

**FREMONT COUNTY PLANNING COMMISSION  
MEETING MINUTES  
7:00 PM, APRIL 28, 2016  
450 N. 2<sup>ND</sup> ST., ROOM 205  
LANDER, WY 82520**

**Open of Meeting:** Chairman Kristin Paulsen called the meeting to order at 7:00 p.m. The following were present: Vice Chairman JR Oakley; Planning Commissioners: Tom Jones and Chris VonHoltum; County Commissioner Travis Becker; Planning Department Staff: Director Steve Baumann and Department Secretary Cheryl Crowson. Absent: Planning Commissioner Harold Albright and Small Wastewater Specialist Marcel Lopez. Guests: See attached sheet.

**Pledge of Allegiance:** Chairman Paulsen led those present in the Pledge of Allegiance.

**Approval of Agenda:** Vice Chairman Oakley moved, Commissioner Jones seconded to approve the Agenda of the April 28, 2016 meeting. No further discussion, the motion carried unanimously.

**Approval of Minutes:** Commissioner Jones moved, Commissioner VonHoltum seconded to approve the Minutes from the March 24, 2016 meeting. No further discussion, the motion carried unanimously.

**Staff Progress Report:** Director Baumann reviewed the Staff Progress report presented to the County Commissioners for March 2016. Discussion: (a) February 2016 was a challenging month from the revenue side, but was significantly made up last month. (b) Steve Warner is continuing to work with DTE in Dubois correcting addressing and road errors; (c) Marcel Lopez is absent this evening, but the department is ahead in numbers for septic system permits from this time last year. (d) Received telephone calls from individuals regarding the Heil Subdivision asking if the roads are public or not. Contacted the Sheriff's Department to advise them, from our standpoint, the platted roads appear to be public roads. (e) Director Baumann has been working with the cities of Riverton and Lander regarding annexations. Recently, the City of Riverton did an annexation by plat. Director Baumann contacted attorneys from some of the planning associations within the state seeking their opinion how the process should work. Sharing the information with the cities of Riverton and Lander and asking them to advise the Planning Department when they are doing annexations. (f) Cheryl Crowson is finishing up the reconciliation of the fuel system information, updating the vehicle information, fuel keys and current employees.

Chairman Paulsen asked if there is a written procedure in place for annexations. Director Baumann answered, he contacted the attorney for the City of Gillette who put

together a step-by-step process they thought the statutes required and forwarded that information to the cities of Lander and Riverton. It doesn't impact us except that we should be kept informed. Internally, we do not have a way of knowing when annexations occur other than Chip. It appears that other cities are doing things their own way. Chairman Paulsen asked if the form uses the state statute as a guideline and if it was sent to Dubois and Shoshoni. If we are going to attempt to set a procedure, we need to make sure all municipalities are included. Director Baumann responded no, but he will forward it to them and also to the surveyors, since they are the first point of contact. Chairman Paulsen requested a copy to review. Discussion continued regarding process. Director Baumann commented the State Statute reads that the applicant has to petition the County Commissioners and the county then forwards it to the city. Items to consider are: (a) making sure if it is a county road, is it a maintained county road; (2) is there a septic system on property and will it now be serviced by water and sewer through city; (3) be knowledgeable of what is taking place before it starts, if there is a process where they need to petition the County Commissioners, what are they supposed to ask for, what are the County Commissioners looking for so everyone knows what the process is. Director Baumann stated he will review this again.

**Unfinished Business:** None.

**New Business:**

**Vacation of Grace Mantle Simple Subdivision**

Louis Dickinson came forward to represent the subdivision vacation. The Grace Mantle Subdivision is being vacated to implement the Phase I of the Desert Subdivision. The portion of land at the top, "the tail", is not included in Phase I, but the rest of the subdivision is. The remaining top portion, "the tail", will be included in Phase III. Previously, no lots have been sold and there are no changes. The electric was already there and a water well. The vacation will include the entire Grace Mantle Subdivision and all easements listed on the plat, then put in place right after this the Desert Subdivision with all new easements. Covenants were not filed for Grace Mantle Subdivision and no correspondence received. Director Baumann commented everything has been paid, and only need the Plat Vacation Statement prepared for recording.

