



Bonner County

Board of Commissioners

Luke Omodt

Asia Williams

Steve Bradshaw

Public Hearing Minutes

Planning

Date: November 29, 2023
Location: 1500 Hwy 2, Suite 338
Sandpoint, ID 83864

CONVENE AT: 1:30 p.m.

ADJOURN AT: 3:40 p.m.

COMMISSIONERS PRESENT: Williams, Bradshaw, & Omodt

OTHERS PRESENT: Planning Staff: Jake Gabell, Jenna Crone, and Swati Rastogi Legal: Bill Wilson

Commissioner Omodt opened the hearing at 1:30 p.m.

Commissioner Omodt asked if anyone needed assistance for this hearing, there were no requests. Commissioners Omodt, Bradshaw, and Williams advised that they had no conflicts with these files.

Action Item: Discussion/Decision Regarding File S0002-23 Providence Subdivision. The project proposes to plat an approximately 40-acre parcel into 116 residential lots. The property is zoned Suburban. The project is located off of Providence Road, a Bonner County owned public road, in the Area of City Impact of the City of Kootenai in Section 01, Township 57 North, Range 2 West, Boise-Meridian. The project proposes to be served by the City of Sandpoint for water services, Kootenai Ponderay Sewer District for sewer services and Avista Utilities. The project is located within Northside Fire District.

Following the Hearing Examiner's and the Zoning Commission's public hearings, the Board of County Commissioners approved the project in a public hearing held on October 02, 2023. The Planning Department received a request on October 16, 2023, for the Board to reconsider their decision based on the following issues: storm water; fire access; sewer, water and wetlands; traffic; schools; conflict of interest and; general and miscellaneous requirements for subdivisions not met for subdivisions as required by the Bonner County Revised Code.

The Board is granting the request for reconsideration, in part, limiting the scope of this public hearing to address the concerns raised in the reconsideration request pertaining to the topic of "wetlands" only.

Staff report presented – Swati Rastogi (see attached report)

Bill Wilson provided comment regarding the reason reconsideration was suggested as it relates to BCRC for wetlands and the jurisdiction of wetland delineation by Bonner County and/or Army Corp of Engineers. Discussion followed.

Commissioner Omodt called a 5-minute recess at 1:49 p.m. due to technical issues with Zoom.

Reconvened at 1:59 p.m.

Appellant Comment – Ashley Morris, Seven Sisters HOA Vice President

Wants to protect the wetlands near Chewelah Loop, concerns that the developer wants to fill in and build over the wetlands area; asking to do proper setbacks of the wetlands area; remove lots and make into a protected greenspace; does not want to see further destruction to the wetlands; see attached letter.

Applicant comment – Mike Hammack, Dan Taddick, H&H Engineering, & Mauricio Cardona, Counsel
Mapped wetlands referenced in appellant's letter, are via satellite, not a delineation of wetlands as determined by a professional. Lots referenced in appellant's letter have 20' setbacks as required by BCRC. Project is following all sections of the BCRC regarding wetlands. Army Corp of Engineers will not say anything regarding low quality wetlands. When the project applies for the BLP will follow the setback in BCRC. Discussion with Bill Wilson regarding conditions and BCRC. The project utilized a licensed professional and followed law and code in wetlands delineation. A lot of the concerns related to sewers are not applicable to this project, they have received all approvals from KPSD at this time and paid all reservation fees at this time. Brief comment regarding litigation about the watershed, this should be resolved soon. With the representation by the County that all that the condition is doing is clarifying what the law says right now, most concerns are addressed. City of Kootenai recommends no approval of this project; however the project has complied with the current requirements/laws of the County. The City of Kootenai has no jurisdiction over this project. The application is appropriate for the project's completion at this time which will then go to DEQ for process review and has already been approved by KPSD. There will be no building in the setback area for the wetlands.

Public comment –

Jerome Buckmelter - Asks that the delineation of wetlands be done by a disinterested third party expert.

Reet Stefano – Opposed to this sub-division. The wetlands need to be looked at by professionals.

Janelle Shields – What recourse will citizens have if their septic systems are affected by what may happen to the wetlands.

Clarification in regard to public comments.

Molly McCahon - In support of the condition of approval as amended by legal, unclear on the shown map vs actual delineation of the wetlands. Questioned the 20' setback of certain lots that may disturb the wetlands.

George Johnson – Opposed to project. Wetlands need to be completely defined by somebody who is in this field.

Matt Linscott – Understands that this was delineated by a certified professional. He understands the National Wetland Inventory map are the probability of wetlands, they are not jurisdictional. Bonner County institutes that is if it shows on the NWI map then you have to have them delineated before you are allowed to get a BLP.

Grace Bauer – The wetlands will naturally drain, that is south into the Seven Sisters neighborhood; previous hearing the wetlands will be filled in; DEQ brought up sewer issue which goes hand in hand with wetlands issue; is standing water considered wetlands or just a flooding issue; property rights of all not just the developer; unfair to stick just to the wetlands issue.

Unknown– Referenced article in The Reader regarding stormwater; the wetlands receive water from all surrounding properties, if they are filled in there will be additional stormwater issues; study done by professionals not reflective of reality; need a disinterested third party; property insurance for flooding possibility.

Cristina Wilser – Has seen the water in the field and on her property, where will this water go; concern that this professional did the study in August not in the spring/fall to see the actual water; concerns for the wildlife in the wetlands area.

