



Body

Having concluded that the Criteria for Approval of a Subdivision Concept Plan found in Title 9-3-2(B-4) can be satisfied I move to APPROVE the Concept Plan for Sackett Ranch Subdivision as described in the application materials submitted August 23, 2021 and as updated with additional applicant information attached to this staff report with the following conditions: 1) All required studies done, 2) Deed restrictions be shown; 3) Traffic Analysis required based on total potential units.

Meeting History

Nov 9, 2021 5:00 PM Audio **Planning & Zoning Commission** **Public Hearing**

Mr. Chase reviewed the request for a 16 lot subdivision on 40.46 acres located in the Big Game Migration corridor. He discussed the access concerns because the existing roads would not adequately support the increased traffic. Due to the scale of the project and the existing access roads, a Traffic Impact study would be required.

Mr. Curt Behle, representing the applicant, commented he has been working with Public Works and the neighbors who have a 60' easement through the center of their property in order to improve the access location for those lots and be less intrusive to the neighbors. He noted they had received subdivision approval from EIPH and that he had been working with the neighboring Greenback subdivision and was aware of the studies required prior to submitting for Preliminary.

PUBLIC COMMENT:

Mr. Brent Peterson, adjacent land owner to the east, was concerned that it did not fit with the neighborhood parcel sizes and was concerned with the access.

Mrs. Merri Moradian, adjacent property owner, requested the subdivision be denied because it is in the Big Game Migration Corridor and the Waterbird Migration Corridor and she did not want to see it developed. She was also concerned it would interfere with the adjacent farming that is done on their lot. She cited language from CC&Rs that are tied to this parcel that prevents lot splits of less than 10 acres. Mr. Glenn Moradian felt the access should be from Packsaddle Road via Silver Dollar Subdivision rather than through the easements provided.

Mr. Dan Burr, adjacent property owner, was concerned with the road that is being used for access is not sufficient to accommodate the traffic. Mrs. Patty Burr was also not in favor of this application and believed the sellers of the property in question stipulated it to stay in ag use.

Mr. Curt Behle, representing the applicant, commented he has signed access agreements for the proposed parcel and commented he has not seen the CC&Rs referenced by Ms. Moridian because they were not presented to the current owners of the property, so he could not address those.

COMMISSION DELIBERATION:

Ms. Tremblay commented that the CC&Rs were not mentioned by the applicant and the County cannot enforce them, but if there is a deed restriction on the deed that should be considered and should be addressed prior to Preliminary.

Mr. Watters commented he was concerned with the traffic impact and the access and wanted to make sure the total number of potential dwelling units based on 2 residences per lot be used on the traffic study. Mr. Michelbacher was concerned with the potential deed restriction, but felt that could be dealt with before Preliminary.

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Wyatt Penfold, Commissioner
SECONDER: J.A. Michelbacher, Vice Chairman
AYES: Jack Haddox, J.A. Michelbacher, Erica Tremblay, Timothy Watters, Wyatt Penfold, Rebeca Nolan
EXCUSED: Taylor Cook

The preliminary plat materials were then submitted on August 11, 2023. The PZC first reviewed the application on November 23, 2023. The staff report listed the following:





Considerations:

- The application is being processed under Title 9 with the zoning district being 2.5acre rural residential. All lots under this title must meet the zoning district requirements of 2.5 acres. Currently, this proposal does not suffice as the open space lot is only 1.69 acres.
- The Natural Resource Analysis and Wildlife Habitat Assessment was conducted for 6 lots and does not include the potential for accessory dwelling units. Further, no building envelopes were provided as part of the mitigation. Building envelopes could easily be provided on the eastern portion of the lot – east of the interior subdivision road- to reduce impacts and cluster development. Staff would recommend the building

envelopes be placed on the eastern side of the development, east of the interior subdivision road.

- Legal access has been a topic of discussion in the past. Comment received suggest that the Board has no authority to adjudicate easements. However, legal access that is in compliance with County Local Road standards (50-foot minimum right-of-way) should be confirmed.

Staff recommends a CONTINUATION for the applicant to supply documentation of legal proof of access and for the preliminary plat to be revised to comply with County regulations. If applicant feels the letter provided by Moulton Law is sufficient, the PZC should continue for a legal review from Teton County's Prosecuting Attorney's Office.

