

Commissioners Minutes

March 13, 2025 – 1:38 p.m. to 4:56 p.m.

**PUBLIC HEARING: REQUEST BY MDC, LLC/JOSEPH CARTER, REPRESENTED BY RIVERIDGE ENGINEERING COMPANY, FOR A CONDITIONAL REZONE OF PARCELS R37511 & R37510112 FROM "A" (AGRICULTURAL) TO "CR-R-R" (CONDITIONAL REZONE – RURAL RESIDENTIAL), CASE NO. CR2022-0016**

Commissioners Brad Holton, Zach Brooks and Leslie Van Beek

DSD Principal Planner Dan Lister, Carla Carter, Michelle Creamer, Jeff Creamer, Jason Carnahan, Jim Martin, Joe Carter, Rodger Hawker, Crystal Hansen, Michael Back, Elizabeth Koeckeritz, Carolyn Sartain, Steve Sartain, Andrew Blanch, Tedd Todd, Chris Anderson, Jeremiah Hansen, Lyle Zufelt, Tyler Gates, Will Selby, Rick Gibbens, Douglas Carnahan, Joe Petzak, Paul Slaughter, Betsy Chick, Joe Strongone, Alma Shields, Levi Thomas, Christine Hitchner, Cheryl Palange, Kirsten Higginson, Kent Adamson

Deputy Clerk Monica Reeves



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The Board met today at 1:38 p.m. to conduct a public hearing in the matter of a request by MDC, LLC/Joseph Carter, represented by Riveridge Engineering Company, for a conditional rezone of parcels R37511 & R37510112 from an "A" (Agricultural) Zone to a "CR-R-R" (Conditional Rezone – Rural Residential) Zone. Present were: Commissioners Brad Holton, Zach Brooks and Leslie Van Beek, DSD Principal Planner Dan Lister, Carla Carter, Michelle Creamer, Jeff Creamer, Jason Carnahan, Jim Martin, Joe Carter, Rodger Hawker, Crystal Hansen, Michael Back, Elizabeth Koeckeritz, Carolyn Sartain, Steve Sartain, Andrew Blanch, Tedd Todd, Chris Anderson, Jeremiah Hansen, Lyle Zufelt, Tyler Gates, Will Selby, Rick Gibbens, Douglas Carnahan, Joe Petzak, Paul Slaughter, Betsy Chick, Joe Strongone, Alma Shields, Levi Thomas, Christine Hitchner, Cheryl Palange, Kirsten Higginson, Kent Adamson, and Deputy Clerk Monica Reeves.

Elizabeth Koeckeritz, the attorney representing the Carnahan and Carter families, as well as the underlying property owners, testified that the applicants have worked with DSD for three years to get this project to this point. Staff recommended approval of the project, but the P&Z Commission recommended denial with two primary concerns about how will the lot sizes fit in with the surrounding community, and school overcrowding. The developers have a long history of developing smart, responsible neighborhoods, including some of the areas directly adjacent to the Willowcreek Subdivision. The parcel consists of 164 acres and is designated as residential on the future land use map and is currently zoned agriculture. They are providing a draft preliminary plat