Chairman Paulsen called for a motion. Commissioner Jones moved, seconded by Vice Chairman Oakley to approve the Vacation of the Grace Mantle Simple Subdivision located in the NE1/4NE1/4, Section 10, Fremont County, the entire plat being vacated plus all easements and send to the County Commissioners. No further discussion, motion carried unanimously.

**Desert Subdivision Filing No. 1**

Louis Dickinson came forward to represent the subdivision. He commented he has been to the City and they are satisfied, the Airport is satisfied and has just given to Director Baumann a copy of the engineer report on the road for Phase I and a copy of

Covenants that have not been filed yet. Continue to work on an Improvement & Service District to include the roads and water wells. Chairman Paulsen asking if the Homeowners Association has been established and what it is called. Mr. Dickinson answered it is Desert HOA Subdivision, which includes the architectural control committee, all landowners will be a part of, in addition there will be an SID with the county that will take care of the roads and any water issues and water well testing. Director Baumann commented he had several conversations with the clerk's office on how to ensure that there will be a recording place on the plat to allow covenants to be recorded after the subdivision has been recorded. On the bottom of the plat there is a square area that has been sectioned for "Official Use Only", which will allow the clerk's office to get the mylar after the commissioner's have signed and fill in with the recorded covenant information. Also, remove the culverts and topography on the plat. Chairman Paulsen asked Mr. Dickinson when he returns to the city for their final approval. Mr. Dickinson answered they were good with it and just need to take the plat to them for their signatures. Chairman Paulsen asked if we usually have Raeline's (recording clerk) signature on the bottom of the plat, is it something new. Director Baumann answered that Raeline signs them and it was just put on there by Mr. Johnson as an addition. Chairman Paulsen stated that her name is spelled incorrectly. The covenants were changed to include Louis and Jackie Dickinson. The plat shows Louis Dickinson as a sole proprietor. Mr. Dickinson commented that if he needs to make a change he will make the change, but doesn't know if it makes that much difference. Chairman Paulsen commented to make sure that both the plat and the Covenants are changed to match so there isn't a question. Change the Covenants to be the same as the Dedication on the plat, as a sole proprietorship, unless there are legal documents to that change that information. Make sure both the plat and the Covenants match, because they will basically be filed one right after the other, so there isn't two different entities signing saying they are the same thing.

Chairman Paulsen called for a motion. Commissioner VonHoltum moved, seconded by Commissioner Jones, to send the Desert Subdivision Filing No. 1 Final Plat to the County Commissioners for their review and approval with the topography being removed and either everybody's names being taken off or being corrected and verification of the Certification and Dedication of Title to make sure signatures are correct. No further discussion, motion carried unanimously.

**Review Chapters VI, VII and VIII of Regular Subdivision Regulation, Subdivision Development Agreement, Plat Vacation paperwork and Dedications and cell towers.**

**Chapter VI – Required Improvements and Funding**

Chairman Paulsen stated at the last meeting the removal of telephone service requirement was discussed and all were in agreement. Also, Letters of Credit were discussed of the different ways people could bond. Director Baumann asked regarding the Letters of Credit, should there be a sample form or will the banks have their own.

Commissioner VonHoltum commented most banks have their own form, but to review it making sure it is a true letter of credit, some banks may try to write themselves out and that is not acceptable, it has to be a full guarantee letter. Director Baumann asked if he could get a copy for review. Commissioner VonHoltum answered he will provide a sample copy of the form the bank uses. Also, suggested getting a form from each of the other banks to review. Vice Chairman Oakley asked about having a checklist to help make sure a Letter of Credit received is accurate, having some guidelines to follow. Director Baumann stated the County Attorney would need to review each Letter of Credit received to make sure it is accurate, but having a guideline for internal use would be beneficial. No further discussion. All changes made to this Chapter are acceptable.

