

Commissioners Minutes

May 14, 2024 – 1:31 p.m. to 2:56 p.m.

**PUBLIC HEARING - APPEAL BY DESTINY PLATT OF THE DIRECTOR'S DECISION DENYING A REQUEST TO MODIFY TWO (2) CONDITIONS FROM CASE NO. AD2021-0060 AND RD2021-0021, CASE NO. AD2021-0060 APL (AD2023-0060 MOD)**

Commissioners Brad Holton, Zach Brooks and Leslie Van Beek

DSD Director Sabrina Minshall

DSD Assistant Director Jay Gibbons

Deputy PA Zach Wesley

Destiny Platt

Steven Platt

Darin Taylor

Gary Stark

Trevor Lantz

Sarah Van Curen

Paul Thomas

Kohl Hall

Mike Johnson

Other interested persons

Deputy Clerk Monica Reeves



PUBLIC HEARING - APPEAL BY DESTINY PLATT OF THE DIRECTOR'S DECISION DENYING A REQUEST TO MODIFY TWO (2) CONDITIONS FROM CASE NO. AD2021-0060 AND RD2021-0021, CASE NO. AD2021-0060 APL (AD2023-0060 MOD)

The Board met today at 1:31 p.m. to conduct a public hearing in the matter of an appeal by Destiny Platt, represented by Darin Taylor, of the Director's decision denying the request to modify two conditions from Case No. AD2021-0060 and RD2021-0021, Case No. AD2021-0060APL (AD2021-0060 MOD). Present were: Commissioners Brad Holton, Zach Brooks and Leslie Van Beek, DSD Director Sabrina Minshall, DSD Assistant Director Jay Gibbons, Deputy PA Zach Wesley, Destiny Platt, Steven Platt, Darin Taylor, Gary Stark, Trevor Lantz, Sarah Van Curen, Paul Thomas, Kohl Hall, Mike Johnson, other interested persons, and Deputy Clerk Monica Reeves.

DSD Director Sabrina Minshall gave the oral staff report consisting of the case history, timeline, access, agency comments, and public comments. Destiny Platt is appealing the Director's decision on Case AD201-0060MOD to modify the approved access for Parcel R38437011 from Indecision Lane to utilize a 25-foot County easement off of Goodson Road, which was the result of a 1978 contract between the U.S. Bureau of Reclamation and Canyon County. On August 3, 2021, Edward Goodson received approval for an administration land division for Parcel R38437 that created four

parcels, three with building permits and one agricultural-only parcel. On November 26, 2023, Destiny Platt/Goodson Family Trust requested modifications of two conditions from AD2021-0060 and RD2021-0021 to:

- Remove condition no. 7 which states "Crossing agreement with Black Canyon Irrigation District (BCID) must be in place prior to the issuance of any building permit(s)" with a request to replace it with "a crossing agreement must be in place prior at time building permits applied for." Or, "Crossing agreement must be in place prior to the issuance of building permit(s) to parcel #4 as cited on record of survey for Goodson Family Trust." *(Today's appeal is not going to address this condition because subsequent to the denial, the applicant submitted a partial withdrawal to not address this condition. The Bureau of Reclamation gave the crossing permit with BCID's approval.)*
- The applicant is also requesting to change the ingress/egress from the approved access per case no. RD2021-002 which utilized a proposed private road, "Indecision Lane" and the approved 28' easement reduction for a portion of the access. The applicant is requesting to replace this requirement with an alternate access for parcel 3 (R38437011) utilizing "Goodson Road," but it's actually the County 25-foot easement for a public road that comes off Goodson Road (that is Canyon County agreement with the Bureau of Reclamation).

The subject property is located approximately 658 ft. south of Goodson Road.

The following people testified in support of the appeal:

**Destiny Platt** testified the appeal is regarding access to her 10-acre parcel off of Goodson Road. She is not appealing the crossing agreement wording modification that was on the public hearing notice because she already has a crossing agreement in place that has been accepted by all parties involved. She addressed the open county road that is 662 feet in length for a total of .38 acres as referenced in the 1978 contract between the Bureau of Reclamation and Canyon County. The road was in existence long before 1978 as a judgement that was issued in 1960 that specifies the property owners it affects; it does not reference the land between Goodson Road and the private property owners. This is later addressed by the 1978 contract for an open county road. DSD has had difficulty in understanding what to call the 662 feet off Goodson but she has found clarification in state code, Title 40 regarding width, maintenance, and jurisdiction of roads. Ms. Platt believes the Director's decision was based on incorrect facts that were provided to DSD from BCID via email dated June 28, 2021. The terms of the 1978 contract are clear, nowhere does it state the County must exercise use to keep it existing. The surrounding landowners have continuously used it and maintained it seeking no compensation from the County. If Canyon County wants her to sign an agreement stating she will not seek compensation from the County regarding the maintenance of the open county road she will be happy to do so. Her use of the road will not put Canyon County under any additional liability that it is not already currently under as it has always served by residential and agricultural purposes. She addressed the legality of access to her parcel. She