CONDITIONS OF APPROVAL

1. The Engineer's Cost Estimate needs to be stamped by the engineer.
2. The Plat should be updated in the following ways:
 - a. It requires the signature of the Planning & Zoning Commission Chair person, not the Administrator.
 - b. Floodplain, not "Flood Plane"
 - c. Fire pond should be included in the plat to ensure setbacks are met.
3. The financial guarantee needs to be fully provided by the time of final plat application. The draft letter provided is adequate for a draft only.
4. The development agreement is missing 4 pages which incorporates the appendixes including the plat and cost estimate, etc.
5. The CCRs should be updated to include:
 - a. Teton County Dark Sky lighting requirements.
 - b. Fencing should be wildlife friendly fencing given the location of the NROs and suggestions from the Wildlife Biologist as a mitigation measure. All mitigation measures provided should be included in the CCRs.
 - c. Trail maintenance is in the CCRs but a pathway isn't provided with the application
 - d. General septic tank maintenance per current DEQ and EIPH recommendations
6. Subdivision sign and landscaping should be included in the improvements plans. This should be updated in the cost estimate.
7. Address Public Works Comments:
 - a. Improvement Plans – Fire pond profile does not show finished elevation.
 - b. Culverts should be incorporated at all road profile low points.





November 14, 2023 PZC Motion:

MOTION: *I move to continue the public hearing for Dorothy Gayle Preliminary Plat in order to obtain additional information from the applicant or other agencies to the February 13, 2024 hearing with the following request for additional information:*

1. *A revised plat showing Lots 1 & 2 combined for a total of six lots;*
2. *A legal review of the access proposed;*
3. *A revised NRA or footprints placed on the east side of the subdivision road; and*
4. *Surface water rights passing through the property be noted on the plat.*

RESULTADOPTED [Unanimous]
MOVERRebecca Nolan **SECONDER:** James Weber
AYES Wyatt Penfold, Rebecca Nolan, James Weber, Tyler Wertenbruch None
NAYES None
ABSTAIN

February 13, 2024 PZC meeting discussion and motion:

Ms. Krueger reviewed the application for Dorothy Gale Subdivision requesting 7 lots on 40.46 acres that was continued on November 13, 2023 in order to get more information on several areas of the application. Ms. Krueger reviewed the updates provided that address the building envelopes, surface water rights, and access. She stated a legal access has been established but it has not been established where that access will be. Approval would be conditioned on resolution on the legal access which the applicant has proposed from W 4850 N or if it is from a different portion of the property. The solution would need to be conditioned on resolution between private parties of the issue whether or not the development has legal access via W 4850 N and N 3550 W to CR N 3000 W which is sufficient to allow improvement of the roads to meet County local road standards required by Title 9.

Mr. Curt Behle, representing the applicant, commented the irrigation easement would continue to serve the adjacent parcel as well with only one draw. He commented he is working on resolving the access issue and would release some existing easements once the access issue is resolved. He also discussed the deed restriction on the property but stated it refers to not using the One Time Only lot split process but does not preclude further subdivision through the full subdivision process. He also talked about the need for a culvert on the road depending on where the road access is determined to be.

Mr. Penfold asked if an easement would be provided for the existing canal on the south border of the property as it would soon be required once all the canals in the County are mapped and adopted. Mr. Behle commented there is currently an easement on the south border of the property. Mr. Penfold commented they will still need a canal easement based on the state legal requirements for a canal easement for access and clearing debris.

Mr. Kaufman asked if the legal access has been established. Mr. Behle commented the title company showed there is an easement so that will need to be confirmed. He stated it is not the best case scenario for the neighbors so they are suggesting the easement be on the perimeter of the property rather than through the Moradian property. Mr. Watters stated the applicant will need to legally resolve the actual road access and confirm the required easements are in place to support the location of the proposed access.

