

Commissioners Minutes

September 17, 2024 - 1:33 p.m. to 4:37 p.m.

**PUBLIC HEARING: REQUEST BY TANNER VERHOEKS OF HAVEN IDAHO FOR A CONDITIONAL REZONE OF APPROXIMATELY 43.95 ACRES, FROM AN "A" (AGRICULTURE) TO A CR-R-1 (CONDITIONAL REZONE – R-1 RESIDENTIAL) ZONE, CASE NO. CR2022-0005**

Commissioners Brad Holton and Leslie Van Beek

Deputy PA Zach Wesley

DSD Director Sabrina Minshall

DSD Planning Supervisor Carl Anderson

DSD Principal Planner Michelle Barron

In Favor: Tanner Verhoeks, Emily Nied, Jenallee Udy, Cody Ellis, Justin Ruthenbeck, Hethe Clark, Isaac Josifek, and Robbie Reno

In Opposition: DeWight Hagel, Ted Zahradnicek, Russell Johnson, Curtis Kessel, Luis Chavolla, Cynthia Atnip, Gary Geyer, Jim Danes, Larry Peterson, Sue Marostica, and Victor Marostica, other interested citizens

Deputy Clerk Monica Reeves



**PUBLIC HEARING: REQUEST BY TANNER VERHOEKS OF HAVEN IDAHO FOR A CONDITIONAL REZONE OF APPROXIMATELY 43.95 ACRES, FROM AN "A" (AGRICULTURE) TO A CR-R-1 (CONDITIONAL REZONE – R-1 RESIDENTIAL) ZONE, CASE NO. CR2022-0005**

The Board met today at 1:33 p.m. to conduct a public hearing in the matter of a request by Tanner Verhoeks of Haven Idaho for a conditional rezone of 43.95 acres, from an "A" (Agricultural) Zone to a CR-R-1(Conditional Rezone - R-1 Residential) zone, Case No. CR2022-0005. Present were: Commissioners Brad Holton and Leslie Van Beek, Deputy PA Zach Wesley, DSD Director Sabrina Minshall, DSD Planning Supervisor Carl Anderson, DSD Principal Planner Michelle Barron, In Favor: Tanner Verhoeks, Emily Nied, Jenallee Udy, Cody Ellis, Justin Ruthenbeck, Hethe Clark, Isaac Josifek, and Robbie Reno, In Opposition: DeWight Hagel, Ted Zahradnicek, Russell Johnson, Curtis Kessel, Luis Chavolla, Cynthia Atnip, Gary Geyer, Jim Danes, Larry Peterson, Sue Marostica, Victor Marostica, other interested citizens, and Deputy Clerk Monica Reeves. Deputy PA Wesley summarized what the Board requested from the applicant at the conclusion of the February 8, 2024 hearing. The applicant was asked to return with additional information regarding the viability of 29 septic systems on the property and how far they will migrate to any of the adjacent surface wells; address the concern about whether the ground would leach from the septic systems; obtain response times for fire, police and ambulance; and address the viability of the responsibility for schools. Testimony will be taken on those limited issues and the materials that have been provided by the applicant. The hearing will not be reopened from scratch; it's a continuation to talk about those narrow topics.

DSD Principal Planner Michelle Barron gave the updated staff report and noted that she inadvertently attached a public comment that was not intended for this application, and she

asked that Exhibit G2 be removed from the staff report. On February 8, 2024, the Board heard the case and requested additional information to be brought forward, and today the applicant is back with that requested information. There was a review of the hearing criteria the Board must consider. The request includes a development agreement to limit residential development to 29 buildable lots with a public water system. The preliminary plat has been put on hold until a decision has been made for the conditional rezone. There was a review of agency comments and property owner comments. DSD Planner Barron summarized the areas the Board wanted additional information on:

- Address the viability of 29 septic systems.
- How far the septic would migrate to any of the other surface wells that are immediately adjacent?
- Address the Board's concerns about basalt, lava, and other rock close to the surface.
- Response times of fire, police, and ambulance.
- Address the viability of the applicant's responsibility for schools.
- Staff was requested to bring back draft conditions for a development agreement.
  - The applicant has additional recommended conditions they will address during their presentation

Regarding the proposed conditions, Commissioner Van Beek said she had suggested no secondary homes, but this would allow for a secondary dwelling with a nutrient pathogen study and that was not the proposal.