purchased the property in August of 2021 and her only legal access comes off Goodson Road, not Indecision Lane. She believes DSD misinterpreted the cited survey and easements that were referenced when finalizing the administration decision AD2021-0060. The 28-foot ingress/egress Farmwell maintenance easement states it only benefits 1.97 acres which is far from fitting her parcel's description of 10 acres. The survey from July 27, 2021 clearly states to see sheet 2 in regards to parcel no. 3. Sheet 2 states the 25-foot open county road right-of-way contract and specifies the 28-foot Farmwell maintenance easement. However, DSD took sheet 1 of the survey and labeled it with a line from Indecision Lane to Farmwell as a 28-foot ingress/egress easement. Removing the maintenance easement wording leaving it open for misinterpretation as an easement that benefitted her 10-acre parcel. Ms. Platt has provided proof of her existing and only legal access to her property and the lack thereof off of Indecision Lane, hence her request for an amendment to correct the oversight. She and her husband purchased a manufactured home in March of 2023 and she has been in constant communications with DSD regarding both access points ever since. The manufactured home company has been storing their home throughout this process but they cannot continue to do so. The majority of her 10-acre parcel is in field and irrigated by a pivot leaving them no room to store it on their property as they do not wish to impact the agricultural aspect in which her parcel serves. The only place to store the home is where it will be placed on a foundation as the site was strategically picked on a corner of fallow ground on a slope and out of the way of the pivot. The access to Goodson Road is not only open and existing but the most common sense solution to the issue at hand. She asked the Board to recognize what has always been and to recognize the existing open county road located off Goodson Road and reverse the denial so she may have access and an address from Goodson Road.

**Darin Taylor** offered testimony on behalf of the applicant. The issue in this case appears to be whether the County has authority under the 1978 contract to allow use of the road right-of-way easement by some users but not other. He read language from the contract into the record. The county was granted a road described as the west 25 feet of the north  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of the NE  $\frac{1}{2}$  of Section 24, Township 5 North, Range 4 West, Boise Meridian, Canyon County, Idaho. The tract of land contains 0.38 acres and is subject to all existing easements and rights-of-way. Since the County did not and does not own or have an interest in real or personal property within miles of the county road, there is no reason for the grant to have been limited to use only by County employees or for County purposes. The grant's reasonable interpretation and interference is that the road was to be open and used to access parcel adjacent to the south end of the county road, the applicant's parcel. There are no terms or conditions in the 1978 contract limiting the road to residential users or ag users or the then-existing residential and ag users. The County has sole jurisdiction over the road subject only to the terms and conditions of the contract. It can be concluded it is an open county road. The applicant asked for a change access from Hop Road via Indecision Lane to Goodson Road via the open county road. DSD denied the request but did not articulate a reason why or cite County code or a single state or federal law or regulation. No one has been prohibited by the County from using the open county road and the right-of-way except the applicant. Denying Ms. Platt access using the open county road denies her the same benefit

other properties using the road enjoy. They request the Board approve the request and modify the administrative decision to change from Goodson Road via Indecision Lane to the open county road from Goodson Road. Following Mr. Taylor's testimony he responded to questions from the Board. There were also questions for Director Minshall regarding road standards, rights-of-ways, and driveways.

**Gary Stark** testified that he lives by Indecision Lane. Google Maps show Indecision Lane and the proposed route to the Platt property versus coming off Goodson Road and it's one mile or more to go off of Indecision Lane to get to this property. It doesn't seem logical for an emergency vehicle to travel a mile with several turns getting around another residence to try to find the Platt home in the event of an emergency. The logical route is to come off Goodson Road if that is at all possible because it's only 600 feet to the proposed property.

Commissioner Van Beek declared that she is familiar with Gary Stark's land use decision on his property where the Board granted an agricultural haying operation to continue and we limited the ability to build on his property to a corner so the bulk could continue.

**Trevor Lantz** gave testimony regarding the history of the property and said the intended use for the lane was for agricultural use for cattle. His grandfather initially sold this property to his sister and some of the background to that is it stems to the use of when it was Mr. Lantz's great grandfather's property where the original use was a homestead in 1904 on the other side of Goodson Road and that lane existed for his cattle use. The usage has changed a lot but for the most part it does intersect with Indecision Lane and comes off a private lane. It cannot be used for any other purpose because it intersects with an irrigation ditch. There is no other purpose for it at this time other than agricultural and residential which it is also currently being used for.