that that meets all the requirements of the rural residential zone. It consists of 164 acres with 75 single-family residential lots with the average minimum lot size of 2 acres, and it meets all County code standards. The proposal is for a community water system and individual septic systems. The flood area will have a no-build easement. She referred to 200 acres that were acquired 23 years ago and said the intent was to use the property as a nursery and eventually residential development. Parcel 1 was completed in 2005 with residential development; Parcel 2 was completed in 2007; Parcels 3 and 4 were planted with trees and Parcel 5 has been used as an owner residence. In 2022 the owner also moved a container grow operation from Oregon onto that site. Tree farming is an incredibly intensive use of agriculture and the top soil and every time they harvest another planting they lose significant topsoil and so the property is no longer viable to be used as tree farm which is why they are looking at moving forward with the neighborhood today. The property is surrounded by residential development on all sides. It's expected that the neighborhood could generate between 38 and 53 students but the owners have helped mitigate the impact of the development. As they close out the tree farm they are proposing a donation of \$50,000 worth of trees to the school district for the new school site, however, if they cease operations before the district is ready to receive those they will provide a \$50,000 cash donation, which is in addition to the \$150,000 cash donation they have agreed to provide to the Middleton School District. There has been a huge increase in the number of students that attend charter and private schools and who are being homeschooled which alleviates the number of students in public schools. The primary entrance is on Lansing Lane and there is space to include a bus stop as requested by the school district. There is a proposed extension on Stony Brook Way through the Thoroughbred Subdivision to the west, which was requested by the highway district. The developers will be happy to turn this into an emergency access only or to shut it down completely. There would be a second emergency access through Kemp on the southern border. The road was put through at the request of the highway district and they know there are neighbors who do not want it to go through but from the developers' perspective it can go through or not - they are open to whatever makes the most sense. This is in the Mid-Star Capital Improvement Plan. There are currently improvements planned at the corner of Purple Sage and Duff, Purple Sage and Lansing, State Hwy. 44 and Duff, and State Hwy. 44 and Lansing, and additional improvements that are scheduled to be completed on Purple Sage. All of those improvements are funded through impact fees so they cannot be completed until the homes are built and impact fees are collected. Each house will be dedicating more than \$5,000 per lot in impact fees overall. They are also required to do all the frontage improvements. Following her testimony, Ms. Koeckeritz responded to questions from the Board.

Principal Planner Dan Lister gave the oral staff report. The future land use plan in the 2020 Canyon County Comprehensive Plan designates the parcels as residential. As conditioned, the request aligns property rights, population, school, economic development, land use, natural resources, public services, transportation, housing community design and agriculture goals and policies. The property is currently zoned "A" (Agricultural). It is best suited soils, prime farmland if irrigated. It is currently a nursery with large tree production. The average lot size within 600' radius: 5.38 acres.

The request is a conditional rezone to a "R-R" (Rural Residential) Zone. The subject parcels are surrounded by residential development and similar rezones. Within a one-mile radius there are 26 existing subdivisions, a 2.63-acre average lot size. Planner Lister reviewed the surrounding uses in the area.

Adequate facilities:

Water: Initially the applicant proposed individual private wells. Staff recommended a community water system because of the benefits. It's a high nitrate area and a community system would provide extra quality.

Sewer is to be provided by private onsite septic/drain field systems for each lot. Southwest District Health did not provide comments; however, the applicants will have to do a nitrate priority study.

Drainage will be retained onsite and/or discharged at predevelopment rates. Runoff must be addressed to ensure no impact to irrigation facilities. Design and construction will be reviewed at time of plat.

Irrigation: An onsite pressurized irrigation system is proposed using existing water rights Black Canyon Irrigation District does not oppose the request subject to improvements protecting existing systems

Power will be provided via Idaho Power and other utilities (gas, cable, phone) depending upon availability. The City of Middleton requests a utility easement for future city services expansion.

Traffic:

The request equates to 784 trips per weekday, 58 trips during the AM peak hour, and 77 trips during the PM peak hour at full build-out. The proposed request is anticipated to generate more than 700 new trips per day and more than 70 peak-hour trips requiring a traffic impact study.

A draft Traffic Impact Study was prepared on July 5, 2023, by CR Engineering, Inc. Based on the review of the Lansing Lane and SH-44 intersection, a temporary traffic signal with existing lanes will be required at the build-out of the development (2025). The Lansing Lane and Purple Sage Road intersection is anticipated to operate acceptably with the existing intersection control and lane configuration.