The following people testified in support of the request:

**Tanner Verhoeks** testified that they are confident the land will support 29 new septic systems. They completed a geotechnical investigation; they dug 18 test pits. The minimum rock depth was 4 ½ feet and the maximum rock depth was nearly 14 feet. The average rock depths are just over 8 feet which is more than adequate to support a traditional septic system. They performed a level one nutrient pathogen study, and the report was sent to DEQ and SWDH for review. They had a predevelopment meeting with SWDH and discussed details for the septic systems and because they are in a nitrate priority area, their septic systems will receive additional scrutiny and will have to meet a more stringent point of compliance for nitrate concentration levels. Standard septic systems such as the older ones on surrounding properties simply dump nitrates into the ground and the nearby dairy plays a large role in this; however, the septic systems proposed for this project are 60% nitrate reducing systems (advanced treatment systems). The proposed drain field locations are designed based on groundwater flow direction to avoid any point concentrations, and before any building permit is issued they will do more physical testing for each lot. SWDH is present for that test pit and only if they approve the soil conditions and septic design do they get a building permit for that lot. If a lot will not support a proper septic system then sanitary restrictions are not lifted for that lot, and it cannot be built on. Their proposed water users' association has the authority and responsibility to make sure what they build works as designed well into the future. Properly

installed systems will have a negligible impact on surrounding surface wells in accordance with DEQ guidelines. Mr. Verhoeks testified that the Kuna Rural Fire District provided updated information about a new station that's going through entitlements that will improve already adequate response times. EMS provided a list of stations in the service area and quoted response times between 12-15 minutes as well as their funding goals to further improve response times. Police did not respond after multiple inquiries, and per County code a lack of response must be considered approval of the application. There is a history of correspondence from the agencies and the responses have been consistent throughout; each agency reports adequate coverage for the project. There has been written testimony from the school district and verbal testimony from the administration and teachers about why they support this project but what hasn't been heard before was the metrics and technical data as to why they can support the new students from this project. The letter from the school district includes the forecast number of students for this project, which is 14 students, along with current capacity levels at the elementary, middle, and high schools the students would attend. They also provided additional context on the long-term planning, how the project fits into the plan and reaffirmed that they are able to serve the students generated from this project. The letter marks the school district's sixth positive affirmation of this project. Regarding secondary houses, Mr. Verhoeks testified that per their updated draft development agreement secondary houses are fully restricted. Condition No. 5 of the updated agreement ensures all technical issues are septic systems are implemented. Condition No. 9 adds additional detail around the water users' association and the board that will govern it. They are trying to be very responsible and intentional when it comes to water resources and in lieu of a standard homeowners association their plan is to institute a formal water users' association that will be privately funded and available to neighboring landowners and operated based on assessments required in the CC&R's. It will be in charge of running the community water system, including retaining a certified operator; it will maintain the landscaping around the community well site; maintain the holding pond, pump equipment, and landscaping at the pond site for the pressurized irrigation; and ensure the advanced treatment septic systems on site operate as designed by retaining a certified operator. The development agreement creates the framework for this, and they plan to further flush out the details and legal documents at the preliminary plat phase. Mr. Verhoeks testified that the eight standards for evaluation are being met and they have provided example language that can be used in the FCO's should the Board agree the project meets the standards. Following his testimony, Mr. Verhoeks responded to questions from the Board.

**Robbie Reno** offered testimony as an agent of the Kuna School District Board. He stated that developers come into the community and do not often involve the schools, but this developer has worked with the school district to provide a good opportunity for the kids. They are a model developer for working with the schools and he encourages all developers to do that. He hopes the project moves forward. Regarding the student generation rate, he stated that Tischler Bisch did a study 3 years ago and their generation rate is .52 students per single family and for multi-

family it's .41; 29 homes at that generation rate equals 14 students. Following his testimony, Mr. Reno responded to questions from the Board.

The following people testified in opposition to the request:

**Dwight Hagel** testified about his concerns regarding the addition of 29 septic systems and the negative impacts on the aquifer and traffic. He also has safety concerns with the canal that goes through the property.

