

# Valley County Planning & Zoning Commission

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Bryan Cooley, Chairman  
Scott Freeman, Vice-Chair

Ed Allen, Commissioner  
Ray Cooper, Commissioner  
Johanna Defoort, Commissioner

## MINUTES

Valley County Planning and Zoning Commission  
February 14, 2019  
Valley County Court House - Cascade, Idaho  
PUBLIC HEARING - 6:00 p.m.

**A. OPEN:** Meeting called to order at 6:00 p.m. Quorum exists.

P&Z Administrator – Cynda Herrick:	Present
P&Z Commissioner – Ed Allen:	Present
P&Z Commissioner – Bryan Cooley:	Present
P&Z Commissioner – Ray Cooper:	Present
P&Z Commissioner – Johanna Defoort :	Present
P&Z Commissioner – Scott Freeman:	Excused – Recused himself prior to meeting
P&Z Technician – Lori Hunter:	Present

**B. MINUTES:** Commissioner Defoort moved to approve the minutes of December 13, 2018. Commissioner Cooper seconded the motion. Motion carried unanimously.

**C. NEW BUSINESS:**

- 1. C.U.P. 18-15 Clear Creek Crossing – Preliminary Plat:** Nick Schlekeway of Green River Project LLC is requesting a conditional use permit for a 7-lot residential subdivision on 80.23 acres, with 5 buildable parcels and 2 open space parcels. Lots will range in size from approximately 3 to 15 acres. Individual well and septic systems are proposed. Access will be from a new gravel private road from Atkin Lane. A variance is requested for the length of the proposed cul-de-sac road. The site is located in the NE ¼ Section 4, T.12N, R.4E, Boise Meridian, Valley County, Idaho. [Postponed at the request of the applicant from December 13, 2018.]

Chairman Cooley introduced the item. Chairman Cooley asked if there was any *exparte* contact or conflict of interest. There was none.

Chairman Cooley asked for the Staff Report. Staff presented the staff report and summarized the following exhibits:

- **Exhibit 1** – Preliminary Site Grading map received from the applicant.

- **Exhibit 2** – Russ Fanselow letter dated Feb. 7, 2019. He is opposed. He has paid for and helped to maintain Atkin Lane. Increase in traffic would destroy road. Culvert system across Clear Creek has washed out in the past and there is no alternative route. Widening the road will cut directly onto his property. Pastures are currently protected wetlands used by birds. He has been employed in past to irrigate the pastures and concerned about water levels from Alpha Ditch, flooding due to ditch bank failure, and septic systems flowing downward contaminating existing wells.
- **Exhibit 3** – Larry Lemons, 20 Atkin Lane, sent information from the Environmental Protection Agency regarding Dredge and Fill of Wetlands (Section 404) permit requirements.
- **Exhibit 4** – Bylaws of Alpha Ditch Company, recorded on Feb. 4, 2019 as #419102

Chairman Cooley asked for the applicant's presentation.

James Fronk, of James Fronk Consulting, 14028 Norwood, McCall, spoke as a representative.

- **Exhibit 5** – Vicinity map and adjoining neighbor information.
- **Exhibit 6** – Preliminary plat overlaid on aerial view.

Mr. Fronk referred to the exhibits and described topography of area. Existing topography limits the number of building envelopes. Total of nine (9) lots proposed. Lots were originally intended to continue across the road but must be numbered different due to surveying statute. There are five (5) developable lots. Lots 6 and 7 are open space lots. There is an access road along ditch. The irrigation in meadow will not change and water will not be diverted.

The land plan preserves the natural landscape and vegetation. There will be small irrigated envelopes around buildings for fire protection. There will be a 70' Right-of-Way along Atkin Lane. Wetlands will be delineated after spring and then he will submit the Section 404 Permit for review.

A representative of the Alpha Ditch Company said bridges are not allowed across the ditch but galvanized pipe greater than 4' diameter is. The pipe may be squash pipe (oval shaped). There is a 7 % grade or less on the road. The applicant is asking for variance in length of dead-end road.

- **Exhibit 7** – Preliminary plat delineating wetlands and topography. Best management Practices (BMPs) will be used to stop erosion from road construction.

There will be a 10,000 storage tank for fire protection, likely placed close to Atkin Lane.

Mr. Fronk referred to Exhibit 5 and discussed Atkin Lane which already supports vehicles such as garbage truck and school bus. There will be impacts on road during construction. Atkin Lane is a county road.

In comparison to existing neighboring properties, this subdivision will be less dense. The road

within subdivision will be private. It is a single family residential subdivision.