Susan Bowman – Functions and values of wetlands; wetlands do not respect property lines they are dynamic; wetlands delineation should not be done in summer; litigation if there is no third party; how was the wetlands determined to be of low quality; discussed the 20' setback; sewer lines or water lines through wetlands soil they will bust; need to look at paving.

Appellant rebuttal – Ashley Morris, Seven Sisters HOA Vice President

The applicants documented the wetlands in the driest month of a year where there was not a lot of precipitation. In agreement with all of the statements made regarding the size of the wetlands in this area. All of the concrete may cause flooding of their neighborhood which violates the property rights of the current homeowners. Referenced photos in attached letter. Asking for the wetlands to be protected. KPSD will issue a will serve letter, concerns about the affect to infrastructure of City of Kootenai.

Commissioner Omodt asked about the will serve letter for clarification. Dan Taddick clarified that a will serve letter was submitted with the application and as part of the presentation. KPSD has reserved 116 spaces for this project. Commissioner Bradshaw spoke to engineers not jeopardizing their own engineer stamp; the Army Corp of Engineers is the third party determining the delineation of wetlands. In the wetlands report any hydrology on most of the property will be accumulated from rainfall and snow.

Public comment closed at 3:21 p.m.

Staff rebuttal – Swati Rastogi

Addressing questions of the delineation done in August and the setbacks from wetlands brought up during public comment. Consideration taken regarding the dry year in which the study was conducted. The delineation was done in accordance with the Army Corp of Engineers' manual. See page 8-9 of the Staff Report. The will serve letter was provided and was uploaded onto the website.

Deliberation and discussion among the Board.

Findings of Facts (with Amendments):

33. Site contains PEMIC and PFO1C mapped wetlands (National Wetland Inventory, US Fish and Wildlife Service).

34. A wetland delineation study dated March 22, 2023, prepared by Kagel Environmental, LLC, Wetlands, Wildlife and Permitting Specialists in the State of Idaho was submitted to Bonner County as part of the subdivision application.

35. Per BCRC 12-731, a wetland reconnaissance by a design professional accepted or authorized by the Army Corps of Engineers is required to determine wetland boundaries for all subdivisions containing mapped wetland as determined from the U.S. Fish and Wildlife Service National Wetland Inventory maps. The applicant has submitted a wetland reconnaissance to the U.S. Army Corps of Engineers requesting a Jurisdictional Determination. In light of the recent decision made by the Supreme Court on Michael Sackett, et ux., Petitioners V. Environmental Protection Agency, regarding the wetlands under the jurisdiction of Clean Water Act, there is a resulting delay in the determination to be provided by the U.S. Army Corps of Engineers.

While the Army Corps of Engineers review the delineation to determine whether the aquatic resources in the review area are jurisdictional or not, the agency does not review the delineation report to determine the wetland boundaries.

36. Per BCRC 12-732, a professional wetland delineation shall be submitted at the time of application for all subdivisions featuring lots containing a wetland based on a wetlands reconnaissance as required in BCRC 12-731 of this subchapter. The preliminary plat delineates the wetlands based on the wetland delineation report.

37. The Environmental Protection Agency (EPA) develops and interprets policy, guidance and environmental criteria used in evaluating permit applications, determines the scope of geographic jurisdiction and applicability of exemptions, reviews and comments on individual permit application and has the authority to prohibit, deny, or restrict the use of any defined area as a disposal site. The U.S. Army Corps of Engineers (USACE) administers day-to-day program, including individual and general permit decisions, conducts or verifies jurisdictional determinations and develops policy and guidance (Section 404(c)).

38. Both EPA and USACE enforce Section 404 provisions. Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports) and mining projects (US EPA, 2015).

Conditions of Approval (with Amendments):

11. **Wetland Delineation:** The wetland delineation study dated March 22, 2023, prepared by Kagel Environmental, LLC, Wetlands, Wildlife and Permitting Specialists in the State of Idaho was submitted as part of the application. The wetland delineation report seems to indicate that the wetlands are of low-quality. Based on this wetland delineation, all future buildings shall maintain a 20-foot setback to the delineated wetlands in accordance with BCRC 12-733. The applicant may submit a revised wetland delineation prior to the recording of the final plat or at the time of development in accordance with BCRC 12-732.

Commissioner Omodt stepped down from the chair and made a motion to affirm the Board's prior decision of approval with amendments to the Conditions of Approval as noted in this staff report, on project FILE S0002-23: Providence Subdivision, requesting the creation of 116 residential lots on an approximately 39.57-acre property zoned Suburban and located in Section 1, Township 57 North, Range 2 West, Boise Meridian, Bonner County, Bonner County, Idaho.

This decision is based on the Findings of Facts as amended in this hearing and the resulting Conclusions of Law that remain unchanged from the prior decision of approval. I move to adopt the Findings of Facts as amended in this hearing.

The decision is based on the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. I move to direct the Planning staff to draft written Findings of Facts and Conclusions of Law to reflect this decision and transmit to all interested parties. This action does not result in a taking of private property. The action that could be taken to obtain the approval of preliminary plat is to complete the Conditions of Approval as amended with this decision. Commissioner Bradshaw seconded the motion Roll call vote: Commissioner Williams – No, Commissioner Omodt – Yes, Commissioner Bradshaw – Yes. The motion carries.

Meeting adjourned at 3:40 p.m.

Deputy Clerk: Alisa Schoeffel