### **Chapter VII – Mobile Home Parks**

Chairman Paulsen commented in a conversation with Commissioner Albright today, he would like the opportunity to comment before any final decisions are made on this Chapter. Director Baumann stated he has tried to condense this Chapter and reviewed the State Statutes again locating the portion indicating the need to have something in place. There is valid reason to think beyond the mobile home, and try to incorporate other things, such as micro homes as well as man-camps. Most counties deal with man-camps through their zoning regulations and of course we do not have zoning so we don't have the ability to apply that process. There need to be something put together stating the impact to mobile homes, micro homes, and temporary housing establishments in one form or another. County Commissioner Becker commented man-camps may be something we possibly will be dealing with in the near future; there could be a large development in the Moneta area possibly within the next three to five years. Gary Hatle commented that some of those larger operations, if they are large enough, could be regulated under the DEQ requirements. Chairman Paulsen stated to give thought to how we could regulate and increase the definition to incorporate different types of temporary housing facilities. Commissioner Jones commented on a situation of a mixture of property on Carbide off Tweed Lane, approximately four miles out of town. There are mobile homes that are not being taken care of and property owners near are having concerns. We need to have some regulations regarding this type of situation. Director Baumann stated it is their own parcel of land and until they exceed the current regulations stating five mobile homes on their lot or not able to fit a small wastewater system on their site, the property owner has the right to do as they choose. No further discussion. This item will be discussed again at the next meeting.

### **Chapter VIII – Corrected Plats, Re-Plats, Re-Subdivisions and Vacations**

Chairman Paulsen described Corrected Plats have an error on the plat, but no change. Definitions of Re-Plat, Re-Subdivisions, there is still some confusion, but can be discussed. No questions on page one. Page two, Vacations, definition is from Albany County, which follows State Statutes 34-12-106 through 34-12-109. No further discussion, all changes made to this chapter are acceptable.

### **Plat Vacation Application**

Chairman Paulsen commented in the Declaration of Vacation of Protective Covenants form, make sure the protective covenants vacated are only on a specific portion or vacating all covenants against the subdivision. Change the wording to make the intent more understandable. No further discussion, the remainder of the Application is acceptable.

### **Handout**

Director Baumann said on the vacation process, Julie Freese has commented on several occasions, if a portion of a plat is re-platted or re-subdivided, that portion be vacated before the new re-plat or re-subdivision. There are other counties that have language reasonable similar to this stating "Land covered by a vacated plat may be replatted as described by this chapter. Any later replatting of an area already platted and not vacated shall be construed to be a request for the vacation of the original plat or portion thereof. Any such plat, once approved and recorded, shall act to vacate the original plat which it replaces". Should this language be in our vacation section to help to remove her concern? Chairman Paulsen stated she will consider the wording. Vice Chairman Oakley had concerns regarding legal issues from a lender's standpoint. Director Baumann stated Tom Johnson of Apex, is working on a re-plat of three or four lots in Knight Subdivision. The replat is going to remove everything that existed below, except individually recorded easements. Chairman Paulsen stated the need to be very cautious regarding the easement portion. She will contact Julie Freese and discuss this issue.

### **Dedications**

Chairman Paulsen commented this was an issue discussed at the last meeting and requested the commissioners to review. Historically, the older plats just copied the language which dedicated to public or private, making it difficult to determine which one it was because it stated both on the plat. At the last meeting, there was discussion regarding the subdivider having the option to choose whether it was a public or private road. Being able to give them ownership in dedication so they would choose one of the two, this document is the outcome. One is a dedication where it dedicates everything for public use and the other is a dedication where the roads are still private, but the easements are for public use. Director Baumann stated he sent a copy to Tom Johnson of Apex Surveying, and he gave excellent comments on "granting" and "reserving". After reviewing the definition of both, the word "grant" is better than "reserve" in terminology. No further discussion, the Dedications forms are acceptable.