Commissioner Allen asked about Corps of Engineer wetland delineations. Mr. Fronk stated he is a certified wetland delineation inspector. He did a preliminary inspection based on what was seen in the field last fall. This proposal will have minor impact to wetlands.

Commissioner Allen asked for clarification on the ditch crossing. Mr. Fronk replied that they have not yet determined yet if round culvert or squash pipe would be best, either would be allowed. They are working to resolve sediment issue.

Mr. Fronk referred to Staff's questions in the Staff Report. They don't plan to sell lots before the subdivision is complete. The lot size is incorrect in the application. The steepest road grade will be 7%. There have been discussions with Alpha Ditch Company members. The internal road will be private. There will be underground power with additional telemetry for future utilities. The applicant is willing to change the proposed road name. The stormwater management plan is preliminary using the County's BMP and DEQ suggestions. The applicant will work with the ditch company. There will be CCRs that address lighting, wood burning devices, ditch requirements, and water use. The lots are split due to the dynamics of the state statute.

Commissioner Defoort asked for additional clarifications. The electrical lines will be above ground along Atkin Lane and then continue underground within subdivision. The requirements of the Cascade Fire Department will be met. The variance request is for the length of the culdesac road. The ordinance allows culdesacs of 900 feet but longer ones may be specifically approved by the Board of County Commissioners. The requested road length is 2600 feet. Lots 3B and 4B will be tied to lots above the road and will not be sold separately. No buildings will be allowed on 3B and 4B, including barns, sheds, etc. Building envelopes exist.

In response to a question from Chairman Cooley, Mr. Fronk replied that the road location was chosen as it is the best place to cross the ditch due to topography. The crossing will not affect operation of ditch.

In response to a question from Commissioner Allen, Mr. Fronk replied that the emergency access via Ward's property would allow connectivity for emergencies such as fire. Use along ditch would require further discussion with ditch company

In response to a question from Commissioner Cooper, Mr. Fronk replied that the private road in subdivision, including snow removal, would be maintained by the subdivision Home Owner's Association.

Commissioner Defoort asked for clarifications about the existing Ditch shares and how they would be divided among new owners. Currently 50 shares exist for the 80.25 acres. The majority of shares would be owned by Lot 1. Lots 2, 3, 4, and 5 would not be using ditch water. Nick Schlekeway, 4615 Emerald Street, Boise, is the property owner. He stated that some Alpha Ditch shares would be granted to owners of other lots so they have the right to walk along the ditch bank.

Commissioner Defoort asked about the current water rights usage for the property. Mr. Schlekeway replied that it is used for irrigation for cattle grazing. The amount of water is tight based on Clear Creek. Usage is metered with gates according to the shares. CCRs will address water usage, no manufactured housing allowed, and road maintenance. Fifty shares are not enough to use this property as agricultural (grazing); therefore, single-family residential is the best use of this property. Green space around dwellings will be irrigated by sprinkler systems from individual private wells.

Chairman Cooley asked for proponents. There were none.

Chairman Cooley asked for undecided. There were none.

Chairman Cooley asked for opponents.

June Fullmer, 82 Atkin Lane, is an Alpha Ditch shareholder and a neighbor on Atkin Lane. She has multiple concerns. Alpha Ditch has not had a shortage of irrigation water. If the subdivision is approved, Alpha Ditch must have access to the irrigation ditch. Fifty shares is more than enough for 80 acres. Property owners cannot water from the ditch (illegal). Ditch crossings must be approved by majority of shareholders. There has not been any correspondence with June, Joe Kennedy, or Tim Shaw [Alpha Ditch Board of Directors]. Culverts on Clear Creek are over 30 years old according to Jeff McFadden [Valley County Road Dept]; heavy equipment will be detrimental. The Fanselow house will likely not meet setbacks if Atkin Lane is widened. She questions if the Valley County Private Road Standards have been met. Liability of a community trail along ditch is a liability.

Joe Kennedy, PO Box 99, Cascade, is concerned that the bridge placement in the main draw will get runoff from subdivision and the top of ridge into Alpha Ditch. Has the amount of runoff been estimated? Project should be designed to accommodate a 100 year precipitation event. Idaho statutes pertaining to ditches state that encroachments shall not interfere with ditch. How will repair expenses be allotted? A bridge in the center of draw is poor placement. Alpha Ditch is private and cannot be a community trail. Walking the ditch is for maintenance only.

