

**BONNER COUNTY HEARING EXAMINER
PUBLIC HEARING MINUTES
March 1, 2023**

CALL TO ORDER: Hearing Examiner Jackie Rucker called the public hearing to order at 1:30 p.m. in the 3rd Floor Meeting Room of the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho.

PRESENT: Jackie Rucker, Hearing Examiner

ABSENT: None

ALSO PRESENT: Assistant Planning Director Travis Haller, Planner II Daniel Britt, Senior Planner Swati Rastogi and Hearing Coordinator Jenna Crone.

PLEDGE OF ALLEGIANCE

CHANGES IN AGENDA: None

APPROVAL OF MINUTES: No minutes for approval.

PUBLIC HEARING:

CALL FOR VISUAL, HEARING OR OTHER IMPAIRMENT REQUIRING ASSISTANCE: The Hearing Examiner asked whether anyone needed special assistance to hear, see or participate in these proceedings. Hearing no response, she continued with the public hearing.

CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS: Hearing Examiner Jackie Rucker stated that she had no conflict with this proposal.

File S0004-22 – Silver Birch Estates – Subdivision. The applicants are requesting to plat approximately 25 acres of unplatted land into eighteen (18) approximately one-acre lots. The property is zoned Suburban. It is located off Silver Birch Lane, a public right-of-way, in the Area of City Impact of Oldtown in Section 25, Township 56 North, Range 6 West, Boise Meridian, Idaho.

STAFF PRESENTATION: Senior Planner Swati Rastogi presented a summary of the project and previously circulated staff report, concluding this project is *not* consistent with Bonner County Revised Code.

APPLICANT REPRESENTATIVE: Connie Krueger, Project Representative, gave an overview of the proposed project.

APPLICANT REPRESENTATIVE: Gordon Dobler, Dobler Engineering, addressed questions from the Hearing Examiner regarding comments made by DEQ on the proposed project.

PUBLIC/AGENCY INPUT: The following members of the public spoke on the record: None

HEARING EXAMINER INPUT: The Hearing Examiner closed the hearing to public testimony and discussed findings and conclusions.

RECOMMENDATION TO APPROVE: Hearing Examiner Rucker recommended approval of project FILE S0004-22, Silver Birch Estates, requesting a creation of 18 residential lots in the Area of City Impact of Old town in Section 25, Township 56 North, Range 6 West, Boise Meridian, Bonner County, Idaho, finding that it is in accord with the Bonner County Revised Code as enumerated in the following conclusions of law, and based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. Examiner Rucker further recommended adoption of the findings of fact and conclusions of law as set forth in the Staff Report and direct planning staff to draft written findings and conclusions to reflect this recommendation 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 the preliminary plat is to complete the Conditions of Approval as adopted.

Findings of Facts:

1. The subject property is approximately, a 25-acre parcel of unplatted land.
2. The subject property located in the Area of City Impact of Old town in Section 25 of Township 56 North, Range 6 West of Boise Meridian, Idaho.
3. The subject property has direct access and frontage on Silver Birch Lane, a County owned and maintained public right-of-way. The road is paved with cold mix asphalt and has a speed limit of 35 miles per hour.
4. The subject property has a zoning designation of Suburban and a land use designation of Transition.
5. The applicant is requesting to plat the subject property into 18 residential lots ranging in area from 0.970 acres to 0.973 acres.
6. The site does not contain steep slopes of over 30% grade. (US Geological Survey)
7. The site does not contain any mapped wetlands. (US Fish and Wildlife Service)
8. The site does not contain any mapped waterbodies, streams, lakes or rivers. (National Hydrography Dataset, US Geological Survey)
9. Parcels are located within SFHA Zone X and not located within floodway, per FIRM Panel 16017C0850E, Effective Date 11/18/2009. This project would not require any further floodplain review.

- 10.No local, state or federal agencies have identified presence of any critical wildlife habitats on or within the vicinity of the subject property.
- 11.The development is proposed to be served by a community water system – Solar Acres Water Association, individual septic systems and Northern Lights Inc. The letter submitted by the Idaho Department of Water Resources indicated that “currently there are no recorded water rights for domestic use associated with this parcel.” The applicant reported that they reached out to the agency and clarified that this was a simple issue of transfer of ownership of the Solar Acres Water Association community owner system that would resolve the issue.
- 12.The site is located within the area of service of West Pend Oreille Fire District, West Bonner School District #83, Bonner County Ambulance District and Pend Oreille Hospital District.
- 13.Area of all proposed lots ranges from 0.970 acre to 0.973 acres. The proposed project has been granted an administrative exception to reduce the minimum required lot size from 1 acre to 0.97 acres, per Planning File #VE0012-22.
- 14.The proposed preliminary plat meets/ shall meet the standards of Bonner County Revised Code as indicated in Standards Review and Conditions of Approval.