### **Proposed Revisions and Additions to FCLUP**

Director Baumann commented that the County Land Use Plan was adopted in 2005, at some point in time since then, two sections were added, one for cell towers and one for something else. What prompted this is several phone calls from cell phone tower companies, Verizon and Union. The most troubling was that one had erected a tower between Smith Road and the All Nations Subdivision, while locating on private property

is acceptable, what is concerning is they are erecting a structure that is reasonably tall; no provision to protect the public if it falls over; no availability for the public to comment on where they are located; no provision for the county to know where they are being located, in the general sense; but also there is no provision to try to maximize the usefulness of each tower for the maximum number of operators. Maybe we do not want to be involved in that aspect, but there is an opportunity for reviewing the provisions of the Land Use Plan and its statement that we are here to protect the health and safety of the public. One of the goals for the land use is to protect the public safety and health, but we do not have any provision or method for protecting public safety or health. How do we want to go about this? I do believe there is a sincere group that is mandated to take the Land Use Plan and provide implementation strategies, come up with some thought or method for the development of ideas to provide public involvement and protection for public health. Most towns do because they have zoning in place and attach a number of items to each one. Exemptions do provide the opportunity for the County Commissioners to put in reasonable methods for applying the exemptions. In this case they are exempt from the subdivision law, but still have to go through the process of providing public notice. The most important item is to make sure they are not within falling distance of a structure, especially one that has someone living in it. Vice Chairman Oakley commented there are cell towers all over and in the middle of cities. Commissioner Jones stated he understands in the cities there is zoning to apply to these towers, but in the county do they need a permit or just approval of the property owner. Director Baumann answered that it is just the approval of the property owner. Commissioner VonHoltum stated they (cell tower companies) ask the lenders to sign off stating if the property is foreclosed, the cell tower will not be taken down. Commissioner Becker stated that he was not a part of the implementation of the Land Use Plan, but his understanding related to health, safety and welfare, is basically for citizens to have access to cell service. As far as the health and safety, that wasn't taken in effect that it could fall on a structure. It was not designed for that, it was more that if there is a place for a cell tower, then put one in because that will help the health, safety and welfare of the individuals within that tower range. Chairman Paulsen stated by providing 911 and other services that will be available. Director Baumann commented this was brought up for discussion and is up to the Planning Commission to decide the need to pursue any further. This issue was brought up to the County Commissioners as a possible revenue source for a site as well as a permit . Chairman Paulsen stated we didn't want to penalize people who are willing to help with the communication issues we have within Fremont County and the State of Wyoming. Vice Chairman Oakley commented it isn't anything we need to deal with at this time. Commissioner VonHoltum stated there have been no issues with the towers in his experience. Understanding the idea of co-habiting the towers and these are some of the biggest assets these companies own, can you force them to allow their competition to take advantage of that? Is there some sort of fee structure to be put in place? The radio stations compete to use specific radio towers, because those are what are valuable to those companies. Chairman Paulsen commented we don't want to limit the growth of what these companies can do for the health, safety and welfare because where we are, you can go five minutes out of town

and not have cell service. That is part of good planning, growing by making sure that these services are available. When we are looking at things like waiving the requirement to put telephone service into the regular subdivisions, we are anticipating the growth of cell service. For the regulating of this, after taking the requirement of landlines out, doesn't look good on our part. Commissioner VonHoltum stated he was fine with not addressing it at this time. All were in agreement. No further discussion.

### **2016 Fee Schedule**

Director Baumann commented as part of the County Commissioners budget process, all departments were asked to come up with an extra \$500,000, by additional cuts and areas of possible revenue increase. Prior to the Planning Department's budget hearing with the County Commissioners, the budgeting person for the county sent out an e-mail with a number of spreadsheets listing how each department could provide their portion of the \$500,000. Those items were based on a furlough day, self funding to employees own retirement account, unpaid holidays and a couple other items. In addition to that, it was asked if there was an opportunity to increase revenues. After discussion with two individuals within the Planning Department that interface with the public in as far as the fee structure, asking them if they thought there was an opportunity for change in the fee structure and whether there had been any issues related to the current fee structure from the public, for the most part, there hasn't been any comment. The service the department provides is more valuable than the fees charged. We are just trying to make the fees charged closer to the value of the service being provided. Just as a suggestion, change our fee structure by adding a \$50 increase to all items except, adding a \$5 increase to addressing, the addition of a Variance Application Fee for any subdivision and as-built septic systems. We are still continuing to see a significant number of people putting in septic systems that are more than happy to pay the \$500 after the fact, which indicates the fee is not enough of a discouraging factor to bring people into the office and actually go through the process of applying for a septic system permit. Director Baumann presented this information to the County Commissioners as thoughts on generating additional income through fee structure within the department, since the Planning Commission had not had a meeting yet.