Candy Gregory, 39 Atkin Lane, read her letter. Concerns include Atkin Lane destruction, noise, dust, wetlands, irrigation ditch, affect on existing wells, and additional septic systems. Atkin Lane goes through her property. Will the road be widened? Other concerns include fire and liability of ditch. Atkin Lane is privately maintained. School buses do not come down the road; students are picked up at corner of Atkin Lane and Clear Creek Road.

Paul Bloomberg, 53 Atkin Lane, owns property serviced by Atkin Lane and Alpha Ditch. Applicant should have had a neighborhood meeting. Atkin Lane is 50 years old, does not meet county standards, and does not have a road base. If approved, Atkin Lane should be improved in both width and depth. No shortage of water in Alpha Ditch. Alpha Ditch is 100 years old, fragile, and access is for maintenance only.

Dan Moore, 29 Atkin Lane, bought outdoor recreational property with an open atmosphere. The project would change area and raise appraised property value but drop the actual market value. The road is not developed for heavy equipment and increased traffic. Who will maintain

Atkin Lane? If widened, owners will lose property. The road is not wide enough or strong enough. He is concerned about the ditch crossing.

Tracy Kennedy, PO Box 99, Cascade, is opposed due to previous mentioned issues with the bridge, ditch, culvert, and road. She questioned who governs CCRs. The community trail will be misconstrued as a "green belt" but is only for maintenance of the ditch.

Mike Fullmer, 82 Atkin Lane, owns along Atkin Lane. The road is marked with a "private lane, dead end" sign posted by the County and the County does not maintain past the corner. People own property there because of how it looks now.

Russ Fanselow, 35 Atkin Lane, has several issues. The culverts have washed out before and do fill up annually and could cause loss of emergency access to area. The road has jelly rolls, is marked as "private lane", and is privately maintained. School bus does not drive up Atkin Lane. Wetlands and wildlife habitat are important. There is a problem going through and disturbing wetlands. Proposed road goes thru flat which it gets "soupy" enough to trap and kill cattle. Ditch does leak.

Chris Ward, 40 Atkin Lane, owns immediately adjacent to proposed property. Her concerns have already been mentioned. The proposed emergency access road goes to her property.

Chairman Cooley asked for rebuttal.

James Fronk, clarified that construction equipment will have weight-bearing trailers. Emergency access to Wards can be removed. He is very conscious of the wetlands and EPA requirements. A 404 clean water act permit application will be sent to the Army Corps of Engineers. He will be doing a specific wetland delineation this spring when the vegetation is studied. Lower density than allowed is proposed (5 buildable lots on 80 acres).

Commissioner Allen asked about the ditch crossing. Mr. Fronk replied that this location is the only option. Drainage does come from higher topography. The land use not changing. Sediment during construction is a concern and BMPs would be followed.

Administer Herrick asked if tests had been down to determine if saturation would cause landslides. Mr. Fronk replied that the slope is stable and well drained.

In response to a question from Commissioner Defoort, Mr. Fronk replied that the runoff currently goes into the ditch. The concern is the new road would increase sediment. This will be dealt with construction management, check dams, sediment ponds, silt fence, etc.; this issue is not unique to this location. The Valley County Engineer will make comments and has approval. New driveways will be constructed to reduce runoff. The applicant is aware of concerns of sediment and runoff.

Commissioner Defoort asked about the status of Atkin Lane. Administrator Herrick replied that Atkin Lane is a public road according to Judge Carey. It is a non-maintained public right-of-way easement that is privately maintained.

Mr. Schlekeway stated that he bought the property six years ago. Lot owners will include himself and his sister. The proposal is well below the allowed density. His Intent is to maintain views. He has proposed larger lots than many of the neighboring parcels. He had never seen the Alpha Ditch bylaws prior to tonight. He did not know that there would be an issue even though both the previous owner and his real estate agent also owned shares in Alpha Ditch. The ditch is for maintenance but he doesn't believe that everyone walking the ditch currently is maintaining it. Atkin Lane is in poor condition but there never has been an effort to improve it. Individual residents maintain the road. He would participate in improving the road but it shouldn't be just his responsibility.

Commissioner Defoort asked questions about canal, access, removal of the community trail, and a possible fence. Mr. Schlekeway said that an access easement exists for maintenance and would be shown on the subdivision plat. The proposed pathway could be removed.

In response to a question from Commissioner Defoort, Administrator Herrick did not know if the Alpha Ditch bylaws stating 80% approval of share holders for ditch crossing were enforceable. The Bylaws from the ditch company were recorded two weeks ago; we just became aware of them.

