

Commissioners Minutes

May 29, 2024 – 1:33 p.m. to 2:54 p.m.

PUBLIC HEARING: APPEAL BY BRISTLECONE LAND USE CONSULTING, REPRESENTING JC EXCAVATION, OF THE P&Z COMMISSION'S DENIAL OF A CONDITIONAL USE PERMIT, CASE CU2023-0002-APL

Commissioners Zach Brooks and Leslie Van Beek

Deputy PA Zach Wesley, DSD Planning Supervisor Carl Anderson, DSD Principal Planner Michelle Barron, DSD Director Sabrina Minshall, DSD Associate Planner Doug Exton, DSD Code Enforcement Officer Gary Westerfield, Constituent Services Director Aaron Williams, Elizabeth Allen, Juan Carlos Nieves, Andres Gordillo, Macario Gordillo, Grant Peterson, Harry Robinson, Barbara Harris

Deputy Clerk Monica Reeves



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The Board met today at 1:33 p.m. to conduct a public hearing in the matter of an appeal by Bristlecone Land Use Consulting, representing JC Excavation, of the Planning & Zoning Commission's decision to deny Case CU2023-0002 a conditional use permit (C.U.P.) to allow a staging area use within an "A" (Agricultural) Zoning District. Present were: Commissioners Zach Brooks and Leslie Van Beek, Deputy PA Zach Wesley, DSD Planning Supervisor Carl Anderson, DSD Principal Planner Michelle Barron, DSD Director Sabrina Minshall, DSD Associate Planner Doug Exton, DSD Code Enforcement Officer Gary Westerfield, Constituent Services Director Aaron Williams, Elizabeth Allen, Juan Carlos Nieves, Andres Gordillo, Macario Gordillo, Grant Peterson, Harry Robinson, Barbara Harris, and Deputy Clerk Monica Reeves.

DSD Principal Planner Michelle Barron gave the oral staff report where she reviewed the case summary; the hearing criteria for a C.U.P; the P&Z Commission's basis for denial where they found that criteria #4 & #7 could not be mitigated; the applicant's request; site photos; agency comments; public comments; and the recommended conditions of approval if the Board approves the request. The subject property is located at 80 S. Robinson Road in Nampa, on Parcel R30624010. The case was originally heard and denied on June 15, 2023. The appellant is submitting the appeal on the basis that the decision was not supported by proper evidence, and that they were not provided with a fair hearing process. On September 21, 2023, the Board remanded the case back to the P&Z Commission to flush out possible conditions and more fully consider the evidence. The case was denied on January 18, 2024 by the P&Z Commission. An appeal was filed on the basis that the decision was not supported by substantial evidence and the concerns brought up during the P&Z Commission can be appropriately mitigated. The request is

for a C.U.P. for a staging area to allow the property to be utilized for their excavation business. The request is to bring the property back into compliance after a code enforcement issue for storing the materials for the business without a C.U.P. No work will be conducted on site. There is adequate parking for the offsite employees who will utilize company vehicles. The appellant is offering to remove the dirt storage on the site to help mitigate many of the concerns. The property is located within the Nampa area of city impact, and the future land use is low-density residential. Canyon County designates the future land use of this area as agriculture. As a condition of approval, the appellant has proposed the use of the staging area shall terminate at such time that Nampa city limits are touching the property on two sides.

The following people testified in favor of the appeal:

Elizabeth Allen with Bristlecone Land Use Consulting testified on behalf of the appellants. The P&Z Commission identified actions that could be taken by the applicant to gain approval: Reduce the number of trips and equipment impact and provide buffers. The applicant has identified mitigation to address those concerns. JC Excavation, LLC, has been in business since 2017 and is owned by Juan Carlos Nieves and the manager is Mario Nieves. This is a staging area for materials and equipment such as bulldozers, excavators, skid steers, loaders, dump trucks, and equipment buckets. She reviewed site photos showing the storage area noting that the previous dirt storage area along Robinson Road has been removed to mitigate the neighbors' concerns about noise and dust as well as the concerns about noise from when they unload the dirt for the backup alarms from the equipment. On the original site plan, they proposed a berm along Robinson Road with a sight 6-foot sight obscuring fence and a site obscuring fence on the north side of the property and will plant landscaping to prevent erosion. Today she will present an updated site plan. Ms. Allen reviewed the analysis of the criteria discussed at the P&Z Commission hearing and said the request will not change or negatively affect the area. A lot of the equipment on site is the same type as used by farmers throughout the area. There are sporadic residential sites and there are staging areas for two excavation businesses within the vicinity. A majority of the properties in the area have unmitigated storage for personal property. She reviewed the agriculture and rural residential character. They will comply with the requirements of the Nampa Highway District. The applicant is proposing that when the City of Nampa touches the property on two sides the use will cease to operate.

Juan Carlos Nieves testified he is the owner of JC Excavation and is seeking a C.U.P. for a staging area for his business. They do not want problems with neighbors, but the neighbors across the street are unhappy with them. He has been trying to do the right thing to get the approval. They will not have any dirt stored on site. The plan is build a berm along Robinson Road and build a fence along the west, north and south sides to avoid noises. The noise coming from the property is from starting equipment for 10 minutes in the morning, and when they return to the site at the end of the day. He is amenable to changing the hours of operation.

Grant Peterson lives on Robinson Road and has no objections to the request by JC Excavation. He said there are two other excavation businesses in the area, so he doesn't see any problem with JC Excavation being there. He testified the property on the other side of his property has travel trailers and semis parked on it and they are in and out of the property quite a bit throughout the day.

Andres Gordillo testified that he lives on Robinson Road and he will be speaking on behalf of his father, Macario Gordillo. They are close neighbors with JC Excavation, and they have not noticed any disturbances, and they find them to be good neighbors. He said there are other similar businesses located along Robinson Road so it seems unfair that JC Excavation is not able to park their equipment on the site.

Testimony in opposition was as follows:

Harry Robinson testified that he lives directly across the street from the subject property, and he is a registered professional civil engineer with 50 years' experience in managing heavy engineering construction projects, building rapid transit systems, pump stations, airports, and bridges. He is not against construction; the activity at 80 S. Robinson is a busy construction yard, not a staging area. He said Bristlecone Land Consulting stated the P&Z Commission's denials were not based on substantial evidence, but he disagrees because there was substantial evidence to justify the denial. They operate on the weekends and holidays and after 8 p.m. Future land use designations are low-density residential as Nampa wants to do. They state the closest home site is 300 feet away, but his living room window is 96 feet away. The operation has dramatically changed the character of the area and negatively impacted his quality of life. Trucks hauling trailers with large equipment have backed up traffic while trying to turn against 50 mph busy oncoming heavy traffic. He does not believe the applicant's representative has presented truthful information and he questions their credibility and whether they will honor conditions should the Board overturn the P&Z Commission's denial.

Barbara Harris testified that she lives directly across the street from the subject property and there is a mountain of testimony from herself and her neighbors. The land is designated as agriculture, but it is functionally residential with a lot of surrounding houses, and she doesn't believe the business belongs there. Robinson Road is a two-lane country road with no turn lanes and ever-increasing traffic. There are times when there are 6-10 cars backed up in both directions when trucks try to turn into the property which increases the risk for accidents. Trucks going in/out make a lot of noise. She appreciates they will not store dirt on the property. She said this case comes down to a choice between the convenience of a renter (JC Excavation is a renter) and the homeowners' expectations that they will be able to live in peace. The activity of trucks and trailers

profoundly affects the surrounding homeowners' living environment. This should not be an industrial area. This is a staging area for construction equipment, not agricultural equipment.

