

Commissioners Minutes

September 5, 2023 – 1:32 p.m. to 3:20 p.m.

**PUBLIC HEARING TO CONSIDER A REQUEST BY LEAVITT & ASSOCIATES ENGINEERS, INC. FOR A
CONDITIONAL REZONE WITH DEVELOPMENT AGREEMENT AND PRELIMINARY PLAT (INCLUDING
IRRIGATION, DRAINAGE, & GRADING) FOR DEMBI ESTATES SUBDIVISION, CR2021-0006 AND
SD2021-0032**

Commissioners Brad Holton, Zach Brooks and Leslie Van Beek

DSD Director Sabrina Minshall

DSD Planner III Michelle Barron

David Ferdinand

Dan Lardie

Costea Dembi

Mario Dembi

Elizabeth Dembi

Ethan Dembi

Greg Harness

Deputy Clerk Monica Reeves



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The Board met today at 1:32 p.m. to conduct a public hearing in the matter of a request Costea Dembi for a conditional rezone with development agreement, and a preliminary plat (including Irrigation, Drainage, & Grading) for Dembi Estates Subdivision, Case Nos. CR2021-0006 and SD2021-0032. Present were: Commissioners Brad Holton, Zach Brooks and Leslie Van Beek, DSD Director Sabrina Minshall, DSD Planner III Michelle Barron, David Ferdinand, Dan Lardie, Costea Dembi, Mario Dembi, Elizabeth Dembi, Ethan Dembi, Greg Harness, and Deputy Clerk Monica Reeves.

DSD Planner III Michelle Barron gave the oral staff report. The applicants, David Ferdinand and Dan Lardie, representing Costea Dembi are requesting a conditional rezone from the agricultural zone to the CR-rural residential zone for approximately 10.82 acres of a 23.38-acre parcel. The remaining 12.56 acres would remain in the agricultural zone. The request includes a development agreement to limit the rezone to 10.82 acres to be zoned rural residential. The P&Z Commission had previously seen this application when the request was for a single-family residential rezone with 16 residential lots and it recommended denial to the Board for that plan. The applicant and landowner opted to change the application and was scheduled to move forward with the Board. It was then determined that the application had a significant change and needed to be heard by

the P&Z Commission for the amended application that is presented today. The applicant has submitted a variance request to DSD to reduce setback of the front of the property to the existing home. On May 18, 2023, the P&Z Commission recommended denial of the conditional rezone and the subdivision based on Findings 1, 2, 3, 4, & 8 not being supported. The proposed conditional rezone aligns with three goals and three policies of the 2020 comprehensive plan, and it does not align with 11 goals and several policies of the 2020 comprehensive plan. The subject property is located off Lakeshore Drive with the east boundary running along South Powerline Road in Nampa. The applicant plans to continue farming over half of the parcel. The property is south of the Nampa Area of City Impact and is surrounded by crop lands and a few scattered homesites, and to the north within there are several land uses with rural residential being the predominate zone and some single-family residential. There are commercial and industrial zoned properties to the west. There are 30 subdivisions in the area with an average lot size of 1.31 acres which includes a portion of the area of city impact. Within one mile of the site there have been 17 land use cases since 2016; 14 were approved and 3 were denied. In 2013 East Lakeshore Subdivision was approved and it is located northwest of the site, is zoned rural residential and consists of 4 residential lots and 2 non-buildable lots in the impact area. In 2016, Phase 2 of Table Meadows Subdivision was approved, and it is located north of the site and zoned R-1 and is connected to city water and sewer. In 2021 a conditional rezone from agriculture to single-family residential was approved with a concept plan of 30 residential lots and with a requirement to connect to city services. On the preliminary plat they plan to have 10.82 acres zoned CR-rural residential, and there are 4 residential lots, one with an existing homesite, with the average lot size of 2 acres and a private road on its own lot. Individual domestic wells and septic systems will be used. The large portion will remain as agriculture. Comments were received from agencies and property owners. Ms. Barron reviewed the 8 questions and the standards of review the Board must review. Ms. Barron said David Ferdinand submitted materials that were read into evidence, and they were not included in the Board's packet of information but there are copies available today. He also provided a copy of his presentation that he will be giving today. Following her report, Ms. Barron responded to questions from the Board regarding the road and the culvert.

