brent McFadden: The building permit was issued, I've got to talk to Ralph. When I got notified of this Ralph was in Puerto Rico. I went out and looked at it and talked to them and said well you probably need to apply for a hardship in order to get this to go through. I am surmising and I will have to talk to Ralph that he issued it on a detached garage apartment, that is what it is called, we have not changed it to accessory building. So the building permit was just issued for, what Ralph does is set the building permits for a building. He issues a permit. We do not issue a permit, they come in and fill it out we will not issue the permit until see a septic permit come in from Eastern Idaho Public Health. That is our agreement with them. So we know that they are aware that there is something going on here and we want to know if the septic system will hold it because dealing with a detached garage apartment we require that they be on the same septic system. After hearing them testify that they were going to put a garage on it because that is what they needed to do I am sure that is what Ralph was doing even if they had done that it still should have come back as a conditional use permit for a detached garage apartment. I was not aware of that and that is why I had you do it this way. I did not know that is what they were doing and I just surmised that there was something that they needed to have done. I had them apply for the hardship conditional use permit.

Christy Swenson: Brent was there is there an acreage requirement for the detached garage.

Brent McFadden: No.

Christy Swenson: So if this conditional use permit had been for a detached garage would it have been issued by the building department.

Brent McFadden: Yes it would. The lot size is grandfathered.

Christy Swenson: Would they even need a conditional use permit for that?

Brent McFadden: Detached garage apartment, yes.

Shane Sutton: How do we clarify what a detached garage apartment is versus moving a mobile a mobile home?

Brent McFadden: There is not a definition on that as long as there is a garage detached from the house and the house part of the living area has more than three bedrooms that is what we can allow.

Doug Sakota: Does this have a garage?

Brent McFadden: They stated and that is when it dawned on me that what they were really doing was that, because they said to put a garage on it to make it be a detached garage apartment. Even at that we should have asked for a permit for a conditional use permit, they should have gone through this process. Before the permit was issued.

Kirsten Ruebush: Before they occupied it?

Brent McFadden: Well when they occupied it yes. The hearing is closed Kirsten. I am.

(Kirsten Ruebush talking in the background.)

Matt Hartline: The detached garage with living space would also be a permanent structure as opposed to a garage and a mobile home or something like that.

Brent McFadden: Correct. The hardship is when the hardship was over they have to move it off. They have a year after the need is gone for them remove that from the property.

Ed Williams: I suppose everybody on the committee here has read that article on the from our code let me read it to you.

Rick Robertson: Ed are you referring to the nonconforming issues on the back one. H. Regardless of the provisions. Would you read that for us.

Ed Williams: Regardless of the provisions of this section and those uses allowed under other provisions of this part where residential uses are allowed, a hardship dwelling shall be allowed provided the property must remain in the name of the owner, and the person or persons residing within the dwelling must be related to the owner with 2 levels consanguinity and that the added dwelling be temporary and be removed within 1 year of the end of the need. So that is what it says in our code.

Rick Robertson: Thank you. Anymore comments from the commission?

Bill Squires: I think this is a big mess of course. I can definitely see both ways. I can save a lot of time but thinking we are to follow the procedures that we've got and allowing a hardship dwelling that this came under my opinion would be that it doesn't fall into a hardship case especially since it sounds like it is a permanent living facility. What this hearing is about doesn't

mean that they can't come back and redo it the other way but I would suggest that it doesn't fall within that definition. It doesn't mean that the Commissioners can override that either it is just our recommendation.

Rick Robertson: Thank you Bill.

Mike Munns: It is my understanding that it doesn't matter who owns the dwelling that they proposed to live in or where Bates have applied for the permit are the Bates supposed to own the property or the dwelling?

Brent McFadden: Bates own the property, they have to own the property not the dwelling.

Aaron Swenson: Just asking questions. If this were denied tonight can they come back to the next public hearing and get a conditional use permit for a detached building with living quarters?

Brent McFadden: Yes.

Ed Williams: Well isn't that what we are working with now. The permit is a conditional use permit and so here we have and I just read what a conditional use permit allows.

Arlene Anderson: Do you have a copy of the permit. What does the permit state, what is it for?

Brent McFadden: All it is, is a permit to set that trailer on that property.

Mike Munns: And so if I understand this then by that permit that dwelling or home to be put on the property does not fit the ordinance.

Brent McFadden: It does not fit the zoning ordinance.

Mike Munns: The zoning ordinance at this point.

