

Minutes of the Regular Meeting of the Lava Planning and Zoning Commission held Tuesday, May 25, 2010, 6:30 p.m. at Lava City Hall, 115 West Elm Street, Lava Hot Springs, Idaho

Present: Dave Sanders – Chair
Curtis Waisath
Nick Nelson
Cory Unsworth
Trish Avery – Secretary

Guests: Lisa Toly, Steve Toly, Darrel Trost, Clinton Pagnotto, Kerby Pagnotto, John Somers, Ted Sessions, Shawn Mulholland, R. Ben Fisher, Glenda Heath, Jerry Zambo, Vicky Lyon, Jean Haddow

The meeting was called to order at 6:38 p.m. by Nick Nelson, acting chair.

Approve minutes – April 20, 2010

A motion was made by Curtis Waisath and seconded by Cory Unsworth to approve the minutes of the April 20, 2010, Regular Planning & Zoning Meeting. All voted aye, unanimous.

Dave Sanders arrived at 6:42 p.m. and resumed the chair duties.

Public Hearing – Zone Change Application

Applicant – River’s Edge Resort LLC

Dave Sanders opened the public hearing on the Zoning Map Amendment Application, applicant – River’s Edge Resort LLC.

Trish reported that the office staff noticed that the map should have had an additional tract of the Hampson’s Riverview Tracks colored in. The write notices did include this track. The commission reviewed the zoning map and the notification map.

Shawn Mulholland and Darrel Trost, River’s Edge Resort LLC, present their request for a Zoning Map Amendment. They showed a map which had been marked with the zoning and all public use property (city park, LDS Church, and Lava Lion’s Park) indicated. The map showed that the property which they are requesting a zoning change is surrounded by commercial and public use property with three (3) blocks of residential properties located on the south of the proposed site. The applicants stated that they have done a lot of work since they purchased the property five (5) weeks earlier. The previous owner has also done a lot of work to clean up the property. The applicants would like the campground to be something that residents of Lava Hot Springs can be proud of and hope to make some money along the way.

They stated that half of the property which they purchased is not zone commercial. They would like to have this property zoned commercial so that they can rent out the house on a nightly basis. They plan to put in a one way emergency only access which would connect into North 5th West Street.

The applicants addressed the concerns of campfire smoke, stating that according to weatherstat.com 80% of the wind blows to the west. They have contacted other tourist communities which have told them that campgrounds that have gone into those areas have increased the property values and tax base to the city.

Comments were made from the audience concerning the sewer line that runs down the hill along an existing trail from River Street which the applicants plan to develop into the emergency access. The applicant stated that they were not aware of a sewer line running down the trail, but were aware of the sewer line which runs along the river.

Ben Fisher asked what the five year or twelve year plan was or if they had a plan beyond renting out the A-frame house. The applicants said that they are applying for a commercial zone. The existing trailer park is very compact; they may eventually want to make more room. Mr. Fisher interrupted and commented that the applicants will try to extend the campground and do the same thing that Ava Dean has been doing illegally. The applicants stated that there are 4 hook ups on the property now, and that this point they do not have plans to extend the campground now.

Mr. Fisher continued to interrupt and other guest started to make random comments. The commission chair stated that the applicant needed to be allowed to finish their presentation. The audience continued to interrupt and make comments. The assistant city clerk stating the hearing needed to be brought back into order and not have a bunch of jumbled up comments.

No written input had been received.

Dave Sanders, commission chair, started the public comment portion of the hearing. He instructed the guests to come to the front, state their name, and make their point. They will be limited to five (5) minutes.

Steve Toly used the map to show where his property is located. He has concerns that the road is a bottle neck. He is also concerned that the other vacation rentals in Lava have no occupancy limits. There are ownership issues of the road into the A-frame. He is concerned because he uses the river along there also. There will be too much traffic. Vacation rentals are a year round business with year round traffic. Until some of these issues are addressed, he is opposed to turning that house into a vacation rental. He did compliment the applicants on the work that they have done on the existing campground. Another concern he has is that the road into the house has no lighting.

Lisa Toly stated that the town needs growth and development. Her point is that if the city is going to allow the mingling of commercial & residential where is the protection of the residents? She stated that she applauded people who want to invest in Lava Hot Springs. Her problem is that she does not feel safe in her home

on Elm Street and she does not want to feel not safe on Spring Street when they build there. Nightly rentals are fine but there seems to be no rules, no occupancy, no governing of the nightly rentals. Are we going to have a community or are we going to turn the whole town into a tourist thing? If the city is going to allow this type of growth the city needs to govern it.