The following people testified in support of the request:

David Ferdinand testified there were a lot of questions that came up during the P&Z Commission hearing which have to do with the letter from Keller Associates the day of the hearing and it was because they were doing the CR-rural residential rezone and the preliminary plat at the same time. The Dembi family met with DSD staff after the original hearing on May 18, 2022, and a lot has happened since then. The Dembis asked what to do to utilize a portion of the pasture and corrals to build homes for their children so they can remain on the farm. He said a former DSD employee, Elizabeth Allen, met with Dan Lardie, the applicant's representative, to gain a concept that would meet staff's approval and they were told to request a 4-lot subdivision instead of 16 lots, and each lot would be designated for a home for family members currently living in the homesite on an 8-acre parcel. Each family member would continue to farm a portion of their parcel to maintain the

agricultural feel of the area, and they would agree to waive the secondary residences as allowed by code. They had a neighborhood meeting on August of 2022. To gain three additional residences, the Dembi Family was told to apply for a conditional rezone to rural residential to convert 8.9 acres of the 23.37 acres for three future residences and access. The highway district requires the dedication of 40 feet of public right-of-way. The request today is to use 10.43 acres for future homes for the family and retain the remaining 13 acres in an agricultural lot for crops. The updated plan also includes one common road lot, and it sounds like it's been changed to an easement that will be in record. Access shall be permitted onto Lakeshore Drive via the private road approved through the variance process. The additional three lots would be allowed with extended treatment systems which can reduce nitrate levels. Test holes were excavated on April 5, 2023, and no groundwater was encountered at 10 ½ feet. Pressurized irrigation will be supplied via an existing irrigation well and pump. The existing concrete ditch will be tiled to carry surface water to downstream users. The request maintains a balance between residential growth and agriculture that protects the rural character, and it achieves a land use balance which recognizes that existing agricultural uses and non-agricultural development. The subject parcel is designated as agriculture in the 2020 comprehensive, and two additional homes are allowed to be built on it. There are multiple homesites that exist near this parcel. The proposed conditional rezone will not impact essential services. The Nampa School District submitted an updated letter stating they do not have a problem with overcrowding. The Nampa Highway District has approved the variance of the setback. The existing home will not meet County setbacks. The right-of-way is dedicated to the highway district and a variance application has been submitted by the applicant to DSD for a variance of the setback of 6.6 feet.

DSD Director Minshall said because the P&Z Commission recommended denial, the Board does not have proposed conditions to consider but if it chooses to reverse the decision a second hearing will be required and staff could bring proposed conditions.

Dan Lardie with Leavitt & Associates testified they revised the preliminary plat to show the right-of-way as dedicated, not as a lot; the holdover note was removed; the radii was clarified; the variance was approved; the preliminary plat has been signed; the bearing distance has been added; and a found pin symbol in the southwest corner was identified. The property totals 23.37 acres and the applicant is seeking three new homesites, and more than half of the property will be farmed. There are cluster homes in the area, some of them are north of the Nampa impact area which is Lakeshore Drive. There are 10 homesites within .3 miles of the site to the west; to the south is the Dembi home and a neighbor's home; within a mile to the south there are 7 homesites clustered in two's; and further south is the Golden Hill's Subdivision which was taken out of agriculture a few years ago. The existing home is 14 feet from the to-be-dedicated right-of-way which falls within the 33% purview which will allow for DSD Director approval. Following his testimony, Mr. Lardie responded to questions from the Board. Additionally, there were follow-up questions for staff.

Mario Dembi read the letter of intent from his father, Costea Dembi, who purchased the land years ago so his five children could have land to build their future homes if they decide to.

Costea Dembi testified that planning and zoning suggested he change his proposal to a rural residential zone with a two-acre average, stating it's a plan that could be approved. Staffing has changed and so has the support. They dug test holes, met with the highway district, and have done everything he was asked to do. There will not be anyone living on the property except for family members; his children will raise their children on the property, and they will use the remaining land for pasture or for alfalfa. On the south side of his property are clusters of homes, and all he is doing is trying to match the neighborhood.

The following people testified in opposition to the request:

Greg Harness testified he has lived at the corner of Lakeshore and South Powerline since 1999 and believes there is no reason this land should be removed from agriculture because it fits with the comprehensive plan, and it should remain in agriculture. The rezone is not more appropriate than the current zoning. He has concerns regarding ground water, wells, the high arsenic levels in the ground water, irrigation, and traffic, and even though the applicant has said his family members will live on the property there is no guarantee the lots will remain with family members and that puts a lot of insecurity for the neighbors. The land has been farmed for decades and it should continue to be farmed. He is opposed to the rezone and the plat.

Rebuttal testimony was offered by David Ferdinand who said the Harness parcel consists of 1.5 acres, and the requested parcels are 2.03 acres. This is a transition area and it is cut off by the New York canal. Matthew Clements farms in the area and he supports the rezone. The City of Nampa wanted more density across the road which is why they wanted to deny it because they want larger density so they can provide more services. The Nampa Highway District does not require a traffic impact study because they do not believe this project will make an impact. The project will have a road that will make it much easier to get people in and out of the property. The highway district wanted to use Lakeshore and not Powerline because it is a local road and Powerline is a much faster connector. The existing home is allowed to remain with reduced setbacks from newly dedicated public right-of-way. The applicant will waive the right to secondary residences as allowed by code. There are two houses on the corner and if they both wanted to put secondary homes there would be four houses on the corner, but it would not have the same quality as this proposal. They will restrict access to only Lakeshore Drive to include a private road access, a single access to 12.5 acres of the ag ground is on the very end of the property. A nitrate reducing system will be redesigned and constructed as required by Southwest District Health. A level one nutrient pathogen study was conducted on May 18, 2021 for only proposed three new lots and they are saying that due to the evaluation results in the original NP study they recommend extended treatment capable of reducing nitrate levels to 16 milligrams or less, as a condition of approval. The Board had follow-up questions regarding the proximity to city services.