Idaho Transportation Department (ITD) submitted a comment stating the department has no concerns regarding the request due to the request being greater than 2.5 miles north of SH-44

Access:

The existing access is a private driveway serving Parcel R37511 from Lansing Lane, a major collector. The access is used for the existing residence and agricultural operations. The applicant

submitted a conceptual site plan proposing a public road connection to Lansing Lane (major collector), a connection to Stony Brook Way (public road established by Thoroughbred Estates Subdivision, and Kemp Road (public road established by Willow Creek Ranch #3). The applicant proposes access to Kemp Road for fire access only and plans to place bollards at the access to ensure it remains for emergency access only. Future residential development should be planned via one or more public or private road approaches to Lansing Lane. A public road connection extending between Stony Brook Way (in Thoroughbred Estates Subdivision) on the westerly boundary and Lansing Lane is generally desirable to support public needs and provide adequate traffic calming measures to reduce pass-through traffic and limit vehicle speeds. The draft traffic impact study states the site access on Lansing Lane does not warrant turn lanes at the time of development buildout.

#### Essential Services:

The proposed residential development will be served by Mill Creek Elementary, Middleton Middle School, and Middleton High School. The applicant has discussed an agreement with Middleton School District to provide 100 trees from the existing nursery for the district to use to help aesthetically and offset costs to the district. Now is working on a donation amount to mitigate impacts. Middleton School District submitted a comment letter expressing significant concerns regarding capacity, continued growth, and the ability to meet future facility needs.

Canyon County Sheriff's Office did not provide a comment. The Middleton/Star Fire District responded that they can serve the project. Station 52 (Kingsbury Road) is 4 miles away (6-minute est. travel time). Does not oppose subject to compliance with Water Supply (hydrants) and fire apparatus access. Canyon County Paramedics/EMT provided no comments. Black Canyon Irrigation District –Does not oppose subject to improvements protecting existing systems. There were 21 comments were received for the P&Z hearing, and 19 for the Board's hearing with concerns regarding traffic, access (Stony Brook Way and Kemp Road extensions), water quantity, essential services and the impacts to Middleton School District and EMS, as well as the lot sizes. The P&Z commission recommended denial due to cumulative school impacts, and they found a 2-acre minimum lot size (not an average minimum lot size) to be more commensurate with the area than what the code provides for rural residential.

Planner Lister reviewed the conditions of approval that were recommended to the P&Z Commission:

1. The development shall comply with all applicable federal, state, and county laws, ordinances, rules, and regulations that pertain to the property.
2. The subject parcels, R37511 & R3750112, shall be divided in compliance with Chapter 7, article 17 of the Canyon County Code of Ordinances subject to the following conditions/restrictions:

- a. The development shall be limited to 76 residential lots in substantial compliance with the conceptual site plan and applicant's letter of intent.
- b. As shown in the conceptual site plan, the development shall extend Stony Brook Way from the west boundary and Kemp Road from the south boundary to the existing approach extending from Lansing Lane. The Kemp Road access shall be used for emergency access. The development shall provide a fire access easement and all-weather service road to the property boundary of Willow Creek Ranch Estates #2 Block 1 Lot 9. Entrance from the public street shall have fire department-approved bollards or other access restrictions to limit access to emergency traffic only. Willow Creek Ranch Estates shall be responsible for allowing and providing access at the subdivision boundary to Kemp Rd. for emergency access.
- c. The development shall provide a 10-foot no-rise pathway and 20-foot easement along the southern edge of Willow Creek, extending from the west boundary to the eastern boundary, dedicated for use by pedestrians, non-motorized vehicles, and equestrian traffic. A 10' pathway with a 20' easement shall connect the pathway to a public road within the development.
- d. A 20' wide utility corridor easement shall be dedicated to the City of Middleton on the eastern edge of the development along Lansing Lane.
- e. A no-build easement shall be placed over the Willow Creek floodway and depicted on the plat to notify owners and limit improvements and structures from obstructing the floodway. Any development in the floodway or floodplain shall comply with Chapter 7, Article 10A of the Canyon County Code of Ordinances.
- g. Development shall provide a central pressurized irrigation system to service all residential lots.
- h. Prior to preliminary plat approval, a traffic impact study shall be submitted to Highway District #4 (HD4). Any mitigation measures/improvements stated in the study and required by HD4 shall be completed prior to final plat approval.
- i. ~~Development shall provide 100 trees from the nursery that are compatible with the needs of the Middleton School District prior to the beginning of build-out.~~ (The applicant requested the removal of the condition since they have an agreement and it is a voluntary donation. Staff believes there should be condition to monitor that mitigation and recommends this language: At the time of preliminary plat the referenced signed agreement between the Middleton School District and the developer shall be submitted.
- j. The subdivision shall provide an area within a common lot or easement for a school bus stop.
- k. Subdivision development shall comply with air quality and stormwater pollution protection requirements of the Idaho Dept. of Environmental Quality.