The Commission was concerned about the lack of building envelopes on some of the lots and questioned the statement in the NRA regarding impact to wildlife. Mr. Behle commented they were told by the biologist that performed the study that there would be no need for mitigation on the most of the property. They were concerned that building envelopes are not located on lots in the overlav only on a portion of the lots in the subdivision





MOTION: *Having concluded that the Criteria for Approval of a Preliminary Plat found in Title 9-3-2-C can be satisfied, I move to recommend APPROVAL of the Preliminary Plat for Dorothy Gayle Subdivision as described in the application materials submitted on August 10, 2023 and additional information attached to the staff report with the conditions of approval as listed in the staff report with the additional condition: 1) Because the County does not have the authority to adjudicate private easements approval is conditioned on judicial or other resolution between the affected private parties of the issue of whether the development has legal access via W 4850 N and N 3250 W to CR N 3000 W sufficient to allow improvement of the roads to meet County local road standards required by Title 9.*

RESULTADOPTED MOVER Lindsey Love SECONDER: Wyatt Penfold AYES Lindsey Love, Tim Watters, Wyatt Penfold, Wade Kaufman, James Weber Tyler NAYES Wertenbruch ABSTAIN None
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The preliminary plat went to the Board of County Commissioners on April 22, 2024.

MOTION: *I move to continue the public hearing for Dorothy Gayle Preliminary Plat to June 24 at 1 PM in order to obtain additional information from the applicant or other agencies and for legal review of access, water rights and any other outstanding issues.*

RESULTADOPTED [Unanimous] MOVER Michael Whitfield SECONDER: Cindy Riegel AYES Cindy Riegel, Bob Heneage, Michael Whitfield None NAYES None ABSTAIN
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June 24, 2024 BoCC meeting minutes and motion:

- 1. 1:00 PM – PUBLIC HEARING: Dorothy Gayle Ranch Preliminary Plat Hearing (Continuation) 📎

Planning Administrator Jade Krueger presented the staff report for the Dorothy Gayle Ranch Prelim Plat. This item was continued to consult legal regarding access and water rights. Legal has provided no input at this point. The Board asked what the earliest date that this could be heard if the item is continued. Ms. Krueger stated that it could be placed on the July 8th Meeting.

Curt Behle, representing the applicant, addressed the concerns the Fire Marshall expressed about the existing pivot. The pivot will be removed. The applicant expressed concern on the three year timeline approaching with several outstanding items that are dependent on things out of their control.

Ms. Krueger clarified that the County cannot adjudicate easements. In addition, the County has asked for legal proof of access and not received it.

Mr. Behle stated that numerous legal documents from the title company have been given.

Public comment was opened at 1:25 PM.

Dan Burr spoke opposed to the application based on the fact that the easement is not 60'.

Brent Peterson, nearby property owner, stated that it does not have a 60' access easement. He is also concerned about his pivot, he is not going to move it.

Glen Moradian spoke opposed and provided documentation that the easement is 30'. He questioned how the applicant can have a bigger easement than he has. He also spoke with the Fire Marshall about the pivot. The Fire Marshall agreed that the pivot would prevent emergency vehicles from accessing the proposed subdivision. He also pointed out that the application contains fourteen material omissions and misrepresentations that would allow the Board to deny the application.

Public comment was closed at 1:34 PM.

Applicant rebuttal. Mr. Behle reiterated that legal documentation from the title company has been provided.

Board deliberation. Lacking input from the Prosecutor, the Board continued the item to the next Regular Meeting agenda.

MOVER: Michael Whitfield

SECONDER: Bob Heneage

Continue the item in order to obtain legal review and additional information from the applicant and/or other agencies regarding access and water rights to July 8 at 3:30 PM.

AYES (2) Bob Heneage, and Michael Whitfield

Absent (1) Cindy Riegel

Adopted (2 to 0)





July 8, 2024: BoCC Meeting minutes and motion:

6. PUBLIC HEARING: Dorothy Gayle Preliminary Plat Hearing (Continued)

Ms. Krueger presented the updated staff report for the Dorothy Gayle Subdivision Prelim Plat hearing. Staff received new public comments and comments from the applicant. The access issue needs to be resolved between the applicant and adjacent landowners prior to Board approval. The Board cannot adjudicate access issues. Idaho Dept of Lands submitted a letter stating that the State of Idaho owns all mineral rights.

Curt Behle, representing the applicant, reiterated that this application concept hearing was in November of 2021 where access issues were flagged. Planning & Zoning requested that legal access be proven prior to approval. He stated that the pivot will no longer be used for farming. They will adjust the CC&R's to reflect the IDL letter regarding mineral rights.

Public comment was opened at 3:37 PM.

Chris Biggerson, is concerned about the number of lots the access will serve.

Glen Moradian, neighbor, asked if the legal review happened and if the Board was going to make a decision today.

Public comment was closed at 3:41 PM.

Applicant rebuttal.