Planner Barron clarified that some of the comments during testimony: the updated letter from the Nampa School District has been added to the exhibits; the variance that was approved was through the highway district; and the variance that was submitted to DSD has not been approved yet.

Commissioner Van Beek had questions for staff regarding the building permit for the existing home. Director Minshall addressed the following exhibits:

- Exhibit H are emails from Mr. Clements, and Mr. and Mrs. O'Brien that were part of the P&Z Commission minutes.
- Exhibit I is the written testimony read by David Ferdinand
- Exhibit J is the applicant's PowerPoint

Upon the motion of Commissioner Van Beek and the second by Commissioner Holton, the Board voted unanimously to enter late exhibits H, I, and J into the record. Upon the motion of Commissioner Van Beek and the second by Commissioner Brooks, the Board voted unanimously to close public testimony. Deliberation was as follows:

Commissioner Van Beek does not find sufficient evidence to overcome what's been outlined by the P&Z Commission and said if the Board overturned the decision it would be the only rural residential zone outside the impact area and it would set precedent and it would be spot zoning. There is no guarantee, there is no way for the Board to condition an application that would state that only family members would own this property and not sell it. She referenced the other properties in the area and said the request is not consistent. Commissioner Brooks said whether or not the applicant sells the property is outside the Board's purview. He is fine with asking staff to find findings that fit finding no. 1. Commissioner Van Beek said the conditional rezone is not more appropriate than the current zoning. Commissioner Holton agrees with Commissioner Van Beek. Commissioner Van Beek disagrees with Mr. Ferdinand's position that this is a transition area. This is an area of special consideration because of its unique features and proximity to one of the largest recreational areas in Canyon County. The City of Nampa says it will block future plans for connectivity when they go to develop this ground. Commissioner Brooks said eventually this area will be R-1 like the City of Nampa wants. Commissioner Holton said this feels like a spot zone and he does not believe a rezone is more appropriate than the current zoning designation. Commissioner Brooks said the request will not negatively affect the character of the area when you have one acre or less lots one mile away and residential areas are nearby. Commissioner Holton said the high-density lots have sewer and water which is a total game changer in land development. Adequate services will be provided, and legal access exists. Commissioner Van Beek said legal access exists because of the variance, if approved and the if the County approves a variance. She does not want traffic 14 feet from a house. Commissioner Brooks concurs that legal access exists. Commissioner Holton said there were no demonstrable traffic impacts that were brought to the Board's attention. Commissioner Van Beek said if this is approved it would require a variance from the County on the private road and so when the rest of the 12 acres develop we'll

have a different problem. Director Minshall said the variance is regarding the setbacks not the private road. If approved, terms will need to be added. Commissioner Holton said he did not discern that there were any measurable impacts on services. Commissioner Brooks concurs. Commissioner Van Beek said the Board has to be able to make positive findings on each of the criteria that have been outlined and if we have one that we are unable to find a positive finding on it trips the denial, and the order appears to be what was recommended by staff and the P&Z Commission. Commissioner Brooks said this is a transition area, but his hands are tied from a set of criteria that says the Board cannot approve something he would like to approve. He would like to see 2-acre lots there rather than the one-half acre or less lots that are coming, but his hands are tied. Eventually the City of Nampa is going to change its mind and they are going to want to draw this in and it will go a different way. Commissioner Holton said the 2030 comprehensive plan is the greatest taking of private lands and this is what the Board has come up against with this land application. He agrees with Commissioner Brooks but said there has to be stability with land use applications and if you have a rule you have to stay with it or have the public come in and leverage to get the standards or the rules changed. It is better for land use decisions to be looked at, see what the rules are and calculate what the Board has to operate with. Commissioner Van Beek wants to evaluate this area, it's a special area and it's going to take collaborative planning between the City of Nampa and the County and until we have support to examine this area with some potential overlays to protect and mitigate it will be very difficult. Director Minshall said this area was agriculture in the 2020 comprehensive plan and in the 2030 comprehensive plan, and if the Board wanted to approve an application such as this within our current ordinance it would be with the idea that it would be conditioned. Upon the motion of Commissioner Van Beek and the second by Commissioner Holton, the Board voted unanimously to deny Case No. CR2021-0006 for a conditional rezone from an agricultural zone to a CR-rural residential zone. Upon the motion of Commissioner Van Beek and the second by Commissioner Brooks, the Board voted unanimously to deny Case No. SD2021-0032, the preliminary plat for Dembi Estates Subdivision. The hearing concluded at 3:20 p.m. An audio recording is on file in the Commissioners' Office.