I. Water shall be provided via a community water system.

3. The developer shall comply with CCZO §07-06-07(4) Time Requirements: "All conditional rezones for a land use shall commence within two (2) years of the approval of the board."

Following his report, Principal Planner Lister responded to questions from the Board.

Jeff Creamer testified that he is representing the residents on Stony Brook Way who have concerns regarding the impact to the school district and lot sizes that are not compatible with the characteristics of the neighborhood. The developer is proposing an ongoing commercial operation to continue in the rezoned residential area, and the most important issue to the residents is the quality of life and the safety on Stony Brook Way which is a dead-end road with 14 homes and the proposed subdivision would change it to a through road connecting Duff Lane to Lansing Lane. His autistic son has issues with anxiety regarding traffic, traffic noise, and crowds and they specifically chose this area seven years ago to reduce his exposure to these triggers. Two other residents on Stony Brook have PTSD and live at the end of the street to reduce their triggers. The proposed traffic study considers the sole access to the subdivision via Lansing, but no evaluation of any impact at all to Stony Brook or Duff was considered. The traffic study is also flawed because the peak traffic count was performed on the Friday of Memorial Day Weekend in 2024. Changing Stony Brook from a cul-de-sac to a through road would create an unlivable situation for his family and force them to relocate. If EMS access is required the residents propose the installation of bollards or gating at the end of Stony Brook for EMS only. Mr. Cramer said it's unfair to compromise the existing neighborhood of 14 homes for the convenience of 75 new ones.

Jason Carnahan testified that he is part owner of some the property and his family, along with the Carter family, purchased the property over 20 years ago with the intent of growing trees and potentially developing residential neighborhoods on the portions that didn't make sense for tree farming. After several years they realized the portion to the north of Willow Creek was not feasible or viable for farming for several reasons and thus they developed it into rural residential neighborhoods. They worked with DSD and agencies to try to come up with a neighborhood that made sense for the area so they developed the rural residential piece. Over the last several years it's been more difficult to plant trees because areas have to be left vacant of trees because there are either too many rocks or not the right type of soil. Farming is no longer viable so the next best use is rural residential use given they are surrounded by residential neighborhoods.

Joe Carter testified that the larger lot that is remaining undeveloped is where the container operation sits, and the lower part is where the field trees are grown. A soil survey was done in the 1970s, and it was good soil, but when they plant a tree and it grows to a certain size, they come in with machinery that severs the roots and removes the ball of soil and it's shipped with the tree. They found a number of holes where the bottom is not nice soil and the depth is anywhere from the surface to as much as 42 inches, but with each crop they remove approximately 3 inches of topsoil and over 20 years it's changed a lot so they are seeing more and more rows where some trees are nice, some are dead and some are stunted. They are lifting a planter to avoid more and

more area which is why it's not 100% not suitable for nursery, but it's far less efficient and far harder. If you planted grain or some other small annual crop it would support that. He lives on the property and has operated there since 2002. They have dug holes to see what the limitations are.

Rodger Hawker testified about his concern that the lot sizes are too dense. His well was drilled in 1979 and his static level was 109. 20 years ago he had to replace the pump and drop it down another 20 feet and the static level was at 115. When he turns the pump on the drawdown is 135. He is very concerned with the amount of wells that are going into this area. He is also concerned about the amount of septic systems and he does not want development to change his agricultural designation. He testified that the intersection of Duff Lane and Purple Sage Road is dangerous and he is concerned about the effects of increased traffic.