Conclusions of Law:

Based upon the findings of fact, the following conclusions of law are adopted:

Conclusion 1: The proposed subdivision is in accord with the purposes of this Title and of the zoning district in which it is located.

Conclusion 2: The site is physically suitable for the proposed development.

Conclusion 3: The design of the proposed subdivision **will not** adversely impact Bonner County’s natural resources, as identified in the comprehensive plan. Any adverse impacts or potential for impacts shall be mitigated as a condition of approval.

Conclusion 4: The public and private services, including but not limited to water, sewer services, solid waste, fire protection, emergency services, and school facilities and transportation, which will serve the proposed subdivision are adequate for the needs of future residents or users.

Conclusion 5: The proposed subdivision **will not** cause circumstances to exist that will cause future residents or the public at large to be exposed to hazards to health or safety.

Conclusion 6: The design of the proposed subdivision or related improvements **will** provide for coordinated access with the county system of roads and with adjacent properties and **will not** impede the use of public easements for access to, or through the proposed subdivision. The proposed transportation system is designed to adequately and safely serve the future residents or users without adversely impacting the existing transportation system by reducing the quality or level of service or creating hazards or congestion.

Conclusion 7: The proposed subdivision is designed to comply with the design criteria for subdivisions set forth in Subchapter 6.2 of this chapter.

Conclusion 8: The proposed subdivision is in accord with the Bonner County Comprehensive Plan.

Conditions of Approval:

1. Show all easements of record including sufficient recording data to identify conveyance, if not already shown. See BCRC 12-620 and BCRC 12-642.B.9.
2. The developments is proposed to be served by Solar Acres Water Association, LLC. While a will-serve letter has been received from the potential water provide, Idaho Department of Water Resources currently does not recognize the agency as a public or community water provider. See agency’s letter, dated January 23, 2023. The applicant is advised to reach out to Idaho Department of Water Resources to ensure that the water system – Solar Acres Water Association, LLC is in compliance with the agency’s regulations, prior to proceeding with the submission of the final plat. See BCRC 12-623.B.
3. The Sanitary Restriction, per Idaho Code §50-1326, shall be lifted from the plat. See BCRC 12-623.C and BCRC 12-412 (19).

In addition to the submitted fire risk assessment and mitigation plan, the project shall comply with at least one of the following. See BCRC 12-623.D.

- a. Prior to final plat, an approved water and fire hydrant system capable of providing one thousand (1,000) gallons per minute for a minimum of two (2) hours where a community water system exists or is proposed as part of the development and is capable of delivering the pressurized water supply necessary for delivering fire flows as prescribed by the international fire code, as adopted by the state fire marshal, and such later editions as may be so published and adopted by the state fire marshal, or as amended, modified or superseded, and incorporated herein by reference with a copy on file with the office of the clerk of the board of county commissioners, and hereinafter referred to as IFC.
- b. A note on the final subdivision plat stating: "At the time of building location permit or building permit, the lot owner shall install a minimum two thousand (2,000) gallon water storage system, meeting IFC standards". Refill on demand is not required to meet IFC standards.

- c. A note on the final subdivision plat stating: "The installation of an approved IFC residential fire suppression sprinkler system is required in all newly constructed residences".
- d. Prior to final plat, a manmade or natural water source with a dry hydrant capable of delivering adequate water supply as prescribed by IFC.
- e. A note on the final subdivision plat stating: "At the time of building permit or building location permit, the lot owner shall install an approved fire suppression method to the satisfaction of Bonner County".

Please take note of the comments received from West Pend Oreille Fire District, dated February 23, 2023. The applicant may be required to make fire mitigation and suppression improvements to the site in accordance with the requirements of the West Pend Oreille Fire District, prior to or after the approval of the final plat.

- 4. The new proposed road has been named "Eclipse Way". This name shall be verified by Bonner County for uniqueness and may require a change if not found to be unique. See BCRC 12-624.A.
- 5. A preliminary road design and profile plan was submitted as part of the Improvement Plans submitted with the application for subdivision. The preliminary road design plans were reviewed and approved by Bonner County on January 27, 2023. The road and road-related improvements shall be made as approved by Bonner County prior to the recording of the final plat. Bonner County may require minor modifications to the approved plans based on the actual site conditions, if needed. See BCRC 12-642.C.
- 6. The preliminary short plat shall be valid for a period not to exceed two (2) calendar years from the date of approval. Within two (2) years of the approval of the preliminary plat, the applicant shall submit the final plat to the Planning Director. At any time prior to the expiration date of the preliminary plat, an applicant may make a single written request to the Planning Director for an extension of the preliminary plat for a period of up to two (2) years. The board may consider such request for extension at any regular business meeting. The extension request must be approved or denied prior to the expiration date of the preliminary plat. See BCRC 12-643.I.
- 7. An improvements plan for the subdivision, containing road design and profile and storm water management plans, dated February 24, 2022 were submitted for review. The preliminary road design and profile plans have been approved by Bonner County. The storm water management plans are under review as of February 27, 2023. The applicant may be required to provide any of the following additional information with the improvement plans, if not already submitted or approved by Bonner County. See BCRC 12-644.A.
 - a. The subdivision name and number, geographic grid (township, range