**Ted Zahradnicek** testified that he has lived adjacent to the subject property for 40 years and he is opposed to the project having 29 septic tanks and a public water system because it will cause adjacent wells to go dry. He would prefer the project utilize city services. He is concerned with houses being developed on farmland, especially in the middle of an agricultural area. He spoke about plans for the widening of Robinson Road and traffic issues in the area which impact EMS response times. He spoke of an emergency where he called 911 and it took 30 minutes for an ambulance to arrive. Following his testimony, Mr. Zahradnicek responded to questions from the Board.

**Curtis Kessel** testified about his concerns with septic systems. He had to use a jackhammer to dig fence post holes on his property and spoke about how 29 loads of rocks were removed from a high spot in his pasture. The land has big rocks and a lava bed and it's not safe or sanitary to put 29 septic tanks in this small of an area. He said the water pipe they intend to use was put in for agricultural use not to supply 29 homes with water.

**Gary Geyer** is opposed to the addition of 29 septic system drain fields. His house was built in 1973 and 4 years ago his septic tank collapsed so he installed a new one which is now sitting on top of the ground. He wanted to put a new drain field in, but the backhoe could only get down three feet and the inspector said they could install the septic tank and put mounds of dirt over it to have six feet from the top to the bottom of the drain field, but Mr. Geyer didn't do that; they went back to the old one and so far, it's still holding. Lava is all over and he questions how deep they can place the drain fields. Following his testimony, Mr. Geyer responded to questions from the Board.

**Jim Danes** testified that his house was built in 1975, and they had a problem 10 years ago with raw sewage coming up in the backyard. They drained his septic tank and it was a mess. The tank had holes so they went through the health department and made a plan and when they dug up the old tank they found that a lava shell was 2 ½ feet below the ground and years ago the drain field pipe was put on top of it. In order to put the tank in and get below that shell, he had to rent a large backhoe and dig through the shell before they got to loamy soil that would properly drain. The subject property will not be any different, and he questions how the developers are going to address that.

**Larry Peterson** testified that the developer always presents the best-case scenario and, in this case, he believe their arguments for a public water system and septic systems, as well as the

impacts on the school district are all best-case scenarios. He said he performed the pump test in the late spring/early summer when the canals and ditches were full and other pumps in the area weren't pumping much and claimed there was very little impact to the water table, but the worst-case scenario will be when we have a dry year and the pressurized irrigation is shut off in late August and the houses start pumping from the public water system to irrigate their landscaping and instead of pumping 400 gallons per day it will be 6,000-8,000 gallons per day and the impacts to the existing wells will be devastating. The ground is not ideal for septic systems and they will have serious issues. Once a municipal water system and wastewater system are available it may be a different scenario but until then, Mr. Peterson believes it will be a disaster for the existing residents. He is disappointed that Commissioner Brooks did not participate in the hearing. Commissioner Holton said Commissioner Brooks recused himself due to a conflict of interest.

**Sue Marostica** testified about a neighborhood with shared wells that has experienced water problems for years and is on the city's top priority list for connection to city services due to the issues with wells and septics. She testified that some of the builder associations wanted to bring a lawsuit against the Kuna School District because they are only welcoming subdivisions that are paying, but none of what they are doing will help build new schools and that is her major concern. She agrees with the neighbors' testimony about the water and septic concerns in the area.

**Lee Nichols** agrees with the testimony that has been given.

Deputy PA Wesley made a point of clarification for the record that the map that was referred to is the map that's in the PowerPoint presentation provided by staff, slide #12. Planner Barron said the subject property is approximately two miles from Nampa city services.