Ted Session stated that he had looked into buying the campground before the applicants. The reason that he didn't buy it was that not all of the property was zoned commercial. He stated that he owns the big house above the proposed property. He has put five hundred thousand (\$500,000) dollars into his home. The reason he built there is because of the view and the property below was not zoned commercial. He is concerned about the noise and the smoke that would come from the campground if it were expanded. He stated that he owns the Blue Moon Bar and puts a lot of taxes into Lava Hot Springs. He said that once this property is zoned commercial, the owners can do whatever they want to with it. He said that he would be OK with the applicants renting the house out as a vacation rental. He said that he knows that if a campground goes into the property along the river it will reduce the property value of his home. He has no problem with the applicants building residential houses on the property.

Jon Somers stated he lives squarely across from the proposed property. He does not want to open the door to campfires, barking dogs, crying babies, boom boxes. He likes to sit on his porch on nice quiet evenings. He said that the road going down into the property is an ambulance tip over waiting to happen unless the applicants improve it.

Glenda Heath stated that she and her husband, Jerry Zambo, own the property that backs up to the proposed property. They have had issues in the past with the previous owner with a few hundred people showing up down of the property to camp, with campfires, and kids. They are very opposed to having a campground next to their property. They are afraid that if a campground is put in, it will decrease their property value. The campfire smoke right now gets so thick that they cannot open their windows.

Jerry Zambo stated he is not opposed to the applicant renting the A-frame house on a night rental basis. He said that he is opposed to the rest of the property being zoned commercial. If the applicants need the money, they should sale the Hampson lots and let someone build residential homes down there, instead of turning two (2) nice residential lots into a campground.

Ben Fisher stated that he lives across from Jerry Zambo. This property is residential. The reason that he moved there is because it is residential and is quieter than Main Street. If we wanted to live in commercial we would have stores over there. The applicants have no plans. If the city is going to make it commercial, the first thing that will happen is it will be nothing but commercial all along River Street. He said that if he owned the proposed property, he would

terrace the hill off and put in cabins. If that happens, the whole area will be nothing but traffic. When the campground goes in they will have people walking up through their houses. People come to Lava with four-wheelers and a chain will not stop the four-wheelers from going up and down the street. The people come here to have a good time; Lava is a lawless town for them. They don't care. They come here to camp, if they want to camp in a city, they can camp in their driveway at home in the city. This area is residential so build a home, of course there is no way into it except through the campground. He said that he has enough smoke in his neighborhood.

Vicky Lyon stated that this is a hard issue. She said that she would be the most affected because the proposed property is across the river from her and she will have to see it. She said that she has no problem with the applicants renting the home as a vacation rental. They need to be able to use the house. They want to see everyone prosper in Lava. We all need to remember that the summer season is for 10 weeks and town is going to be jam packed, but that is what keeps this town running 365 days of the year is the tourists. She has heard people talk about the policing problem and the ordinances. Vacation rental owners are not monitoring the vacation rentals. Some of the vacation rentals have revolving doors with 30 plus people in them each night. We have to enforce the city ordinances and have restrictions on the occupancy. She supports the applicant using the house as a vacation rental and the existing campground. She said that there is some ingress and egress problems that need to be address before any further commercialization is allow on the proposed property.

After all the guests were allowed to comment, Dave Sanders allowed the applicants to address the concerns and questions that were brought up by the audience.

Darrel Trost, an applicant, stated that they do not have a ten (10) year plan. They do not want to do anything to make Lava Hot Springs bad. They plan to improve the roads in and out. They will think about the concerns before plans are made. They do not want to have the residents of Lava opposed to what they are doing.

The audience questioned if the A-frame and from the locking gate west is currently commercially zoned. It was stated that it is conditional use commercial. Trish Avery stated that the proposed property is currently zoned R-2 residential, there has been no conditional use permit given to the property. The property has been misused as commercial.

Shawn Mulholland, an applicant, stated that the current comprehensive plan shows this area as a controlled future growth area.

Lisa Toly stated that she was on the committee at the time the current comprehensive plan was done. At the time the plan was done there were not the nice residential homes in the area that is why the comprehensive plan changes

over years. It was discussed what development was there at the time. It was noted that the Lion's Club rodeo arena and park and several homes were not there. The city park was there but not as nice as it is now. Since that time it has grown into a nice residential area with the city park and the church.

Darrell Trost said that he doesn't know what happened when there were 200 people on the property, but what Ava Dean has done to improve the property it looks a lot better than it did. The applicants plan to continue to make the property better.

Ben Fisher stated that it looks real good the way it is now.

