

Commissioners Minutes

May 14, 2024 – 3:06 p.m. to 4:35 p.m.

PUBLIC HEARING: MARGARET PERSON, REPRESENTED BY STEVE LAW, IS REQUESTING A COMPREHENSIVE PLAN MAP AMENDMENT, AND CONDITIONAL REZONE FROM AN "A" (AGRICULTURAL) ZONE TO AN "CR-R-1" (SINGLE-FAMILY RESIDENTIAL) ZONE, CASE NO. OR2022-0005 AND CR2022-0011

Commissioners Brad Holton, Zach Brooks and Leslie Van Beek

DSD Planner Michelle Barron

DSD Planning Supervisor Carl Anderson

DSD Director Sabrina Minshall

Steve Law

Kurt Smith

Gary Johnston

Other interested citizens

Deputy Clerk Monica Reeves



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The Board met today at 3:06 p.m. to conduct a public hearing in the matter of a request by Margaret Person, represented by Steve Law, for a comprehensive plan map amendment, and conditional rezone of approximately 10.66 acres from an "A" (Agricultural) zone to an "R-1" (Single-Family Residential) zone for a 7-lot subdivision, Case Nos. OR2022-0005 and CR2022-0011. Present were: Commissioners Brad Holton, Zach Brooks and Leslie Van Beek, DSD Planner Michelle Barron, DSD Planning Supervisor Carl Anderson, DSD Director Sabrina Minshall, Steve Law, Kurt Smith, Gary Johnston, other interested citizens, and Deputy Clerk Monica Reeves.

DSD Planner Michelle Barron gave the oral staff report. The subject property, Parcel R36963020, is located at 28753 Peckham Road in Wilder. The Planning and Zoning Commission recommended denial of both the comprehensive plan map amendment request and the conditional rezone request on October 19, 2023. There are five criteria that have to be met to review a comprehensive plan amendment, and eight criteria that have to be met to approve a conditional rezone. The area across Peckham Road has large agricultural production parcels and there are several homesites of varying size along with some smaller family homes. The average lot size within the vicinity is 9.12 acres. The applicant has provided a conceptual plan requesting 7 lots served by private road; the average lot size is 1.3 acres. The future land use designation in the 2020 Comprehensive Plan is agricultural, and the applicant applied under the 2020 plan. The

nearest residential designation and zone are over 2 miles east in Wilder's impact area. The property is not in a growth area and does not have future funding for necessary infrastructure. The parcel is commensurate with other parcel sizes created by land division in the area. Planner Barron reviewed the land division history and subdivisions in the area as well as the comments from the public and from agencies. There is a feedlot located .78 miles from the subject property. The application aligns with only one goal and four policies of the 2020 comprehensive plan.

The following people testified in support of the request:

Kurt Smith testified that Margaret Person has a right to request a comprehensive plan amendment and conditional rezone. Right of possession, control, exclusion, disposition and the right to enjoy are all defined in the property rights section of the comprehensive plan. They will further develop CC&Rs that will promote the right to farm to respect the neighborhood farms while maintaining the existing use of the National Guard building located to the south. There will also be a development agreement. Mr. Smith spoke about the high demand for rural lifestyle properties. This development does not have best or moderately suited soils. It has soils that are 50% class IV soils according to the Canyon County Soil Conservation District. At 50% of the soils with slopes that range between 12%-25% the later 50% was not rated because of the excessive slopes. A scope of work was done to determine the viability of the onsite construction and its repercussions to hydrology and groundwater in the area and to provide construction recommendations for construction on the observed slopes. The property has been used as a gravel pit and the topsoil has been removed, mainly on the top of the hill where the flat soils appear. With the topsoil removed they do not believe it still has a class IV rating. They do not see a higher use for the property than what they are proposing. There is no water right; it is the site of an old gravel pit and the existing topsoil has been removed. It is not developed farmland, nor will it ever be used to grow crops. This seems like a good place for housing that will not take up viable farmland. Mr. Smith spoke about growth trends, the lack of rural properties and how the project helps meet the balance to maintain rural ag in the future and projected growth to come. The nitrate priority study was approved by DEQ for seven lots with seven individual septic system. A private road will provide access to all lots and will meet agency standards. Following his testimony, Mr. Smith responded to questions from the Board.

Steve Law testified that he concurs with Kurt Smith's testimony. The property has no potential other than what he is requesting to do, and he plans to make it an outstanding project. He has been experiencing some health issues and would appreciate approval of his request.

The following people testified in opposition to the request:

Gary Johnston lives on Peckham Road, ¾ of mile from the subject property and he testified he would rather see houses built on properties like this than the beautiful farm ground that's being rolled under every day; however, his concern is with putting a residential development in an agricultural zone. People complain about smells, flies, dust, etc., and it causes issues for other ag

producers and it seems to be spot zoning and then the neighbors will want to split their land. He is not supportive of changing the comprehensive plan designation.

Kurt Smith offered rebuttal comments stating they will include a right to farm statement on the plat, and will develop CC&Rs that take the neighbors' concerns into account. There will be a development agreement where concerns can be addressed and that will stay with the land to mitigate the issues. The developer chose individual wells rather than a commuter water system due to the expense involved.

Upon the motion of Commissioner Brooks and the second by Commissioner Van Beek, the Board voted unanimously to close public testimony.

The Board's deliberation was as follows:

Commissioner Brooks said he has issues with both the 2020 and 2030 comprehensive plans because plans should not be developed with a broad brush. The area is zoned agriculture but it has residential and smaller properties and the comp plan does not take into account that there is housing surrounding this property. People have said the Board is not supportive of agriculture and yet the same individuals do not realize they live in a residential property that is zoned agriculture so aside from that the actual property is where development should be. It's not conducive to growing a crop, it has no top soil and there is no water right so you have to try to get a water right from the state to try to grow something on top of a hill with terrible soil. It's not being farmed and it doesn't look like it's been farmed in the past. He is in favor of moving forward and approving the development. This is not agricultural ground; it's in an agricultural area where development has been allowed. It's unfortunate that was not called out by the P&Z Commission.