Brent McFadden: Unless you consider what they have presented to you is a hardship.

Matt Hartline: I think it would be a stretch to say it would be a detached garage with living space. To come back to that because, because it is not a permanent deal. Yes the garage would be permanent but the garage is not because it wouldn't be sitting on a foundation or be attached. So I don't know, I don't see that that would be, I think it would be a stretch and I think that that then also would also open up the county to you know, everybody could build a single care garage and attach to a modular home or mobile home.

Rick Robertson: Arlene did you have a comment.

Arlene Anderson: I was just going to say I really think the closest use that was intended from the beginning, from the beginning, was under our county code Section 117-59 on Town Sites where it talks about the community core and the community edge and then it lists permitted uses. The first one listed is a single family detached residential with gross densities of at least two units per acre, but for the fact of, but for that one tenth of an acre they would be perfectly within their

legal rights to put another dwelling on that because it is in a Town Site. So the real squabble is a tenth of an acre.

Matt Hartline: It does state underneath there though that each building on a lot um on a primary street frontage shall have an entrance facing the street.

Arlene Anderson: Well they are obviously going to enter off of the street but do you mean, but do you mean that the home has to face, where does it say that?

Rick Robertson: Which one are you referring to?

Matt Hartline: On number 5C.

Arlene Anderson: Oh on number 5 under C. Each building on a lot with primary street frontage. I don't think that it excludes it, the wording. Each building on a lot with primary street frontage shall have an entrance facing the street, entrances shall be accessible to the public as a regular building entry from the public sidewalk. That is for.

Mike Munns: If that was the case then this was allowed, how many entrances to the property can you have on to the street.

Brent McFadden: They could only have one. I mean the way I interpret that is that if they were facing the building they have to have an entrance from the street. And I think that is more leaning to in town centers we allow commercial. What they are saying is that if you have a building on there, one solid building, each business has an entrance facing the street rather than coming off the road.

Christy Swenson: I guess I have a really hard time with the fact that this wasn't a hardship case to begin with. It was a hardship created by the county. I guess that is where my struggle comes. I guess if I am going to speak my mind. I think if it were me, I would be suing the county.

Bill Squires: I think that we ought to let the county take it back to the county and let them decide.

Christy Swenson: The other issue I have with hardship is that it was meant to be a temporary situation and I don't think that is what it was intended to be, a temporary situation so the hardship requirements that we have, I don't feel that it fits.

Aaron: Well to add to that Christy. I think what this does is it just kicks the hardship down the road because the way that I read this is, you know someday mom and dad will die, they could interpret the conditional use permit as you are done. And so if I am understanding that correctly mom and dad are gone and no longer own the property, the conditional use permit is done and at that time they have to move it. I am afraid we might just be kicking the can down the road.

Bill Squires: I would move that we not accept this as a hardship.

Rick Robertson: Ok we have a motion to not accept this as a hardship. Is there a second?

Aaron Swenson: Second.

Rick Robertson: Aaron seconded it Judy. Call the roll call vote.

Judy Coy: Arlene Anderson.

Arlen Anderson: What was the motion?

Rick Robertson: Bill would you repeat your motion.

Bill Squires: That we deny it because it is not a hardship.

Rick Robertson: Being denied as not being a hardship.

Arlene Anderson: Well due to the original intent of a hardship and that was not the original case I have to vote yes.

Judy Coy: Mark Hansen.

Mark Hansen: Yes

Judy Coy: Matt Hartline.

Matt Hartline: Yes.

Judy Coy: Mike Munns.

Mike Munns: Yes.

Judy Coy: Doug Sakota.

Doug Sakota: Yes.

Judy Coy: Bill Squires.

Bill Squires: Yes.

Judy Coy: Shane Sutton

Shane Sutton: 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.

Rick Robertson: Yes

Judy Coy: The voting is unanimous in favor of denying the conditional use permit request.

Rick Robertson: Do we have a motion to dismiss.

Brent McFadden: We are only a recommendation to the County Commissioners. This will go to them and the Findings of Fact is not a hearing. They won't take testimony, they will listen to it and decide whether or not they agree with us or not. They can rehear it, or table it, or they can agree with us, or they can say we will hear it on our own. So those are their options.

Rick Robertson: Could I have a motion to adjourn.

Mike Munns: I so move.

Doug Sakota: I second.

The meeting stood adjourned at 8:41 p.m.

Meeting minutes accepted by:

Meeting minutes prepared by:

Rick Robertson, Chairman

Judy C. Coy, Coordinator