Crystal Hansen represents two family properties on Lansing Lane. She is a third generation equestrian agricultural advocate who spoke on behalf of her family, neighbors, and others who are committed to preserving the rural character and equestrian agricultural heritage of this area, but specifically she spoke to the way the lots have been deceptively sized. The 17-acre parcel is no longer going to be agricultural, but will be commercial container farming so now they are no longer growing trees on that reserve lot that's included in those 2 ½ acre lot size average. There are large-acre properties being farmed and far fewer exceptionally dense lots in the area. Increased traffic will bring road safety concerns. Also, the plan does not speak to the agricultural use and recreation of equestrians.

Michael Back lives north of the project and is very concerned that the traffic that's going to be on the east side of the development will start using Edna because people will not want to wait at Purple Sage. Edna is a farm road with no speed signs, and it has a lot of foot traffic and some bicycle traffic. It was stated that the development would take \$5,000 as impact fees, but Mr. Back, who was a traffic signal supervisor, said the average cost for a traffic signal is between \$200,000 and \$500,000, possibly more.

Ted Todd testified that he has a background in EMS public safety management and law enforcement and he believes Middleton is a public safety disaster waiting to happen. Duff Lane is closed due to developer construction, so is Cemetery Road. During the morning and evening commute Lansing Lane is a parking lot. The fire department only has three people on duty, and the Canyon County Ambulance District is close to bankruptcy. Tonight there will be no paramedic service and no ambulance available in Middleton until tomorrow morning at 8 a.m. because there are not enough employees to cover the shifts. Middleton Fire Dept doesn't come close to meeting the federal standards for response times. Mr. Todd said people have the right to develop their property, but Middleton is not ready for it because we do not have the infrastructure for it. The petitioner wants to keep this huge chunk of commercial operation in the middle of what they want to convert to a residential neighborhood and he finds it hard to believe that the acreage is no longer viable for farming considering there are thousands of trees growing there.

Chris Anderson testified about his concern with the dangerous intersection of Lansing Lane and Highway 44. There have been four deaths in four years at that intersection and the increased traffic from the development will create a major problem. He wants to know more about what the highway district is going to be doing in regards to putting a light there because it's a disaster. If this is a rural residential area why are they allowing anything less than two acres. It should be two-acre minimum buildable lots. He is opposed to the project.

Lyle Zufelt testified that the Board of Commissioners' mission statement is to promote values that ensure quality of life for present and future generations of Canyon County residents. He voted for the Commissioners based on the hope and confidence they would serve the residents' best interests to ensure quality of life for present and future generations, but said there is nothing about this proposed development that will ensure quality of life for the people living in the area. Most of those who are in favor of the development do not live in the area. He wants the Board to look out for the residents. He appreciates Commissioner Van Beek asking about the water drawdown with the wells going into this area because the numbers do not add up. He expressed concern about the report performed by HDR because that company's business comes from the developers. Mr. Zufelt wanted to address his concern regarding wells going dry in the area surrounding Lake Lowell, but Commissioner Holton did not allow the testimony because we are dealing with the aquifer in the subject area.

Will Selby testified about his concern with the influx of growth and said last year he had to replace his well because it went dry and he had to drop it another five feet, and within 100 yards of his property a neighbor's well went dry. He also testified about his concerns with traffic congestion on Lansing Lane.

Douglas Carnahan testified they have not signed an annexation agreement with Middleton and the city did not offer a pathway to annexation although they did suggest a utility access. A public walking trail along the south side of Willowcreek has been included in the plan, and the highway district has no objection to the rezone. The Middleton School District received \$18.5M for facilities improvements six months ago and they are putting together a master plan for how to use that and they have another project they will seek a bond for so there are a lot of resources for schooling. The developers commit to building level to one foot above the floodplain. The container business is located on a portion of the 9-acre parcel on the southeast portion of the property.