Gary Hatle commented the fees are small for a larger developer. The easier it is to get a plat through, the better it is for the county. Taking a piece of land that is taxed dry land, flip it around and file in the courthouse, now you have a 300% profit increase in value in taxable land. The easier it is for people to develop, the long term is for the benefit of the county.

Director Baumann commented he agrees and the increases were just put out for a point of discussion. Commissioner Becker commented there was no discussion on the increase of fees and that this was to go to the Planning Commission. Director Baumann commented we have a number of people come into the office and request replacement reflective numbers and metal plates and we do not have in our current fee schedule to allow these fees. These charges just cover our cost of materials.

Commissioner Jones asked what needs to be done to raise the fee of as-built septic system permits from \$500 to \$1,000. Is it up to the Planning Commission? When it is cheaper to violate the law and pay the fine, then people will violate it. Director Baumann answered the Planning Commission can make the decision to raise the fee. There were four violations last month. Commissioner Jones commented he doesn't have a problem increasing the as-built fee as well as the \$5 and \$3 increases. Director Baumann expressed to the County Commissioners the entire increases combined would only be \$5,000. Commissioner Jones stated that since we just increased fees last year, do not increase the fees again, except to the increase in the as-built septic permit fee. Mr. Hatle asked if the county can require a replacement of the septic system. If one is built illegally, what can be done? Director Baumann answered yes; they can be required to replace it. If we have found out a septic system was put in without a permit, they have to be able to provide us with photographic documentation, copies of receipts to show that the system was installed correctly or the parts were purchased to install the system correctly, then they can be issued an as-built permit. It still isn't a valid permit because there is a disclaimer associated with it. If they cannot provide the information, we can require them to replace it. Mr. Hatle stated it cannot actually be called an as-built, and if cannot be proven to have been installed correctly they would have to fix it. Director Baumann indicated in a lot of cases what occurs is the landowner is under the belief that the contractor obtained the permit. One of the recent violations was done by a new contractor that was unaware a permit was required. Fortunately, the landowner did have photographic evidence. Chairman Paulsen stated education of the people of Fremont County, it is one of our responsibilities to continue to educate from this board, the County Commissioners, the Planning Department and contractors so they understand why it is required and the process.

Commissioner VonHoltum commented that since we just raised fees last year there is no justification to raise them again this year. Vice Chairman Oakley agreed. Although, the fee for replacement address numbers and metal plates should be implemented. Commissioner VonHoltum commented that the as-built septic system permit is more of a fine than a permit, an entirely different issue.

Chairman Paulsen stated that Commissioner Albright had some comments regarding this issue, so take under consideration the addition of the addressing replacement numbers and metal plates for the next meeting. No further discussion.

### **Cash Subdivision Naming and Type**

Director Baumann stated the original parcel had one lot, the Cash Subdivision, a simple subdivision which was done in February, 2014. A few weeks ago the remaining thirty-five acres was purchased. The owner is going to sell the southerly one-half and retain the northerly one-half. Our Simple Subdivision Regulations state "A parcel of land as it existed as of January 13, 2009 may have only one simple subdivision of a total of five (5) lots created within that parcel, once for every three (3) year period. Three (3) years