Jon Somers stated that every campground is full all summer long. He is afraid that the same thing could happen on the proposed property. He does not want to open his door to that. He built his home where it is at, because he didn't want to be around the bars, etc, he wanted to be in the quite.

Ted Session said that he has five (5) lots that his house sits on and his house cost a half a million dollars. He said that he was not opposed to the applicant renting out the house, but does not want to see any further commercialization to the property.

Shawn Mulholland stated that when he build his home eleven (11) years earlier... Ben Fisher interrupted and said put a trailer park out there. Mr. Mulholland continued to say he looked at who could build close to his property and he bought more property. He went into it knowing that he could have neighbors, and ... Mr. Fisher interrupted again and said that he had a neighbor before he built. Then several comments were made from the audience. Ben Fisher stated that if the city makes the proposed property commercial, the city is discriminating against the other property owners in the area, and then they don't have the same opportunities as the applicants have, because he would like to have a bar and a whore house on his property. Several jumbled comments were made by the audience. Mr. Fisher said that everyone should have the same opportunity to have a business on their property.

Mr. Mulholland said that he walked along River Street and you can hardly see the proposed property from the road. Several more comments were made from the audience. Dave Sanders said that the public comment period was over and asked the applicant if they had anything else. Mr. Mulholland started to comment that he echoed... when he was interrupted again by Mr. Fisher.

Dave Sanders again statement that this was the time in the hearing when the members of the commission would have the opportunity to question the applicants. The audience continues to interrupt. Cory Unsworth again stated that the public comment period was over. Dave Sanders asked if the applicant had considered putting some type of buffer like trees or something so the residents would not be influenced by the commercial business. Vicky Lyon said that the

proposed property is down in a bowl and so a trees screen would not make a difference. Dave Sanders stated that the cliff is a natural buffer as it is.

Cory Unsworth asked the applicants if the road into the property could be made so that two (2) vehicles could pass. Mr. Mulholland started to respond to the question when there were more interruptions from the audience. Trish Avery then told the audience that they had been told that the public comment period of this hearing was done at this point and the commission needed to have time to discuss this issue with the applicants. More interruptions started. Dave Sanders told the audience again that the public comment period was over and he thanked the audience for their comments. There was a comment from someone in the audience that they didn't even know who the commission members were. The commission then introduced themselves. (Several of the guests left after the commission introductions.)

Curtis Waisath asked the applicants if they would consider a conditional use permit on their rental. It seems that the public is open to a vacation rental but not to other commercialization of the property. Mr. Mulholland stated that he would not want a conditional use permit because the city could put any conditions that they want on it. The applicants want to make it a family environment. Mr. Trost said that they are going to take into consideration everything that has been said as they make their plans.

Nick Nelson asked if there is a tenant 24-7 at the campground. The applicants said that they do.

Dave Sanders told the applicants that before the commission made a recommendation they would like detailed plans of the emergency access road and what they would be doing on lot arrangements. He also asked what the flood plain restrictions are on the property. Mr. Mulholland said that part of the property is within the flood plain and that they do know the grade for the emergency access.

It was questioned if the road from the campground to the A-frame is owned by the city. Lisa Toly stated that according to her deed the applicant only has an easement where the road from the campground to the A-frame is. Vicky Lyon said there are two separate issues, the road from the campground to the A-frame and the secondary access from River Street. The map was farther reviewed by the commission.

The commission questioned the possibility of a conditional use permit to rent the A-frame. Trish Avery reminder the commission that vacation rentals are not allowed in the R-2 zone and bed & breakfast conditional use permit is no longer allowed in the R-2 zone. The options that the commission has are: to leave the zone R-2 which would not allow vacation rentals or bed & breakfasts; change the zone to R-3 which would allow a bed & breakfast or a motel as a conditional us; change to a C-1 or C-2 commercial zone or create a separate C-3 zone which

could allow for vacation rentals and campgrounds only. She has not discussed the option of creating a C-3 zone with the city attorney. Untranscribable discussion followed.

Dave Sanders brought the meeting back to order.

A motion was made by Nick Nelson to table the recommendation on the zoning map amendment until next meeting. The motion died for a lack of a seconded.

Cory Unsworth stated that in fairness to the applicants, in 30 days the tourist season is half over. Shawn Mulholland asked if he could get a conditional use on the vacation rental so that they can rent it out now until the final decision is made. Trish Avery said that according to the city zoning ordinance, the city cannot give a conditional use permit for a vacation rental in the current R-2 zone. The requirements for a bed & breakfast in the R-3 zone and the Commercial zone options were reviewed.