Mr. Behle stated that the CC&R's restricting the number of lots (Instrument #169400) had been subsequently vacated (Instrument #190814) on the parent parcel.

Board deliberation. Commissioner Heneage summarized the conversation he had with Mr. Moradian. Mr. Moradian invited Commissioner Heneage to come out and tour the property which Commissioner Heneage declined. Mr. Moradian also made Commissioner Heneage aware of the parent parcel CC&R's attached to this packet.

MOVER: Michael Whitfield

SECONDER: Bob Heneage

Motion: Having concluded that the Criteria for Approval of a Preliminary Plat found in Title 9-3-2-C can be satisfied, I move to approve the Preliminary Plat for Dorothy Gayle Subdivision as described in the application materials submitted on August 10, 2023 and additional information attached to the staff report, with the following conditions of approval:

1. The financial guarantee (125% of the cost estimate) needs to be fully provided by the time of final plat application. The draft letter provided is adequate for a draft only.
2. The CCRs should be updated to include: a. Teton County Dark Sky lighting requirements. b. Fencing should be wildlife friendly fencing given the location of the NROs and suggestions from the Wildlife Biologist as a mitigation measure. All mitigation measures provided should be included in the CCRs. c. Trail maintenance is in the CCRs but a pathway isn't provided with the application d. General septic tank maintenance per current DEQ and EIPH recommendations e. Include the owner of the property – Currently Curt Behle is listed as the owner of the property in the CCRs but there is not ownership documentation.
3. Improvement Plans need to be reviewed and approved by the Public Works Director (before final plat application).
4. Address Public Works Comments: a. Culverts should be incorporated at all road profile low points.
5. Address the fire marshal's review of the access for the subdivision (6/19/24) to ensure that Fire and EMS have access.
6. Demonstrate that the development has legal access via W4850N and N3250W to County Road N3000W sufficient to allow improvement of the roads to meet County local road standards required by Title 9 through judicial court order or other legal resolution between the affected private parties through signed agreement.
7. Any change or review of water rights on this property as they might affect other property owners have been documented and resolved and approved by IDWR.
8. Legal assessment and resolution of prior CC&R's that might apply to this property to ensure that approval of this proposal does not violate any valid prior landowner agreements.
9. A plat note should be added to note that the State of Idaho holds all the mineral rights on this property.





The applicants submitted an extension request on October 8 2024, before the November 5, 2024 application expiration date.