after the recording of the previous Simple Subdivision, that parcel may have another Simple Subdivision presented to the Planning Commission for pre-plat review, . . .” So this doesn’t meet the requirements of the three years, it has only been two years. The question is what this is. In conversations with Chairman Paulsen, the description of what the intent of the Planning Commission was when that was written was that the original parcel could have a total of five lots within the next three years. There may have only been one lot platted the first time, but the intent was that there could be as many of five within the three year period. The reason this has come up is because there has not been one like this before. The Phister Subdivision was a fifteen acre +/- parcel that had two lots in it and they took one lot and divided it into four pieces so there were five total lots, so it was a re-plat. This is different because it is not part of the subdivision, it is part of the original parcel. The main idea is we are creating a plat, going through the correct process for subdivision so the adjacent landowners are being contacted and the new parcels will have all the necessary easements associated with it. I would like to have more clarification, understanding how this works from the original parcel proving the intent and what do we call it. A re-plat is something that isn’t producing new lots, which this is obviously producing new lots. It is not a re-subdivision because we are not re-subdividing, it is adding lots adjacent to an already existing subdivision. This is an important issue, to be able to follow the deed history on the lots and in the future to understand how it all structurally occurred. When the owners came in originally, I thought it would be a re-subdivision because we are creating lots. Tom Johnson was not comfortable with the wording Re-Subdivision. Chairman Paulsen came up with just calling it an Addition. Mr. Johnson did not like the word Addition because it usually implies an addition to a town site. We do not have it described in our Subdivision Regulations, so Mr. Johnson wasn’t sure about using it, how it would be applied or what connotation it would have attached to it. This is leaving us in a lurch on how to handle these, because we have a number of one-lot simple subdivisions that something like this could easily occur again, how to handle it is the issue. Mr. Hatle commented that the regulations don’t speak to it. The intent of it would be the forty acres as a one owner piece and at the time created Cash Subdivision, one lot and the rest didn’t fall under it because it was thirty-five acres. That person chose not to do five lots, which he had the ability to do, so if you could keep in mind this is what he could have done, then how can we make this flow so this forty doesn’t have more than five lots. The easiest way to do it is to propose to leave Cash Subdivision alone and have Cash Second Subdivision, because then you have three lots in that forty, which is easy to track. Look at Cash One and Cash Second and compare it to the parent parcel of forty. You can see that the forty did not exceed the five lots as a simple. Now, beyond that when I read this Item C under General Conditions, it appears to me what could happen with this forty is that three years from the time Cash Subdivision was developed, they could go in on the remainder and create five more lots, three years later they can go in and create another subdivision with five more lots and so what you have is, simple, simple, simple which really is a full in the end. It is wrong in that since as long as the design and review are correct, that is what we are here for. This could be a lot worse and really it’s unfortunate because we get hung up on the two plats, but the real issue is how many lots were in

here within the three year period. There will be three with Cash Subdivision and Cash Second that wouldn't exceed the five. Then it is easy because the name convention is simple, one sits against the other and doesn't exceed five lots. I think the person had the ability to do it in the beginning, and we have this all the time because they sell it or divide it for the need at the time. It comes down to, can the Planning Department and Commission justify this through the regulations. I could explain it to somebody that asks does it fit the regulations, does it fit the intent of the regulations, is there enough room in the regulations to find intent. It is hard in a sense, but you could argue, one simple subdivision with a total of five lots. You could probably argue more heavily to say you can't have more than one, but there is a discussion for a total of five lots. In the past, we basically looked at it as though they had the ability do it. We are not creating too many parcels and that is really what the simple versus the full amounts to. My argument is still that it is not any worse to do this, than it is to have a simple, simple, simple. I'm not sure what the three years had to do with anything initially, it has always been there, I think it was more of a deterrent to slow things down. Chairman Paulsen stated when it was originally written, it was because looking at the larger acres parcels, the 40's, 60's the 100's the 1,000's and not wanting to limit the amount of subdividing that one person could do on that, but the way it was originally written you could only have one simple subdivision on that parcel as it was created in 2009. Therefore, we were limiting the amount of growth on any one parcel. At that point in time there was a large poll as to what property was still available in Fremont County, which there were a lot of large parcels and we wanted the ability for growth, which is why it was put in there. The things being said are logical, we have the opportunity for Variances. When you look at things and they make sense, even though it doesn't necessarily fit, that is why you use a Variance. It makes logical sense, good planning, makes good use of the land and accomplishes what you want to see happen. This property wants to have on a forty acre piece, three pieces on it. That is very logical. There is already one lot there, with access, mortgaged and all those things are taken care of. To change that could make it difficult for the homeowner and it is not something they want to do. They are looking to add two more pieces. We could make them jump through hoops and they could say we will just wait for the year and come back and make another subdivision. Instead of creating two more lots, we are going to create five more lots, now you have six lots. You have to remember on the original 4.83 acres, they have the ability to take that one lot and make four more lots into it. So, we could end up with ten lots on the whole thing. Part of this is, we look at this as a logical decision as a group and ask what do we want to do, what is good planning. The Variance tool is something we have that can be used, does that fit the situation. Does it matter how you name it, does it matter what you do with it, as long as you are planning in a good way. Look past what the normal is, what fits for everything else, and look at this situation independently and decide what fits best for this, that's good planning. Director Baumann asked where we are asking for a Variance from. Chairman Paulsen answered from our regulations, that one specific one. Commissioner VonHoltum stated the Variance from the three year requirement. Director Baumann stated the important issue is a plat is being created and we are going through this structure. The initial thought is how we do this as a regular subdivision without