Kirsten Higginson testified that Kemp Road is a private road they paid for it with HOA dues. She works for the Middleton School District and said the influx of people moving to Idaho has increased the number of students in the district. Sheep are herded twice a year up Lansing Lane where they want to add 75 more homes. In 2021 the Higginsons had to lower the pump to their well 20 feet. Her well depth is 243 feet. She said a community well brings a lot of anxiety because that's a lot of water for a lot of homes.



Joe Petzak lives a mile from the nursery operation and he and his wife represent the interest of the business that is the container division of Willowcreek Nursery. They operate on 9 acres of the 17-acre parcel and have been for a number of years. They grow landscape plants as a wholesale operation with 80 customers with 2-3 customer visits per day. They are a good business neighbor.

Paul Slaughter testified about his concern with the impacts to wells. His well was drilled in 2018 at 180 feet and last summer he dropped the pump 10 feet because it went dry. He also testified about his concerns with traffic and kids learning to drive and cross Purple Sage Road and Hwy. 44 where a traffic signal is needed.

Betsy Chick testified on behalf of the HOA for Willowcreek Ranch Estates No. 2 and No. 3, which is comprised of 28 homes on Kemp Road and JR Way. The proposed subdivision map indicates a proposed Kemp Road emergency access; however, Kemp Road is a private road within a subdivision plat that's not dedicated to the public and is not a part of the public road system. It's a private road right-of-way on privately owned land for a private road system. Kemp Road west of Lansing Lane is private. Kemp Road recently extended east of Lansing Lane and that is public and they are building homes in Hawk View Estates. Ms. Chick said Willowcreek Ranch Estates HOA does not give permission to have any form of access road tied into Kemp Road. The homeowners pay for maintenance, plowing, and the overall upkeep of Kemp Road, and the developers have no legal right to access and use Kemp Road. In 2017, the Supreme Court affirmed the judgment of the Canyon County District Court to grant summary judgment for Willowcreek HOA regarding a property owner's claim that they had an enforceable right to access and use Kemp Road. The case was regarding the proposed subdivision on the north side of Purple Sage Road, west of Lansing Lane known as Oakley Estates Subdivision. Commissioner Holton said that is not the information the Board is operating off of. Planner Lister will contact the highway district to inquire if it is a private road or a public road. Follow-up discussion ensued.

Joe Strongone testified that removing the 18-acre anomaly lowers the average to under two acres, and it seems like the developers are trying to convince them that the average lot sizes are a lot lower. During the P&Z Commission hearing, the developers said they were open to a minimum lot size but they did not change or propose anything new. The character of the area is more compatible with the P&Z Commission's analysis of 5.3 acres. He said the \$200,000 donation is a positive precedence and he wishes all developers would do the same thing although he is concerned with the verbiage of the termination agreement because it's vague and up to interpretation and has an easy way out if faced with unreasonable conditions. Mr. Strongone said he had email exchange with the Middleton School Superintendent who said the donation is a good start but will have a minimal impact to the current situation given that there are 3,600 lots that are in various stages of construction. The schools are over capacity. The charter school information that was presented is misleading because it does not reflect the problem in Middleton and it was pulled during COVID and no longer plays a role in terms of planning for the coming school years because the growth of the district has outpaced the impact of the charter schools. He recommends the removal of the pre-annexation and any type of easement for utilities in the final documents. He would prefer to see 3+ acres because it's more in line with the character of the area, and he would like to see construction started when the infrastructure is in place.

Alma Shields testified about her concern with traffic and kids walking to the school bus stop when there are no sidewalks. The city will be responsible for building sidewalks which will take more money that they will not provide for.