Rebuttal testimony was offered by Hethe Clark who said there are 13 subdivision and 140 lots in this area, which has already been planned by the County for residential use as designated by the comprehensive plan. If this property were to wait for the City of Nampa to bring services two miles and be annexed, the density would quadruple because the city cannot economically serve one acre lots or ¼ acre lots. This project helps transition and buffer that change. There was testimony about rocks and the lava rock interfering with plows, and so it doesn't sound like the property that should stay in largescale agriculture. Decisions have to be made based upon substantial and competent evidence in the record. The Supreme Court has been consistent in saying, including in the Hungate vs. Bonner County case, that preservation for appeal also requires more than just supposition as to a particular issue. Regarding the septic systems, the matter has been fully investigated at a stage far earlier than is typical for a subdivision and the data shows the property can handle the septic system. SWDH has to review and approve each septic site, which the evidence shows is likely to happen. The applicant has provided assurances far beyond what is typically required for any subdivision in the form of their development agreement and the commitments they made. They dug 18 test holes, they know what the depths are, and they are confident they can meet SWDH requirements. Regarding water, they have talked about the additional requirements that have to be met in order to do a community water

system and they have discussed doing a monitoring well and working with the Idaho Department of Water Resources to monitor levels. Water studies were done in the early spring and the levels were consistent as previously testified to by Terry Scanlan. There is adequate water. The Kuna School District has said it can serve the project's students. The development agreement reinforces the commitments and arrangements they have made.

Cody Ellis responded to questions from the Board regarding the test holes and how they will work with SWDH on the septic systems.

Tanner Verhoeks stated there are multiple checkpoints for septic systems and if they all fail then the lot will not get a septic or a house.

There was further review and discussion of the proposed conditions.

Regarding the applicant's commitment to be accountable to DEQ and SWDH, Mr. Clark said some of these items are required regardless and, in that case, their public water system is subject to an elevated level of review and oversight and they have to have a qualified operator to run that system. SWDH will review the initial installation of those septic systems, and what the developer is doing with the water users' board is to put an onus on them that all of those obligations are satisfied moving forward.

Deputy PA Wesley said the conditions would accomplish what is being proposed with a public water system and they are going to require agency approvals. This is more detail than we normally get about how it will be administered going forward but the detail is helpful. Perhaps another condition would be to have the O&M manual ready at the time of preliminary plat.

Upon the motion of Commissioner Van Beek and the second by Commissioner Holton, the Board voted unanimously to close public testimony. The Board's deliberation on the eight (8) criteria was as follows:

1. *Is the proposed conditional rezone generally consistent with the comprehensive plan?*  
Yes.
2. *When considering the surrounding land uses, is the proposed conditional rezone more appropriate than the current zoning designation?* Commissioner Van Beek said the 1.67-acre lots are much smaller than the surrounding lots at 5 acres, and this is an area that could be evolving toward a different zone classification but it's still pretty open. Commissioner Holton said all surrounding land uses consist of much larger parcels. He is on the fence for this question because of the other 13 subdivisions in the general area.
3. *Is the proposed conditional rezone compatible with surrounding land uses?* And 4. *Will the proposed conditional rezone negatively affect the character of the area? What measures will be implemented to mitigate impacts?* Commissioner Holton said it's a more intensive use than the surrounding uses. The rezone would be pieces of land that

would not be used incidentally for agriculture where some of the lots definitely can be. Commissioner Van Beek said there is a section that looks to be one mile northwest of this area that is emerging, and it is in proximity of the Stewart Dairy. Commissioner Holton said it is low density residential, and if you look at the map that's just below that it gives the lot lines so you can see what the land divisions are. Commissioner Van Beek said the average lot size overall is significantly larger.

5. *Will adequate facilities and services including sewer, water, drainage, irrigation and utilities be provided to accommodate the proposed conditional rezone?* Commissioner Holton said they have met the burden of proof and made plans to adequately address the facilities and services of sewer, water, and drainage. Commissioner Van Beek asked if the report satisfies Commissioner Holton's request for information on whether the septic systems would have adequate drain fields, etc. He said it does and said they do not deny there is basalt below the ground. They have said they may not be able to develop all 29 lots because there may be a lot that is so difficult to deal with the basalt that it has to forgo a septic system which would mean no building permit. They have demonstrated they brought in a geotechnical engineer and have a concept of what they are up against and they are contractually tying themselves to DEQ and SWDH standards which makes that association very accountable. He is aware of the enhanced capabilities of septic systems and he has little to no faith in them if there isn't a plan for ongoing supervision and maintenance. The developers have demonstrated they recognize the issue and the challenge, and they have a long-term plan that makes them accountable to the same public agencies. They have demonstrated they have a plan to mitigate it that it would be adequate. Commissioner Van Beek said there was testimony from Mr. Danes about how they put mounds over the drain field, but that is not a viable solution. Commissioner Holton said they will be held to the standards of SWDH on how the design will be handled. Commissioner Van Beek said as to the efficacy of community systems, she's heard they fail and there are maintenance issues with them. Commissioner Holton said there is no comparison in the overall performance when comparing 29 wells to one well that is engineered and designed with redundant systems to operate. Commissioner Van Beek wants to make sure what we approve is appropriate given the proximity to the city. It is essential to have a functional drain field.
  