Commissioner Van Beek said there is not a better place to locate something like this but the conflict is there is ag in the area. She was in the area a few weeks ago while driving with her husband (not to view the subject property) and there are a lot of hobby farms and they are broken up and if we're going to put a residential development somewhere it's preferable to do it with two strikes against it on a sandy hill with no water, but there is large-scale diversified ag in the area. The nearest identified residential designation is more than two miles away. There is a high demand for people wanting to live in a residential area but people that do not understand agriculture and they aren't going to understand fly-ons and different things like that. This is a unique area.

Commissioner Holton said comprehensive plans are difficult because you're dealing with a large area and you have very narrow areas like this that cry out for specific areas of consideration. He is frustrated that the P&Z Commission did not explore the specificity of this unique area than just the broad brush of agriculture. This ground will be a challenge if it was placed into R-1 just for them to maintain the yard, you're on a gravel pit and the topsoil has been removed. The way the ground lies is not going to impede agriculture other than the traffic the seven lots will generate and that is a concern with the CAFO down the road. Spot zoning to him is if this was flat land and the geographical characteristics were bland and we took a spot in the middle of bland land. The

US Airforce had it as a temporary airbase in the middle of nowhere in the 1960s and 1970s as a remote radar site. He wants to deliberate towards considering an amendment to the plan. He cannot see it as spot zoning because of what has gone on for decades before this application came forward. Its highest use will never be agriculture.

Commissioner Van Beek said given the conflict that exists with people that do not understand agriculture and chose to live there would be a hard sell where that decision has been argued all the way to the Supreme Court, she thinks the Board needs the opportunity to look at the plan and decide what the unique areas are.

The Board reviewed the comp plan amendment criteria, CCZO 07-06-03:

Is the requested type of growth generally in conformance with the comprehensive plan? Commissioner Holton said generally it is in conformation with the comp plan, but there is the issue about the ground and the production and protection of that. Commissioner Brooks said there are other parts of the plan that put this to the point where we want development in places like this rather than places we want to see in production agriculture.

When considering the surrounding land uses, is the proposed land use more appropriate than the comprehensive plan designation? Commissioner Holton believes it is because we are looking at the surrounding land uses within the area of how this ground has been consumed out of ag, obviously across Peckham to the north are all the large ag pieces and we are not contemplating or considering those. He has concerns about putting more people close the CAFO. Commissioner Brooks said prior Boards have allowed residential without rezoning and in looking at what has developed in the area it is more appropriate for this parcel of ground. Commissioner Van Beek said the balance to that is the impact on the surrounding ag operations. There are good arguments on both side but it is a domino effect.

Do development trends in the general area indicate that the current designation and circumstances have changed since the comprehensive plan was adopted? Commissioner Holton said the 2020 comp plan created this plan to make it so it was in noncompliance and they did not correct it in the 2030 comprehensive plan.

Will the proposed comprehensive plan amendment impact public services and facilities. What measures will be implemented to mitigate impacts? Commissioner Holton doesn't think it will be an impact for public services on sewer/water, but it's possible on road or power. There was discussion about what the Board could tell the applicant they need to do in order to gain approval.

DSD Planning Supervisor Carl Anderson said the P&Z Commission said an alternative to denial would be to have the applicant apply for a conditional rezone to residential rural rather than rural residential, with a development agreement agreeing to three lots. Commissioner Brooks is in favor of looking at a map amendment for this parcel to be considered residential, and what exactly residential can be debated in the future. Commissioner Holton would rather see the land used

rather than be a gravel pile, but he'd also like it to be planned out where the community can have input. Director Minshall said the Board could deny both applications with direction to staff that as we come back in the near future to look at a county-generated comprehensive plan amendment to include this area and look at compatibility and policies and where the map amendment would be in the broader region then your answer to what can the applicant do, is wait until we have the comp plan is adjusted and look at the broader area. Commissioner Van Beek likes that idea. If we prioritize this area and the area south of Lake Lowell are in critical need of that analysis and it's going to take the Board and city partners to look at it to make sure we are consistent.

DSD Planning Supervisor Anderson said another alternative may be that if the applicant comes back with a rezone for a zone that is not a conditional rezone we would evaluate to see if we can make the findings for a comp plan amendment based on that application which would likely have different densities for a concept plan and other factors associated with it that may or may not impact the comprehensive plan amendment component. It may or may not impact the rezoning as far as whether that is something staff would be able to make findings for approval. Commissioner Van Beek said she cannot make a finding that says R-1 is where this area is going. Upon the motion of Commissioner Brooks and the second by Commissioner Van Beek, the Board voted unanimously to deny Case No. OR2022-0005, a request for a comprehensive plan map amendment to amend the 2020 Canyon County Comprehensive Plan Future Land Use Map for Parcel R36963020 from agriculture to residential.

Upon the motion of Commissioner Brooks and the second by Commissioner Van Beek, the Board voted unanimously to deny Case No. CR2022-0011, a conditional rezone of approximately 10.66 acres from an Agricultural zone to a conditional rezone - single-family residential zone, and a development agreement. Commissioner Holton asked the applicant to work with DSD and work towards a goal to make this a viable situation and we need to take into consideration the active ag in the immediate area and try to balance all the things we need to balance and recognize what development has being on there and come up with a solution that makes it more compatible. The hearing concluded at 4:35 p.m. An audio recording is on file in the Commissioners' Office.