Chairman Cooley closed the public hearing. The Commission deliberated.

Commissioner Defoort made the following comments:

- Likes the design; adding five additional houses does not take away from the character of the area, especially if they are going to be owned by second-home owners.
- There are concerns with ditch that need to be addressed.
- Governing agencies will review wetlands and address issues.
- With engineering there is no concern of runoff or sediment.
- Atkin Lane should not be sole responsibility of this owner; should be a cooperative effort among road users.

Commissioner Cooper has the same concerns as Commissioner Defoort about ditch and wetlands. His biggest concern is Atkin Lane. Atkin Lane does develop jelly rolls in the spring; he doubts there is a homeowner's association to maintain it. The existing homeowners should not have to pay for road improvements required by proposal.

Commissioner Defoort questioned how much damage there will be from five additional homes. Commissioner Cooper is concerned with truck traffic and the size of the culverts during unusual events. Spring weight loads would not apply to this road. Culverts were plugged in 1997 and closed road.

Commissioner Allen stated:

- He is concerned with ditch, proposed road, and Atkin Lane.
- Need to come to grips with the road; can't, not allow development of 80 acres.
- Neighborhood needs to address Atkin Lane issue with an agreement.
- We can't just say that the road is a bad road so you can't develop this 80 acres.

- Ditch goes across his private property – he should have access to his property on the other side.
- We have addressed ditch issues in the past – the ditch has to remain open and accessible to the ditch rider.
- Very low density proposed and lots of open space.
- Would leave the pasture open for wildlife.

Chairman Cooley stated:

- This is low density.
- Layout of subdivision is a good fit for land and topography.
- State and federal agencies have jurisdiction over wetlands, etc.
- Crossing ditch with a road and pipe does not affect the ditch.
- Recognize this is a public road, and does not allow us to keep the neighbor off of it.
- This is only five lots, not a huge jump in density.

Commissioner Allen added that Atkin Lane is a public access and they have the right to use it.

Chairman Cooley said we cannot impose a road maintenance agreement on the neighbors.

Commissioner Cooper said that everyone needs to work together to make improvements.

Commissioner Allen said that this subdivision today would have to be built to standards, concerning Atkin Lane.

COA: A shared road agreement shall be recorded for the private road.

COA: Shall have an agreement with Alpha Ditch that is a recorded document and noted on the face of the plat.

COA: CCRs shall recommend firewise landscaping.

COA: Shall not identify ditch as a trail or pathway on the plat.

COA: Staff shall communicate to the Valley County Engineer that the Planning & Zoning Commission is concerned with the draw and potential drainage issues.

COA: Shall participate financially and proportionally with neighbor's to make improvements to Atkin Lane in a Road Maintenance Agreement, if an association or cooperation is formed.

COA: Shall indicate a "no build zone" between the private road and ditch. Lots 2, 3, 4 and 5 shall not build below the ditch.

COA: Shall not put in emergency ingress/egress road along the canal.

Commissioner Allen moved to approve C.U.P. 18-15 Clear Creek Crossing with the stated conditions. Commissioner Defoort seconded the motion. Motion carried unanimously.

Chairman Cooley explained the ten day appeal period.

#### **D. ORDINANCE AMENDMENT DISCUSSION**

Administrator Herrick stated that it is time to review and update Planning and Zoning related ordinances. The list of things to review includes:

- Combining lots is allowed by recording a deed.
- Driveway issues and approach permits.
- Change limit of lots allowed for short plats.
- Recreational Vehicles and definitions.
- Gas and Oil ordinance.
- Improve matrix.
- Improve parking area chart.
- Change density limit of 2.5 dwelling units per acre.
- Final Plat approval for two years instead of one.
- Changes to fee structure.
- Other issues that Commissioners would like to discuss.
- Firewise landscaping & fire-rated material requirements.
- 100' setback from Highway 55 in Lakefork.
- Any other issues that the Commissioners wish to discuss.

#### **E. FACTS AND CONCLUSIONS:**

- VAC 18-04 Portions of Road Right-of-Way in Roseberry Townsite

Commissioner Defoort moved to approve the Facts and Conclusions as presented and authorize the chairman to sign. Commissioner Allen seconded the motion. Motion carried unanimously.

#### **F. ELECTION OF OFFICERS**

Commissioner Allen moved to nominate Bryan Cooley as chairman, Scott Freeman as vice-chairman, and Cynda Herrick as secretary. Commissioner Cooper seconded. Motion carried.

Chairman Cooley adjourned the meeting at 8: 17 p.m.