

Commissioners Minutes

December 3, 2024 – 1:31 p.m. to 2:43 p.m.

PUBLIC HEARING: SHORT PLAT FOR LIPPERT SUBDIVISION, CASE NO. SD2023-0006

Commissioners Brad Holton, Zach Brooks, and Leslie Van Beek

DSD Principal Planner Dan Lister

Darin Taylor

Wayne Lippert

Kimba Lippert

Darin Kindrick

Deputy Clerk Monica Reeves



PUBLIC HEARING: SHORT PLAT FOR LIPPERT SUBDIVISION, CASE NO. SD2023-0006

The Board met today at 1:31 p.m. to conduct a public hearing to consider the short plat for Lippert Subdivision, a two-lot subdivision, Case No. SD2023-0006. Present were: Commissioners Brad Holton, Zach Brooks, and Leslie Van Beek, DSD Principal Planner Dan Lister, Darin Taylor, Wayne Lippert, Kimba Lippert, Darin Kindrick, and Deputy Clerk Monica Reeves. Darin Taylor offered testimony on behalf of the applicants. The Lipperts own 20 acres on the west size of Breezy Lane and are proposing to divide it into a 5-acre parcel on the north and a 15-acre parcel on the south, on which they currently reside. They are dividing their land because they need money to pay for medical bills, and they are dissatisfied with the length of time it's taken to get through the process. They have worked with all agencies and the highway district has been the biggest hurdle they have encountered. Because the property to the west is proposed for development there was discussion with the highway district and the neighbor about access to that property and the district wanted the access to be across the Lippert property. They have required an access easement for road utilities, drainage and irrigation even though this ground is dry and does not have any irrigation water. The property is bordered by Breezy Lane and 25-foot easement because years ago the highway district did not know where the roads were going to go and they were preserving the quarter section lines. Those easements have been recognized on the preliminary plat. As requested by the County they have included a sheet for slopes that shows topography and slope dimensions. They will not build or disturb any land that has 15% slopes or greater. Most of the conditions of approval are already in effect and they just need fire district sign-off and to go through the final plat process. They initially filed as a short plat but because the highway district was not clear on the access to the southwest, as well as road requirements and how much right-of-way they wanted the applicant to dedicate, the district was not ready to proceed with the preliminary plat and final together so the applicant separated those processes. The highway district is in support of what the applicant has done. The applicant has no objection to the P&Z Commission's conditions of approval. Condition No. 11 requires the easement on the south that was given to the neighboring property owner be an actual lot because it's sole purpose is for a

road. There is also a condition that requires prior to final plat approval, a road users' maintenance agreement (RUMA) be entered into between the applicants and the developers on the property to the west. He has no idea of the status of the development to the west, but a RUMA seems premature until the road is constructed and he does not agree with delaying this application until that RUMA is signed. Because the agreement between the Lipperts and the developer to the west is for the sole purpose of the road, it makes sense that it be a road lot shown on the final plat that comes back to the Board. That condition has been added since the P&Z Commission hearing.

Commissioner Van Beek had questions for staff regarding the Codr land use case where there were concerns about the road and access and that applicant was forced to go across Merlin Lane and the impact of that was a road that was 12 feet from a patio. Principal Planner Lister said in that case the developer and the owner could not agree on access to the Codr property and the highway district required access through Lansing Estates, Gloria Lane, and Merlin Lane which would turn that into frontage in a public road. Neighbors in Lansing Estates expressed concern about how that would impact their view and take away some of their space. There is an existing 25-foot right-of-way dedication that happened in Lansing Estates that they didn't think would ever be used, but the rezone allowed that to be worked out with the highway district and some of the neighbors were concerned. The County added a condition stating that is the approval subject to trying to work with the Lipperts to get that access. Through Canyon Highway District No. 4 and discussions with Mr. Codr they were able to work out the 70-foot easement to provide access through the Lippert property instead of the wrapped around improvement which should alleviate the concerns from the neighbors.

Principal Planner Dan Lister gave the oral staff report. The request is for preliminary plat approval of Lippert Subdivision, a two-lot subdivision, on parcel R37431010. The subject parcel was rezoned to a "CR-R-R" (Conditional Rezone-Rural Residential) zone and subject to an approved development agreement (DA #22-025) limiting it to two lots. The property consists of 20.06 acres with a 10-acre average lot size. The subdivision will utilize Breezy Lane, an open, unmaintained public right-of-way, for access. The northern boundary has a 28-foot access easement that serves two parcels to the north and the west. The south boundary has a public right-of-way that has not been opened. Breezy Lane has to be constructed to meet private road standards which is why this couldn't be a short plat anymore because the code says if there is any development that requires engineering it cannot be a short plat; it has to be a preliminary plat first then a final plat with construction plans or engineering that would be reviewed separately because our fees do not cover engineering review for construction drawings. The highway district provided the option for access and it is the 70-foot easement to the south that would help the Codrs develop their property and provide access to this one lot. The applicant agreed to that and provided the easement to the Codrs which would circumvent the other approval that was done for the other division. A condition to be considered by the Board is adding a road lot instead of a private road easement; however, if the Board chooses not to impose that condition it will still meet County code, it's just something that will be an easement and as it goes to the Codr property it will turn