Levi Thomas owns Basalt Blackwater and Excavation and testified about his experience in septic system installation and he wants to speak to water levels and well drawdown. 250 foot wells are really common in this area, and when close to Hwy. 44 you will hit groundwater at 3-4 feet because it sits stagnantly at that point. It was said that wells going dry often are attributed to a fluctuation in the water table due to an increase in population, but that's not necessarily true - oftentimes, especially in this area, because it's old riverbed it's very sandy soil and sediment can gather around the pipe. There are many different reasons why you might need to lower a well, but he doesn't see that these few homes will change the water table all that dramatically. When looking at the surrounding area the islands of houses are showing up all over the place. Regarding traffic, it's on both sides of the river all the way down Hwy. 44 and there are numerous lights and improvements that need to happen. It's time to make space for the people who want to move here and the main thing is to make sure water is treated, which it will be in a community well.

Cheryl Palange testified about her concern with lot sizes. Almost two-thirds of the lot sizes are under two acres, and removing the nearly 19-acre parcel brings the average down to 1.77 acres. Pre-annexation and the dedicated utility corridor is a request by the City of Middleton, and a P&Z Commissioner seemed concerned about it as well and asked the applicant if they really needed them and recommended they be removed so she is surprised to see it in the staff report. She is concerned about the infrastructure, traffic, and schools. Lansing Lane and Purple Sage Road are speed zones, and the \$5,000 per lot needs to go a long way in terms of making improvements.

Christine Hitchner testified that she has document that Betsy Chick spoke about regarding the litigation. Seven of the nine homes on Kemp Road back up to the existing tree farm property line, each of the seven range from 1 acre to just under 2.5. The developer has 17 proposed buildable lots backing up to just 7 homes and they are very narrow and just over one acre each, but they look like slivers compared to the existing lots on Kemp Road. The shape, quantity, and the location of buildable lots is important. She asked if there can be fewer homes.

Kent Adamson is the project engineer and he testified that they will do a community well. There is also surface irrigation so most of the water that's going to be taken up by the well is for domestic purposes. There is not going to be a lot of irrigation which causes a lot of wells to fail because the drawdown for many of these wells is from a local depression versus a regional depression and from a high demand in the well that is maybe not totally made for that demand. The report said many of the wells in the area failed because they weren't constructed properly. It's important to make the difference between a regulated community well and individual wells and their use versus just for irrigation purposes and that sort of thing. 90% of the use is non-consumptive so that means just 10% is not going back into the ground. The report specifies that the levels in the area have been generally stable back to 1969 with a slight decline starting in 1996 but it has stabilized

over the last 10 years through mid-2020, and it dropped about 2 feet. He said the neighbors expressed concern with Kemp Road and the developer got caught up in the private/not private issue and they decided maybe it's better to use bollards. On both entrances the developer has no preferences whether they are bollards or not; they just need two accesses for subdivision.

The Board took a recess from 4:06 p.m. to 4:20 p.m.

Elizabeth Koeckeritz offered rebuttal testimony and said there has been some conflicting testimony and questions have been raised, and if the applicants have not answered Commissioner Van Beek's water questions satisfactorily and the case is looking at being denied they would request a continuance so they can come back with their water expert who can dive into those questions. Originally, they were in the area of impact for the City of Middleton, or Middleton thought so, but there was a County dispute and it's gone back and forth over the years, but she has no problem not signing an annexation agreement with the City of Middleton. Putting a utility easement along the edge of the property is standard practice. They will have to provide an updated traffic impact study for the preliminary plat. With regard to roads, more than \$5,000 per lot, that does go into the bigger pool and it goes for all of the various road improvements that are included with the Mid-Star Capital Improvement Plan, it's not just dedicated to the specific improvements she mentioned that are coming to this area that have been included in that plan. She did not include a list of all improvements. Hwy. 44 is undergoing a big study on the entire corridor and when they are talking about the temporary traffic light those are the ones that are not the solid permanent ones, it's the kind that sticks out and goes over, and that's the improvement they would be looking at having the developer help fund based on the traffic because they do not want the expense of a major installation if they ultimately are going to widen the road or do other improvements. Historical discharge has to remain onsite, and they will provide the updated TIS. The property that the Carnahans and Carters have used for tree farming is no longer suitable for that use and they want to be able to do some residential development on this property. Questions have been raised about the 17-acre lot skewing the numbers and they would be okay with coming with a preliminary plat where the average lot size was the same 2 acres. It is their understanding that Kemp Road is public but it sounds like there is a dispute and they would ask for that to be determined at the preliminary plat stage. They have to be able to prove they have a second access, ideally there is connectivity throughout developments but in this case, they would ask for that battle to be at the next phase. There was discussion regarding lot size. The zone requires an average lot size of 2 acres and they will be amenable to doing the average lot size, not including the 17-acre lot which means they would lose a few lots and have a few larger lots.