having to impugn them with the costs associated with the things that are part of a regular subdivision. They could request a Variance from having to go through the engineering water study associated with it. The important thing is just having something in place, a process. Mr. Hatle commented, that down the road when we look at the regulations again, we should include this concept because it is there and obviously this is going to come up again, I think that just getting a Variance on the three year regulation, recognizing how many years are left and addressing the thought so that in the Variance the thought concept is there. Going back to the parent parcel and not exceeding five lots, if that within that three year [inaudible], is a guidance and good planning, which is what we are doing. It takes away the issue of re-plat naming because it can get long. It works in a lot of cases, but in this one we are struggling and the reason shouldn't be necessarily the naming convention, although that is the problem in this one. I think the Variance is the way to go and spelling it out in the Variance. Commissioner Becker commented his concern is if it is granted, at some point in the future, what is going to stop others who have subdivided from coming back and wanting a Variance from the three year regulation. What is going to stop them from coming back and doing the same thing? It may be different. My concern is where does it stop. Looking at it, if you deny this person but gave it here, are you showing preference. How do you prove good planning? There are a lot of variables that start getting thrown up, when you start granting a Variance of this nature. Chairman Paulsen commented there is evidence to show the reasons why this works well. Under any other circumstance this would be fine. Commissioner Becker commented he understands on this one, but his concern is those who are looking for ways around. Vice Chairman Oakley commented that is why it is limited to the third year, in the third year the Variance could be granted. Commissioner Becker responded why even the three years that is my point. If you are going to limit it into the third year, why even have this as a regulation of three years. Chairman Paulsen stated it was in an attempt to follow some Wyoming cases that had caused some issues with chain subdividing and basically the state gave everyone the option on how to handle the issue. In some counties, they have decided you could not do it on multiple parcels, that is where our date came in. We had to have the definition of what the parcel was going to be so we could set the regulation after that. That was the date chosen, January 13, 2009, and set a time frame. We don't limit what people can do with their property, but we wanted to make sure that we didn't have situations where people were making simple subdivision when they should have made regular subdivisions, not wanting to put the money out to be able to do that. The goal was to make five lots, the landowner could sell them and make money to be able to develop on after that. This has worked well up to this point in time, having been seven years ago, and we have not had any major issues since then. Commissioner Becker commented we are in a litigious society, and I understand this issue, but if it is granted on this case and not granted on another case, you could be opening yourself up for liability because you won't grant the same Variance, even though it could be a totally different situation. Director Baumann stated the issue at hand is really the mortgage. If Dustan did not have a mortgage on that parcel, he would not have a problem and call it a Re-subdivision of Cash Subdivision going from one to three lots. The issue is he has to

