

Minutes of a Special Meeting of the Lava Planning and Zoning Commission held Tuesday, October 28, 2008, 6:30 p.m. at Lava City Hall, 115 West Elm Street, Lava Hot Springs, Idaho

Present: Dave Sanders – Chair
Rita Anderson
Curtis Waisath
Fred Hinz
Nick Nelson

Trish Avery – secretary
R.B. Scott – Code Enforcement Officer

The meeting was called to order at 6:30 p.m.

Minutes: A motion was made by Rita Anderson and seconded by Nick Nelson to approve the minutes. All voted aye, unanimous.

Statement of Facts, Findings and Recom. The discussion was opened on the Statement of Facts, Findings and Recommendation for the Conditional Use Permit for a Bed and Breakfast, applicant Milan Zabka.

B&B-M. Zabka: Rita Anderson said that after reading through the ordinances and Mr. Zabka's application she had some comments. She stated that she felt the commission was forced to go back and change their decision instead of following the intent of the ordinance. On Mr. Zabka's application he states that "My home will be owner or manager occupied while guests are staying." In the Vacation Rental Ordinance, the definition of a Bed and Breakfast: "A dwelling ...and is owner or manager occupied." It doesn't say only while guests are staying there. The definition of a Manager: "A person living on site..." not just while guests are staying there but "living on site". She stated that to her this goes back to what a Bed and Breakfast is suppose to be. When this ordinance was drafted, the commission took into consideration Glenda Heath, she is running a real bed and breakfast because she lives there all the time, and it is her residence. Rita also noted that on page 2 of the ordinance under Section 3-B-1 "A bed and breakfast must be licensed and the owner's name residing on site..." which indicates that this is their primary residence if the owner is residing on site. We have a condition here where the owner is trying to make some extra money, this is his vacation home not his primary residence. Now she feels that the commission is being coerced into approving this so called bed and breakfast because the original intent of the ordinance to keep vacation rentals out of the residential areas is hard to enforce.

Curtis Waisath questioned what the purpose of the public hearing is. He stated that the biggest voices at the public hearing were against the conditional use permit for a Bed and Breakfast. If we allow Mr. Zabka to have a Bed and Breakfast then the citizens don't have a voice in these matters.

Dave Sanders said that he thought that the reason that the commission decided to recommend approve is because the city would have more regulation authority than to go on as he is.

Rita Anderson questioned how restrictive the city can be with the conditions that are placed on this permit. She asked if we can make one of the conditions that the bed & breakfast is owner occupied.

Trish Avery reported that she had spoken to the city attorney. He said that the ordinance allows for a bed and breakfast to be owner or manager occupied and didn't feel that the city could restrict it to being owner occupied. She questioned if because the ordinance indicates that the owner or manager be living on site, can we require that the owner has someone living on site to comply with the ordinance.

Rita Anderson said that living on site means actually living on site not just staying there when there are guests. This was discussed further.

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Rita Anderson referred to Ordinance 2008-1 section 9-E-3 which states; "A conditional use permit shall not be considered as establishing a binding precedent to grant other conditional use permits."

Trish Avery explained that the attorney had stated that we can place different or more conditions on each conditional use permits but we can not go against the city ordinances in setting the conditions.

R.B. Scott stated that his contention has been all the way along that as things are the city has no control, but if the conditional use permit is granted it gives the city more control over this bed and breakfast. If the applicant violates the conditional use permit, the city can pull his license and site him. If he has a bed and breakfast there will be someone on site to control the noise, etc. from the guests. The commission discussed this further.

Rita Anderson questioned R.B. Scott pertaining to fire regulations. R.B. said that recreational fires are permitted in the city but they can only be 3 feet in diameter and 2 feet high flames.

Curtis Waisath questioned if ATV's/snowmobiles/motorbikes need to be addressed. Rita Anderson referred to passed problems in town with noisy guests. R.B. Scott said that there are state and city laws addressing these issues as well as noise. This can also fall under the "disturbing the peace" law.

The commission reviewed the conditions which were placed on Donna Godwin's conditional use permit and discussed what conditions they would like to place on this conditional use permit.

A motion was made by Fred Hinz and seconded by Nick Nelson that the commission recommend to the city council that the following conditions be place on the conditional use permit for a bed and breakfast, applicant Milan Zabka:

1. The Applicant for a Conditional Use Permit for a Bed and Breakfast on the above described property be approved so long as the same conforms to all provisions of Ordinance 1983-2, as amended, and as further amended by Ordinance No. 2006-5.
2. Two off-street parking spaces on Applicant's property shall be provided by the Applicant.
3. All guests shall be required to arrive and depart before 10:00 P.M.
4. All guests and owner/manager shall observe quiet hours between the hours of 10:00 P.M. to 6:00 A.M.
5. The owner/manager shall occupy the Bed and Breakfast at all times when there are guests present.
6. The maximum number of guests allowed will be six with a total occupancy of seven including the owner/manager.
7. A sign shall be attached to the front of the home located upon the property to comply with Ordinance No. 2006-5, of a size of 12" x 12", which sign shall include telephone numbers for the owner and any and all managers of said premises.
8. The Bed & Breakfast shall pass a change of use inspection by the Bannock County Building Inspector.

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9. In the event that the Conditional Use Permit is violated by the owner/manager that the Conditional Use Permit and license be revoked and that the Bed and Breakfast business be discontinued.

All voted Aye, unanimous.

Vacation Rental Ord.: Several documents pertaining to vacation rental ordinances in other areas had been received from the city attorney that day. The attorney recommended that the commission review these documents before proceeding with amending the Vacation Rental Ordinance.

A motion was made by Fred Hinz and seconded by Nick Nelson to table the Vacation Rental Ordinance amendment until the commission has a chance to review the information which was received from the city attorney. All voted aye, unanimous.

Comprehensive Plan Review: Rita Anderson reported on the Comprehensive Plan Community meeting which was held on October 22, 2008. There were 35 guests present. There has been a lot of positive feed back.

Other Business: None.

Schedule Next Meeting: A motion was made by Fred Hinz and seconded by Rita Anderson to hold the next regular meeting of the Lava Planning and Zoning Commission on November 18, 2008 at 6:30 p.m. All voted aye, unanimous.

Adjournment: A motion was made by Rita Anderson and seconded by Nick Nelson to adjourn. All voted aye, unanimous.

The meeting adjourned at 7:30 p.m.

Trish Avery – secretary

Dave Sanders - Chair