Planner Lister said he has received comment from Highway District No. 4 that Kemp Road is a private road, and the highway district requests that they connect this development to Stony Brook.

There was additional discussion regarding lot size. Ms. Koeckeritz said they could agree to a minimum lot size throughout, including the 17 acres of the 2.5 acres which would come to no more than 63 lots. Kent Adamson said there is some confusion, that's 63 lots without a commercial

lot and that would be revamping the project and he's not sure the applicants want to drop the commercial lot.

A brief recess was taken at 4:34 p.m. so the applicants could confer. The Board went back on the record at 4:38 p.m. After the break Ms. Koeckeritz said they can exclude the 17 acres and do a 2.5 lot size minimum for the rest with no lot smaller than 2 acres. There are some topographical constraints on the property with floodplain so they think they can do a 2-acre minimum with an average of 2.5 acres, not including the 17 acres. Commissioner Brooks said that takes care of part of the issue, but he has concerns about doing what a prior Board used to do when they would do "horse trading" versus what was presented when the application was made; but, in the long run some of the negotiating is beneficial. Planner Lister said the conditions are recommendations and it's an agreement between the County and that developer and this is the process that allows for modification of conditions. Ms. Koeckeritz said the applicant is proposing that any development agreement not have a concept plan attached to it at this time because this changes it. They would come forth with a preliminary plat that excludes the 17 acres, that it has a 2.5-acre average lot size, and no individual lot is smaller than 2 acres. The reason for the 2 to 2.5-acre movement is because there are some topographic constraints along the creek that makes it necessary for some to be less than 2.5 acres, but the average overall lot size, not including the 17 acres, will be 2.5 acres with nothing smaller than 2 acres.

Commissioner Van Beek said we have testimony that wells went dry and there has been a drop in either the static water level, or where they can access water, and that conflicts with the testimony that it will not have an impact. Commissioner Holton said there is no comparison between a private well and a community well, and the developer offered to provide expert testimony. He has no idea how deep this community well will be but it will not end at 250 feet, it will be much deeper than that which means that it is not even in the same aquifer or, or the same pool of water. If this development, as per example, was representing that they were going to be putting in 50+ domestic wells on each one of these lots there would be no going forward in his opinion, but they have represented a community well with fire hydrants which is much better than just doing domestic wells. Commissioner Brooks would prefer to continue the hearing to a later date because he doesn't want to rush through the criteria. He said the applicant is allowed to bring a water expert to the continued hearing, but if they are unavailable the public testimony portion will be closed and the Board will deliberate and adjudicate this case. He does not want new testimony. Commissioner Van Beek also wants the applicant to bring back information on the number of lots that would be match the rural nature. She said there is room for creativity on the long narrow lots, particularly where there is a floodway and some aesthetics that have been brought up by the nature of the commercial business that's out there. Commissioner Holton made a motion to continue the hearing to March 31, 2025 at 2:45 p.m. so that the applicant's water engineer expert can provide public testimony about the community well system and the difference between that system and the domestic well infrastructure. Additionally, the applicant is to provide a lot number report that includes the average lot size and the minimum lot size. At that point public testimony will be closed and the Board will deliberate. The motion was seconded by Commissioner Brooks and carried unanimously. The hearing concluded at 4:56 p.m. An audio recording is on file in the Commissioners' Office.