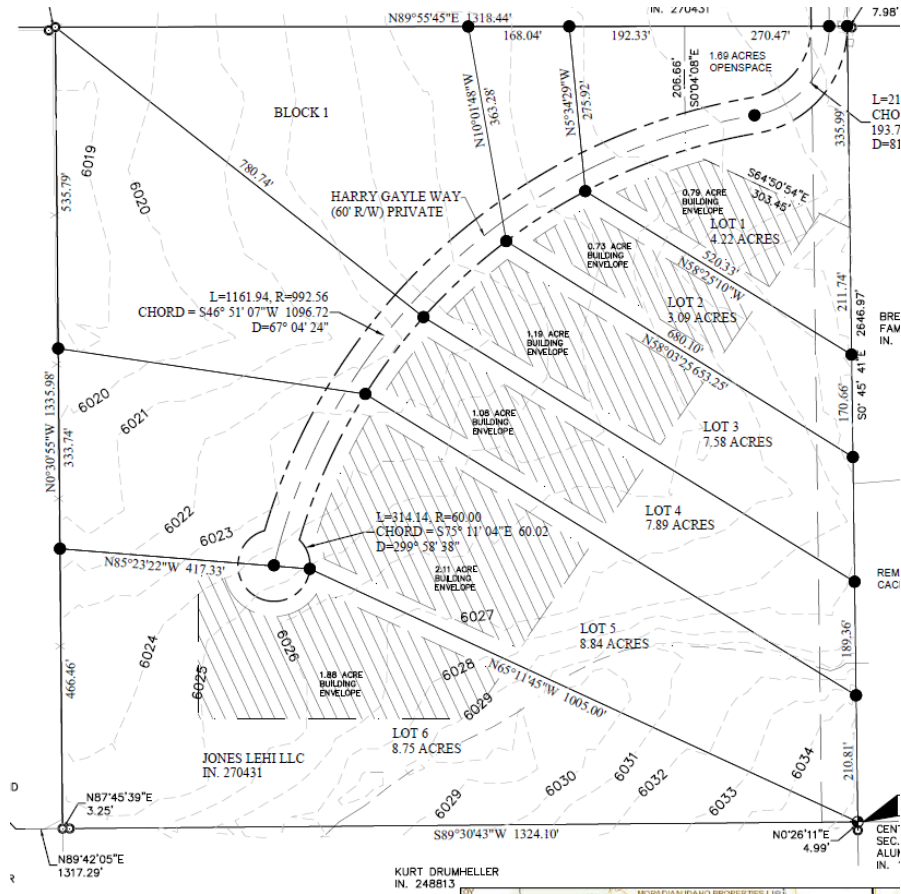


Figure 2. Approved Preliminary Plat

Findings:

Under Teton County Code §9-3-2 (A-3), one extension of up to twelve (12) months may be granted by the Board of County Commissioners pursuant to 9-3-2 (D-2-J).

The applicant may request in writing prior to the expiration date an extension of time for final approval of up to twelve (12) months from the Board of County Commissioners. The narrative must include specific reasons why an extension is requested, address the criteria in the Subdivision Extension Application, and the extension fee. The fee is non-refundable. No further requests for this time extension shall be deemed accepted or granted. An extension request shall be adjudicated under the ordinance in effect at the time of the request for extension.

The considerations for extension approval, per the Extension Request Application:





1. The developer has diligently pursued the completion of final plat approval and the preliminary plat has been approved.
2. The application was continued by the commission for special studies, i.e.: Traffic, NP, Wetland, Wildlife etc.
3. The denial of the extension would cause undue hardship to a neighboring property.
4. It is in the public interest.
5. Delays have been the result of federal, state or local agency demands, lengthy/unusual review agency timeframes, or required studies that can only occur during a limited time(s) of the year.
6. Application of Title 9 regulations (as amended November 14, 2008) would not significantly alter the extended subdivision's design or dedications.
7. County negotiations for non-required public benefit delayed progress in the project.
8. Other extenuating circumstance.

Staff Recommendation:

The applicant is requesting an extension of an additional 6 months to complete the process.

The applicant's narrative states the following:

“As you may be aware, this application has been challenged by a neighbor who has attempted to delay the Dorothy Gayle project. The neighbor has stated that the wildlife on this lot is too important, stated that my client does not have legal access to their property, brought out the fire marshal to the property stating that his pivot will not be moved and a road cannot be built (it is the famers pivot), tried to drag in Commissioner Heneage to weigh in on some narrative, claimed that the easement that is in place is not what the title states causing the county to “pause” this application, claimed that there are CCR'S that restrict lots being split as well as other claims. My client has respectfully responded to all of these questions from the public providing legal documentation or written statements clarifying any concerns. Through these claims, the planning commission as well as the BOCC and their attorneys have understandably continued and delayed the application to try and verify and validate these concerns.

Since the concept hearing back in 2021, the county has asked that the applicant prove legal access based on the concern from a neighbor. The applicant had been providing all documentation from the Title company and their engineer had been working with the county staff to decipher if the access was valid. This application was continued by the planning and zoning committee on November 14th, 2023 where it was noted to have legal issues resolved based on claims from the neighbor. Later the county's attorney removed the paused/ continued status of the application stating that the county cannot adjudicate a private easement and informed the planning and zoning staff to resume the application. To date, no legal filings had been made and only public comments have been made.

This has been unfortunate and has wasted a lot of the county, state and emergency services time as well as money and resources from all. The Dorothy Gayle owner is submitting the final plat paperwork and is kindly requesting an extension for this application.”





The BoCC can determine if an extension request may be appropriate for Dorothy Gayle Subdivision given the 8 listed extension request approval criteria above. This request would allow the applicants an additional 6 months to receive final plat approval.

Board of County Commissioners Action:

1. Approve the Recording Extension Request
2. Deny the Recording Extension Request

Motions:

Approval:

I move to approve the Subdivision Extension Request for Dorothy Gayle Subdivision for 6 months for the reasons listed in the materials submitted on October 8, 2024, which would allow the applicant to receive final plat approval on or before May 6, 2024.

Denial:

I move to deny the Subdivision Extension Request for Dorothy Gayle Subdivision as requested in the application submitted on October 8, 2024.

Attachments:

- A. Application (2 pages)
- B. Narrative (2 pages)