**Paul Thomas** testified about the Goodson Family Trust and the way they look at this property. When it was originally split by his father-in-law they wanted the building lots in area that would be the least impactful to the farming operation. The Goodson Family Trust will eventually be transferred to his wife and it is her intention to leave it in agriculture. Indecision Lane was intended to be an access for their heirs if they ever wanted to develop for residential use. Currently it serves as access to one other parcel for residential and agriculture.

**Mike Johnson** owns property to the south of the subject property and testified the section has been used as the sole access point. It functions as a driveway and for the agricultural use. The harmony of how it works between the cars and owners is easily managed and the road surface has stood the test of time so far. He supports the Platts placement of a home and using the logical access.

Rebuttal comments were offered by Destiny Platt. She said Orton Engineering submitted a letter listing multiple options the County could look at in possibly granting this access point off of Goodson Road. Recognize the contract easement in accordance with the agreement, and consider the easement to be the driveway to grant the allowance for the road to reside in the 25-foot easement which is 3 feet smaller and allowed by code.

DSD Director Minshall said Darin Taylor had comments regarding a driveway easement being a different width than a private driveway. The private road and driveway ordinance was adopted by the County in 2016 and it says driveways serving two or more properties and all private roads shall be located within a recorded perpetual easement having a minimum width of 60 feet for the right-of-way for a public street for the purposes of ingress/egress. The easement with width reduction may be reduced to width not less than 28 feet. She reviewed the criteria regarding surface width. Indecision Lane is 60 feet; it was the private driveway that comes off of Indecision that heads toward Goodson and has had the variance down to 28 feet and it's not been completely improved. It would need an all-weather driving surface of 12 feet. There were follow-up questions from the Board.

Commissioner Brooks asked if the Board can condition it and allow it at 25 feet? Deputy PA Wesley referred to the agreement with the Bureau of Reclamation it's called a county road that we agreed to maintain in 1978 and we made a lot of commitments to the Bureau of Reclamation for that road so it is limited to 25 feet and is subject to any other previously acquired rights by third parties and we are agreeing to maintain the road for the life of it. We are subject to all of the expenses that would be incurred with the road. If our construction of it interferes with the Bureau's operations we are liable to make a payment to them for any additional costs they would incur because of our use. The agreement has conditions and we have the permanence issue which is the Bureau can cancel the agreement if we are not complying with the term and conditions. Could we go lower than 25 feet? Not under the ordinance on a private road or the driveway requirements - those are all set at the minimums but potentially it could be called a county road and they are taking access off the county road which is only 25 feet. There was further discussion between the Board and staff.

Destiny Platt spoke about her communication with the Bureau of Reclamation and said they do not care who maintains that, even though it is granted to the County the County can choose who they want maintaining it whether it is the landowners or the highway agency maintaining it. The agreement is serving a landlocked property, that is it's only means for access which would be Mike Johnson, that is their only access and under what she found under abandonment of rights-of-way or driveways or roadways is you cannot abandon a landlocked residence and that would then create the argument between private vs. public and it can't be private because it's granted to the public. She is not looking to change what the use is, the liability of the County is the same it has always been.

Commissioner Brooks suggested the Board continue the hearing to a later date so they can gather information and potentially allow the Board to explore some option for making this work. Commissioner Van Beek supports that and said while she appreciates that somebody else could maintain it, that's not what the document says so in its most literal sense the County would still be on the hook if property changed hands. Deputy PA Wesley said he has not had the conversation about how they would view that assumption of liability from another user. The Bureau of Reclamation is prohibited from transferring to private property owners and they would not

approve the County doing a straight transfer to a private property owner. Another govt entity would potentially work. Theoretically we could have an agreement that would transfer the liability and burden to maintain the road, but at the end of the day, it would always fall back on the county as long as the agreement were in place. Director Minshall said it would be helpful to have direction of parameters the Board wants for that discussion because it's a matter of what is the County willing to do with this location. Commissioner Holton wants to explore the option of having the County be released from the agreement. Deputy PA Wesley will work with Darin Taylor and see if he can prepare a draft agreement along the lines discussed and potentially see if the Bureau of Reclamation had any objections to that. The Board continued the hearing to May 23, 2024 at 4:00 p.m. The hearing concluded at 2:56 p.m. An audio recording is on file in the Commissioners' Office.