and tier, section number and location within the section), north arrow, date and scale no smaller than one hundred feet to the inch (1" = 100').

- b. The plan and profile of all proposed roads showing final grades and cross sections of roads in accord with the requirements contained in title 2 of this code.
 - c. The plan and profile of proposed sanitary and stormwater systems with grades and sizes indicated. Drain calculations may be required.
 - d. A grading plan, showing storm water drainage for each lot.
 - e. Any other improvements such as curbs, gutters, sidewalks, bridges, lift stations, fire hydrants, street lighting, etc., as required, and in accord with the requirements contained in title 2 of this code.
- 8. After completion of improvements on site, per the Bonner County approved improvement plans, applicant's engineer shall provide inspection reports for County Engineer's review and final inspections. See BCRC 12-644.B.
 - 9. In lieu of completing all improvements as required before final plat recording, the subdivider shall enter into a surety agreement with the board agreeing to complete the improvements in accordance with surety agreement conditions and preliminary and final plat approvals. A cash deposit, certificate of deposit, corporate surety bond written by an insurance company licensed in Idaho having a rating from AM Best & Company of "A" or better, letter of credit issued and backed by a federal or state chartered bank, is required equivalent to one hundred fifty percent (150%) of the project engineer's estimated cost of construction of the improvements for the purpose of guaranteeing completion of the work and repair of any defects in improvements which occur within one year of the first acceptance of the completed work by the board. Sureties guaranteeing the work and repair of any defects in improvements which occur within one year after first acceptance of the completed work by the board may be reduced by the board by one-half (1/2) for that one year. The surety agreement shall be valid for a period not to exceed two (2) calendar years from the date of approval. At any time prior to the expiration date of the surety agreement, the subdivider may make a written request to the planning director for a single extension of the surety agreement for a period up to two (2) years. The board may consider such request for extension at any regular business meeting. The extension request must be approved or denied by the board prior to the expiration date of the surety agreement. See BCRC 12-644.C for more details.
 - 10. After the approval of the preliminary plat, the final plat shall show the following on the final plat. See BCRC 12-646.
 - a. The "initial point" and description thereof, shall be indicated on the drawing and the location and description in conformance with Idaho Code.

- b. The status of adjoining property shall be indicated (name of subdivision or unplatted area).
- c. The accurate location and description and filling of all monuments shall be in accordance with the Corner Perpetuation and Filing Act, Idaho Code title 55, chapter 16. (BCRC 12-646.E)
- d. Private restrictions, if any. (BCRC 12-646.I)
- e. A certificate of a licensed engineer or surveyor of the State to the effect that the plat represents a survey made by him that all of the monuments, shown thereon, actually exist and that their positions are as shown. (BCRC 12-646.K)

11. All endorsements shall be shown on the final plat per BCRC 12-647.

- a. The Sanitary Restriction as noted on the plat, currently, shall be lifted prior to the recording of the final plat.
- b. The project is located within the Area of City Impact of Oldtown. Provide a place for signature for approval from the City of Oldtown.

12. An improvements plan for the subdivision, containing road design and profile and storm water management plans, dated February 24, 2022 were submitted for review. The storm water management plans are under review as of February 27, 2023. The applicant may be required to update the submitted storm water management plans to comply with Bonner County Revised Code, Title 12, Subchapter 7.2. The applicant shall gain approval from Bonner County prior to construction of storm water management improvements on site.

13. After the approval of the preliminary plat, a final plat shall be prepared in conformance with BCRC 12-646, BCRC 12-647 and BCRC 12-648.

File MOD0001-23 – Modification – Farm to Fork. The applicants are requesting a modification of CUP0009-22 to relocate proposed cabins, event center and to allow for a private community hall use. The parcel is 36.50 acres. The property is zoned A/F-10. The project is located off Wrenco Loop in Section 33, Township 57 North, Range 3W West, Boise-Meridian.

STAFF PRESENTATION: Planner II Daniel Britt presented a summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code.

APPLICANT PRESENTATION: Erik Hanson, gave an overview of the proposed modifications to their previously approved Conditional Use Permit.