notify his mortgage and they have to be willing to allow him to proceed. The mortgage will remain the same, it is just being renamed, it will have a different legal description. The asset is not changed, just a different name. Chairman Paulsen commented a different name is a huge issue in the mortgage industry. We don't want to put him in that situation where Lot 1 was good, he did the right thing, he subdivided, purchased it, got a mortgage against it. Now, having the opportunity to purchase another piece of property and attempting to go through the right process to do it, and we want to make him change the lot he already has, making it Lot 1 which then changes the legal description of his mortgage, which triggers the due on sale clause because he has modified, why would we ask him to do that. Director Baumann commented he has not even asked the mortgage company yet. Commissioner VonHoltum stated the mortgage company may not even allow it. Chairman Paulsen said the mortgage company would have to either modify or release the property and do a new mortgage. Director Baumann stated the document that is sent to the banks which everyone has to do that has a mortgage, has to have it signed before we can do a subdivision. Maybe that is the first step, have him go to his lender and if they are agreeable then it is not an issue. Mr. Hatle stated he appreciates Commissioner Becker's comments, it is true when you start getting into Variances you do need to be careful. If you have reasons for the Variance and can document them, you have a basis to compare with the next person. Each situation is different, but there are some that will be the same, and if they are the same then you can grant the Variance again. We should take the issue of Cash's mortgage out of the equations. For instance, Cash isn't involved, that probably is more reality, keeping it simple, we can name it something, but going back to the parent parcel idea of not exceeding five lots, I feel it is a valid point. The problem is we don't know who will come in with what sort of a request for a Variance. This is clear how to justify it. The Item C, 1 in the regulations should be adjusted in the future to address this exact problem. Maybe that should be developed for the Variance as part of the equation, because this is what you will be looking at when confronted again with something similar. It makes sense, the naming convention is easy, haven't exceeded it. Getting wrapped up in the time frame is the only issue holding it back, I do not understand exactly why that is so important. Chairman Paulsen stated in this specific instance, the timing does not have a lot to do with it. If you were to bring in one after the other, after the other, that is where it came in. It is obvious they are not trying to violate the subdivision regulations. Mr. Hatle said it is a Variance from the time frame, recognizing that the parent parcel has not exceeded five lots. Vice Chairman Oakley asked if a decision is going to be made tonight or just having conversation. Director Baumann replied it is more about how to name it, what gets platted and what doesn't get platted. Mr. Hatle stated if Mr. Cash was not involved and went by the letter of this, you could still do the same thing, but you would not be able to force the landowner to be involved. Vice Chairman Oakley asked what is the impact to the landowner if they were to wait the three years? Mr. Hatle answered he did not know, Mr. Johnson is the person that would know more about that issue. Vice Chairman Oakley stated that question has been asked before, what would be the impact to the landowner if asked to wait for the three year term to expire. Mr. Hatle replied he did not know. It should be addressed and a Variance should be allowed in

situations like this. This is an opportunity to clarify the General Conditions, Item 1, C, and not be so limited. This same thing could come up again. The time frame is the problem, more so what is the reason. Vice Chairman Oakley stated there have been Variance discussions before on properties. This would fit a possible Variance, fill in the proper paperwork and submit it for what it is you want to do. It is a legitimate request to the Planning Commission to review and make a decision. This is worth moving forward on, present to the Planning Commission with your reasons why and bring it back to the board with the Variance paperwork. Mr. Hatle stated that ultimately the Planning Commission needs to understand and be able to justify it to someone else that comes before the Planning Commission. Vice Chairman Oakley commented there could be other things that are decided on that do not fit. This issue is something to continue to review and is worth the effort to bring to the board for further discussion and action. Commissioner VonHoltum was in agreement with Vice Chairman Oakley's statement. Director Baumann stated the Chairman of the County Commissioners has indicated that Variances peak his interest and just because it passes this board it may not pass the County Commissioners. Commissioner Becker stated if the Variance moves beyond this board onto the next level, a conversation with the County Commissioners would be very helpful, having a Planning Commission board member along with the petitioner presenting the information. Chairman Paulsen stated discussing with them why this was a candidate for a Variance, the things taken under consideration in offering the Variance. This situation, the Variance is the best way to resolve the issues as well as being a good planning tool. It makes everything looks good and helps the client with taking care of the things they want taken care of as well. Vice Chairman Oakley asked if the input from the mortgage company will be received prior to the next discussion on the Variance. Director Baumann answered if the current Cash Subdivision will be part of the new subdivision, but the way it is being discussed now is it would be excluded. Chairman Paulsen commented we would just be looking at a second subdivision. No further discussion.

The members set the next regular meeting for Thursday, May 26, 2016 at 7:00 p.m. There being no further business for the Planning Commission, Chairman Paulsen adjourned the meeting at 9:10 p.m.

Respectfully submitted:

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Cheryl Crowson  
Department Secretary

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Kristin Paulsen  
Chairman