6. *Does the proposed conditional rezone require public street improvements in order to provide adequate access to and from the subject property to minimize undue interference with existing or future traffic patterns? What measures have been taken to mitigate road improvements or traffic impacts?* Commissioner Holton said they have proposed mitigation for that. Commissioner Van Beek said it is recognized there is increased traffic to the area and there are road improvements underway.

7. *Does legal access to the subject property for the development exist or will it exist at the time of development?* The Board finds legal access does exist.
  
8. *Will the proposed conditional rezone amendment impact essential public services and facilities, such as schools, police, fire and emergency medical services? What measures will be implemented to mitigate impacts?* Commissioner Van Beek appreciates that the Kuna School District is looking for the career technical education portion of that but she doesn't know that the ability to provide that kind of hands-on vocational labor answers the question that it mitigates the load on the school system. The high school is at capacity and modular buildings are not a good option. She spoke about EMS response times in rural areas and with the additional traffic and road construction it could be a matter of life or death. It has not be mitigated in her mind. Commissioner Holton said he was not presented with overwhelming evidence that the application would flip the response times significantly one way or the other. Police, fire, and other EMS chose not to give an opinion that was derogatory towards the project.

The Board had questions for staff regarding the P&Z Commission's recommendation and draft FCO's. The Board was in recess from 3:56 p.m. to 4:06 p.m.

The Board found the request meets criteria Nos. 1, 5, 6, and 7. There was further discussion of the criteria that had been reviewed.

Commissioner Van Beek has concern with introducing an R-1 designation in a transition area in agriculture. Commissioner Holton agrees that it's a reach to go from 3.32 acres down what is proposed. He said the neighbors are concerned about density but it will become much denser when the city gets there. This is one of the better subdivisions proposals he has seen. Commissioner Van Beek likes the proposal, but there is still the question of is it more appropriate. She wishes the application met the rural residential definition because on the south that's exactly what it is. There were recommendations from the P&Z Commission that the applicant could have brought back that would have helped mitigate the concerns on some of those parcels where the surface to basalt was identified as less than average for a septic system. The proposed acreages are not compatible. The introduction of R-1 will create the potential for more approved subdivisions and it will set a precedent. It is difficult to deny a request that has merit, but it is the Board's job to evaluate the testimony and evidence. The right application would have been for a rural residential designation. Commissioner Holton agrees. He heard the neighbors' concerns about septic, but said the applicant went beyond showing how they would mitigate that and set the development in a position that their septic systems would be far superior to the ones that surround the property. Regarding the concerns about density, he spoke about how the neighborhood will change when the city gets to the area and he suggested the neighbors work with a developer to reach a compromise.

Following deliberation, Commissioner Holton made a motion to deny the application and instruct DSD staff and Legal to provide FCO's which will be considered at another meeting. The motion



was seconded by Commissioner Van Beek. DSD Planning Supervisor Anderson asked the Board to indicate what the applicant could do to obtain approval. Commissioner Holton said the applicant can work with the surrounding landowners to make an amenable subdivision or at least be reconsidered in the two-acre or larger plan the County has. Commissioner Van Beek said the proposal needs to be rural residential because this is a rural area, and an increased lot size would allow a greater margin for a challenging area where individual septic systems are proposed. The request is compatible with the land uses to the north, but not to the south and the EMS response times are outside of standardized times, and the entitlements for a fire station have not been granted. It is an issue of timing. The motion carried unanimously. The hearing concluded at 4:37 p.m. An audio recording is on file in the Commissioners' Office.