PUBLIC/AGENCY INPUT: The following members of the public spoke on the record: Sara Sass, Alice Magleby, Lowell Magleby, Jeff Downes, Cristine Riley, and Devon Furtwansler.

STAFF REBUTTAL: Planner II Daniel Britt addressed comments from the public and questions from the Hearing Examiner.

APPLICANT REBUTTAL: Erik Hanson answered questions from the Hearing Examiner regarding Panhandle Health District, and addressed comments made during public testimony.

HEARING EXAMINER INPUT: The Hearing Examiner closed the hearing to public testimony and discussed findings and conclusions.

MOTION TO APPROVE: Hearing Examiner Rucker approved this project FILE MOD0001-23 to allow for a private community facility use, a reduced wetland setback for proposed cabins and relocate the "event center" building, finding that it is in accord with the general and specific objectives of the Bonner County Comprehensive Plan and Bonner County Revised Code as enumerated in the following conclusions of law, and based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. Examiner Rucker further adopted the findings of fact and conclusions of law as set forth in the Staff Report and direct planning staff to draft written findings and conclusions to reflect this decision and transmit to all interested parties. The action that could be taken to obtain the conditional use permit is to complete the Conditions of Approval as adopted. This action does not result in a taking of private property.

Findings of Fact

1. The property is zoned Agricultural/Forestry-10, where private community facilities are conditionally allowed.
2. The property is accessed off Highway 2 an Idaho State owned and maintained travel surface and adjacent Wrenco Loop a Bonner County owned and maintained travel way.
3. Fire protection is provided Westside Fire District.
4. Power is provided by Northern lights Utilities.
5. The site has an individual well and septic system.
6. The site is 36.5 acres.
7. The Corps' authority under Section 404 of the Clean Water Act is to regulate the discharge of dredged and/or fill material into waters of the U.S., including jurisdictional wetlands. If a proposal to construct a building does not include a discharge of fill material, the Corps simply does not have the authority to regulate the activity (i.e. authorize a permit). The proposal to install helical screw piles into wetlands does not constitute a discharge of fill material, therefore the Corps does not have authority to regulate it.

Conclusions of Law:

Based upon the findings of fact, the following conclusions of law are adopted:

Conclusion 1

The proposed conditional use permit is in accord with the Bonner County comprehensive plan.

Property Rights	Population	School Facilities, Transportation
Economic Development	Land Use	Natural Resources
Hazardous Areas	Public Services	Transportation
Recreation	Special Areas or Sites	Housing
Community Design	Implementation	

Conclusion 2

This proposal was reviewed for compliance with the criteria and standards set forth at BCRC Chapter 3, Subchapter 3.3 BCRC Chapter 4, Subchapter 4.2 Title 12, Chapter 7, Subchapter 7.2, 7.3 Title 12, Bonner County Revised Code.

Conclusion 3

The proposed use will not create a hazard or will not be dangerous to persons on or adjacent to the property.

Conditions of approval:

Standard continuing permit conditions. To be met for the life of the use:

A-1 The use shall be developed and shall be operated in accordance with the approved site plan.

A-2 The Conditional Use Permit shall not supersede deed restrictions.

A-3 All setbacks shall be met as found in the approved site plan.

A-4 The Conditional Use Permit shall expire if not issued within two (2) calendar years from the date of approval, or once issued, if the use has not commenced within two (2) calendar years from the date of issuance. At any time prior to the expiration date of the Conditional Use Permit, the applicant may make a written request to the Planning Director for an extension of the Conditional Use Permit for a period up to two (2) years. The Planning and Zoning Commission may consider such request for extension at any public hearing. The extension request must be approved or denied prior to the expiration date of the Conditional Use Permit.

A-5 The applicant shall follow BCRC 12-7.2, Grading, stormwater management and erosion control as found in this staff report.

A-6 The applicant shall follow BCRC 12-335 Public Use Table standards for private community facilities as found in this staff report.

A-7 The applicant shall follow BCRC 12-4.3, Parking standards as found in this staff report.

A-8 The applicant shall follow BCRC 12-4.4, Sign Standards as found in this staff report.

A-9 The applicant shall follow BCRC 12-4.5, Design Standards as found in this staff report.

A-10 The applicant shall follow BCRC 12-4.6, Landscaping and Screening Standards as found in this staff report

A-11 The applicant shall obtain Building Location Permits for all structures.

DISCUSSION:

• **Hearing Examiner and Staff Updates**

- o New Staff introductions: Alex Feyen and Rob Winningham

At 2:57 p.m., the Hearing Examiner declared the hearing adjourned until March 15, 2023

Respectfully submitted,

Jacob Gabell, Planning Director

The above Minutes are hereby approved this 15th day of March 2023.


Jacqueline Rucker, Hearing Examiner