Rebuttal testimony was offered by Elizabeth Allen who testified that she has a master's degree in planning and has been working in Idaho for jurisdictions and in the private sector for almost 10 years. With the house bill that just passed it clarifies that the County will have jurisdiction within the areas of city impact. Regarding the measurement from the site to nearby homes, she took the measurement from the staging area and said the home is just over 300 feet from the area as well as the property to the north. The property to the south is actively farmed as well as the one to the east. Farm equipment is always moving on these roads which causes traffic concerns. A CAFO is located to the north, and they use dump trucks and similar equipment as is used by the applicant. Farmers commonly use the same equipment: skid steers, trailers, etc., and if they wanted to change their business to a landscape business it would be the same equipment and it would be allowed in the agricultural zone. When employees leave the site it is their job to drive the equipment in a manner so as not to enter or exit the site unsafely. Mr. Nieves' sister lives on the property and the property owner has given authorization to proceed with a C.U.P. and for him to use his property as a staging area as he has for the past 2 years.

The Board had follow-up questions regarding conditions. Commissioner Brooks said not storing dirt on site would negate condition no. 5 that was presented to the P&Z Commission where it said stockpiles of dirt would be watered. Commissioner Van Beek said OSHA requires beepers on all heavy equipment and there was testimony at the P&Z Commission hearing that they didn't know if they could turn those off and the answer is no. That is not a noise that can be mitigated because the beepers stay with heavy equipment. Ms. Allen said if they have someone guiding them as they backup they could turn the beepers off, or there are options that they reduce the amplifications of the beepers, they are not as loud as the traditional backup alarm. Planning Supervisor Carl Anderson the letter of intent February of 2024, appears to only show four conditions, but their presentation appears to show five. What are the conditions? Ms. Allen said they are proposing the following five conditions:

- #1 A sight-obscuring berm fence along the frontage of Robinson Road.
- #2 A sight-obscuring fence along the northern property line.
- #3 No dirt staged on the property.
- #4 Nampa Highway District requirements.
- #5 The use of the staging area shall terminate at such time Nampa city limits are touching the subject property on two sides.

Upon the motion of Commissioner Van Beek and the second by Commissioner Brooks the Board voted unanimously to close public testimony. Commissioner Van Beek said Canyon County is an area that is changing and people who live next to uses are impacted differently than people who

rent. Even though a C.U.P. allows a staging area it significantly changes the air quality, noise quality, and the quality of life in that area and the fact that other businesses are operating in proximity without a C.U.P. is irrelevant and it's probably a code enforcement issue the County needs to look at but it does not make it right and as a landowner that should take priority over what happens in the area over a land renter. She spoke about the heavy traffic on Robinson Road and the issues with making a left-hand turn. She finds the proposed use and the proposed mitigation measures to be problematic and she is in favor of upholding the denial by the P&Z Commission. Commissioner Brooks sees this completely opposite from Commissioner Van Beek because he travels the road daily, and he said the equipment that the applicant is trying to move around is not even close to the largest pieces of equipment that travel this road all hours of the day. He believes the additional conditions could mitigate a lot of the concerns. Commissioner Van Beek said it doesn't feel right to try to mitigate a problem for someone who is renting property. She made a motion to deny Case No. CU2023-0002, a C.U.P. for a staging area for Parcel No. R30624010, as per the P&Z Commission recommendation. The motion was seconded by Commissioner Brooks for the opportunity to address counsel on the issue of a split vote. Deputy PA Wesley said the Board could continue the hearing to a date certain so Chairman Holton could review the record and audio and participate in the deliberation. Commissioner Brooks said it is not fair for the applicant to receive a split vote when there are supposed to be three Commissioners present. A vote was taken on the motion with Commissioner Van Beek voting in favor to deny the appeal, and Commissioner Brooks voting against the motion to deny. The vote is negated. Upon the motion of Commissioner Brooks and the second by Commissioner Van Beek, the Board voted unanimously to continue the hearing to June 17, 2024, at 10:00 a.m. The hearing concluded at 2:54 p.m. An audio recording is on file in the Commissioners' Office.