into a road lot which doesn't really connect but it still works. The highway district recommended approval and required a 40-foot wide public right-of-way along Breezy Lane with a 10-foot slope easement. There is no irrigation for the property; the future owner and current owner will be using their well for irrigation up to one-half acre. Ashley Quenzer submitted comments to staff regarding her concerns about habitat and open space and she recommended building envelopes to provide habitat conservation. On October 3, 2024, the Planning and Zoning Commission recommended approval of the preliminary plat request. Staff is also recommending approval. The Board had follow-up questions for Mr. Taylor and Principal Planner Lister regarding the roads, the easement, the slope, and a RUMA.

Given the history with the Codr development, Commissioner Van Beek wants a RUMA that says both parties agree to let that develop go forward. Commissioner Brooks asked what will happen if the Board imposes that condition and the Codr application doesn't materialize. Planner Lister said if they don't submit the plat by February of 2025 the development agreement will expire but County code requires it be brought back to the Board to terminate it and the zoning will revert back to agriculture. Commissioner Holton is concerned about imposing something that is difficult for them to maintain and he doesn't want to delay what the Lipperts can do on their property while waiting on a RUMA.

The following people offered testimony:

Wayne Lippert testified that he built his home on the 20-acre parcel in 1988 and he would like to sell 5 acres. He spoke about his communication with the highway district regarding access and said he placed the easement where the district wanted it. He said Mr. Codr spoke asked him for an easement because his property was landlocked and eventually Mr. Lippert agreed to it because he thought if he didn't grant the easement his five-acre request could be postponed.

Darin Taylor said they could not get a revised letter from the highway district in 2023 changing their recommendation or moving forward with the preliminary plat without making some accommodation on the easement that's been the subject of the meeting. There has been so much effort to get the 70-foot easement and everybody understands what's going to happen there and it's not going to change so the Board has the assurance that it's permanent and it will not go away unless the two parties agree for it to go away. The details about who will maintain the road are usually found in a RUMA, but Mr. Taylor made sure some of those provisions got into the easement agreement and Mr. Lippert has been clear that they are not paying to maintain anything on that 70-foot easement. All of those obligations are described in the easement agreement; it's clear, it's permanent and it's recorded. If there is a RUMA recorded and the development next door never occurs then that document becomes a cloud on the title to the Lippert property, meaning it will show on a title report for that southern 15-acre parcel forever until removed and it will make no sense if there is no development next door. As to whether the 70-foot easement is adequate, the highway district set that number and it will likely have a retaining wall on the north boundary and that's how we can be assured it will work. Mr. Lippert would like the Board

to remove Condition Nos. 8 & 11 because until there is a private road or two driveways on that 70 feet those conditions will not apply. He is content if the Board wants a road lot down; however, he would prefer not to have the RUMA be a condition of approval. Regarding Ashley Quenzer's comments about preserving grasses and native vegetation, Mr. Taylor said in looking at the north 5-acre parcel at least half of it has slopes that are 15% or greater that won't be built on without coming back through the process by condition of approval. A building envelope will not effective the on the 5-acre lot. Following his testimony, Mr. Taylor responded to questions regarding driveways, access, and the easement agreement between the Codrs and the Lipperts. Commissioner Holton said Condition No. 8 should either be deleted or modified to state that at the time a road is constructed a RUMA shall be recorded. Commissioner Van Beek agrees. Mr. Taylor said instead of making it an obligation they should use language that says they should coordinate with and not obstruct or unreasonably delay. Planner Lister said staff recommends deleting it because per the Codrs' development agreement when they do submit the plat they have to meet the requirements, which includes a RUMA. Upon the motion of Commissioner Brooks and the second by Commissioner Van Beek, the Board voted unanimously to close public testimony. Commissioner Holton said he agrees with the FCO's, and he wants to delete Condition #8 in its entirety. He wants it to become a road lot because a lot has more finality to it than a possible easement. Commissioners Van Beek and Brooks agree with it being a road lot and they support the FCO's and the deletion of Condition No. 8. Upon the motion of Commissioner Brooks and the second by Commissioner Van Beek, the Board voted unanimously to approve the preliminary plat for Lippert Subdivision, Case No. SD2023-0006, subject to the conditions of approval, and the removal of Condition No. 8. The hearing concluded at 2:43 p.m. An audio recording is on file in the Commissioners' Office.