It was questioned if Zambos were still operating their bed & breakfast on River Street and if the applicants could rent that A-frame on a 30 day rental. Trish stated that the Zambos bed & breakfast was grandfathered but they have discontinued the operation of the bed & breakfast. She also said the A-frame can be rented on a long term 30 day basis. The applicant stated that they want to do the vacation rental legally and not try to find loop holes to get around the ordinance.

A motion was made by Dave Sanders to designate the proposed property as commercial property. He explained that it is surrounded by commercial property and Lava is a commercial town. It is going to be used for overnight stuff for a certain number of weeks a year. His personal philosophy is that people have a right to use their property. The city can only restrict the use of the property for the good of the community. He said that he appreciates all the things that have been mentioned as far as what the guests feel like the community is. The city does have restrictions as far as how commercial property is used. Those restrictions will be strictly enforced; therefore his motion is to grant the property commercial zone for the entire piece. Trish requested that Dave be more specific on the commercial designation, the ordinance has C-1 and C-2 commercial, or is he recommending a new C-3 commercial zone be added to the ordinance. Dave Sanders stated that he recommends that a C-3 commercial zone so that the city can designate exactly what commercial uses are allowed. The house would be free from restriction as for as a vacation rental and to set up additional campsite according to the Recreational park ordinance.

Vicky Lyon stated that she is concerned that this could be a legal issue if it is that broad. She recommends that the city give the applicant an R-3 zoning so that they can rent the house and they come back with a better plan on what they plan to do with the property. Mr. Trost stated that if they can leave it open for them to do the vacation rental and then come back with a plan before they do any additional

development without having to pay \$500 each time, he would be alright with that. Trish said that the city council has to approve any recommendation that the Planning and Zoning commission have before any changes can be made. The changes will not be in place so that the applicant can rent the house for the coming weekend.

Mr. Trost asked if they could find out from the city attorney if there is a way to zone it commercial with restrictions that they have to come back before they can do any other commercialization of the property.

The motion was seconded by Cory Unsworth for a new C-3 zone with limited commercial. Unsworth – aye, Sanders – aye, Waisath – nay, Nelson – nay, the motion failed.

Nick Nelson stated that there is a problem with enforcement of the ordinances and he understands the residents' concerns. Curtis Waisath said that he didn't think that the officers come to town on the weekends. Dave Sanders said that is an enforcement issue not a planning and zoning issue. Lisa Toly stated that if they are allowing the city to grow then enforcement needs to be in place. The enforcement of the ordinances was discussed. Mr. Trost said that they would expect to have to enforce what limitations the city placed on them.

Further discussion of the application and possible solutions followed.

A motion was made by Dave Sanders and seconded by Cory Unsworth to grant limited commercial, to allow the applicants the rental use of the house and any further development will require detailed plans and engineering. All voted aye, unanimous.

Mr. Mulholland requested that the city remove the barricades so that the owners can work on the emergency access road.

Zoning Ordinance Amendments

a) Alternative Power (Wind/Solar Power) – ordinance amendment

Item tabled.

b) RV on Developed Lots – ordinance amendment

The commission reviewed and discussed the letter from the city attorney regarding RVs on developed lots. Enforcement issues of allowing any RV's on developed lots can be a problem. One of the problems is that no one in town has monthly RV space rental.

A motion was made by Dave Sanders that the city allows use of RVs on developed lots if it is family. Discussion followed on paying fees for water and hook ups. The motion failed for the lack of a seconded.

More discussion followed. It was stated that the city is going to have a hard time stopping the owner of a developed lot from sleeping in their own RV with their kids for the night. It was stated that they did not want outside RVs come in and parking in their family/friend's driveway.

A motion was made by Dave Sanders and seconded by Nick Nelson to recommend that the zoning ordinance remain as written in regards to RVs on developed lots. All voted aye, unanimous.

c) Other ordinance amendment recommendations

Item tabled.

Comprehensive Plan Report

Trish showed the commission the Comprehensive Plan Flow Chart. It was noted that the committee is making good progress on the plan.

Other Business

Nick Nelson requested that the maintenance crew change the watering hours at the city park to after lunch. He said that the playground is often flooded when the children come to the summer lunch program. Trish will talk to the maintenance crew about changing the watering hours.

Schedule Next Meeting

The next meeting will be held on Tuesday, June 22, 2010.

Adjournment

A motion was made by Nick Nelson and seconded by Curtis Waisath to adjourn. All voted aye, unanimous. The meeting adjourned at 8:22 p.m.

Trish Avery – secretary

Dave Sanders – Chair

Approved June 24, 2010