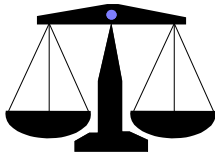


**MINUTES
KOOTENAI COUNTY HEARING EXAMINER
PUBLIC HEARING**

**NOVEMBER 17, 2011
KOOTENAI COUNTY ADMINISTRATION BLDG.
ROOM 1**

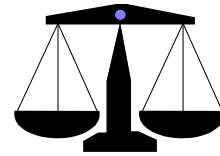
**HEARING EXAMINER
LISA KEY**

**STAFF PRESENT
STACI ARMES
JUSTIN SEIER
SCOTT CLARK
KATHRYN FORD**



**MINUTES
PREPARED BY:**

KATHRYN FORD
Recording Secretary



**MINUTES
REVIEWED BY:**

STACI ARMES
Planner III



LISA KEY
Hearing Examiner

The Official Record of Public Hearing is on a CD recording available at the Kootenai County Community Development.

Lisa Key called the meeting to order at 6:04 p.m.

The Hearing Examiner explained that the purpose of the public hearing is to take testimony on the items that appear on the agenda.

The Hearing Examiner will review the testimony presented and make written recommendations to the Board of County Commissioners, who will make the final decision.

The hearing was adjourned at 7:37 p.m.

HEARING EXAMINER MINUTES
NOVEMBER 17, 2011

CASE NO. APP11-0003

Type: Appeal, request by Tom and Connie Fudge, appealing the issuance of Site Disturbance Permit (SDP10-0057) pursuant to Kootenai County Site Disturbance Ordinance #374. The site is described as Tax# 22892 [IN LT 5-SEC 4 & SE4-SEC 5] in Section 4, Township 49 North, Range 03 West, N.M., Kootenai County Idaho.

Staff Presentation: Scott Clark, Director, clarified that under Ordinance #374 the appeal of APP11-0003 (Site Disturbance) would result in an Order of Decision from the Hearing Examiner and the appeal of APP11-0004 (Administrative Interpretation) would result in a recommendation to the Board of County Commissioners.

Appellant Presentation: Doug Marfice, appellant attorney, stated as a preliminary matter in response to the staff analysis an issue was raised regarding mootness of the appeals. A memo with comments was provided for the Hearing Examiners edification. The site disturbance permit appeal is not moot on the grounds that a favorable decision with this appeal will in effect alter the outcome of the project at issue and require the issuance of a new permit. The Administrative Interpretation appeal is not because a favorable decision will require substantial modifications to the subject project including boundary line issues. The same written comments for both appeals were submitted in a memo dated August 2, 2011 (HE 1000). The legal issues regarding timeliness and mootness are referenced in the written comments.

Scott Brown, appellant representative, presented a letter for reference (HE 1001) and stated that the letter essentially enforces a lot of the points made in the appeal narrative submitted with the application. A brief review on items A) how the parcel was created with a boundary line adjustment; B) financial guarantee found to be incomplete with the application; C) technical components of the application that does not meet the criteria for approval; D) expired permit and exhibits. Mr. and Mrs. Fudge declined to comment.

Staff Presentation: Staci Armes, Planner III, introduced a packet of information from the appeal file (HE 1002) and referenced points of concerns in the appeal. Clarification was provided on the details of timeliness of acceptance and issuance of the permit, how the subject parcel was created and technical aspects of a permit as it refers to the site disturbance ordinance. The calculations in the site disturbance permit did not include the condos but did include the area disturbed for the driveway and parking lots. The stormwater will be addressed when they submit for a building permit for each condo unit, which has not been submitted at this time. The boundary line adjustment was included in a Special Notice Permit issued in 2008 (HE 1003). The applicants Mr. and Mrs. Fudge knew about the Special Notice Permit and did not appeal it after the Board of County Commissioners made their final decision. Furthermore, three years later a condominium plat was brought before the BOCC which at that time the Fudges' did express their concern. The Board did take public comment into consideration and approved the condominium plat (HE 1004). The site disturbance reference is cited from Ordinance #374 Section 7a(4). The bond amount was adequate for the overall project and is not material for the appeal decision. The common practice is receiving and accepting an application that a bond assuery would be in place. A permit can only be extended or expired if it was issued as referenced in Ordinance #374 Section 10(b). The site disturbance permit had a building permit associated with it and the building permit did not have the information needed. Once the information was provided the permit became active, was issued and extended.

Exhibits: HE 1000 – Memo regarding AI of 08-02-11 submitted by Doug Marfice.
HE 1001 – Letter dated 11-17-11 submitted by Scott Brown.
HE 1002 – Exhibits A-1 to A-12 from APP11-0003 file submitted by Staci Armes.
HE 1003 – SPN08-0003 Order of Decision submitted by Staci Armes.
HE 1004 – CON11-0001 Order of Decision submitted by Staci Armes.
HE 1005 – Letter dated 11-17-11 submitted by Darrel Haarr.
HE 1006 – Court Transcript page 43 from CON11-0001 submitted by Doug Marfice.

HEARING EXAMINER MINUTES
NOVEMBER 17, 2011

Public Testimony: Comment Sheets submitted: 6, Applicant/Representatives – 4; In Favor-2 (support of county), Neutral-0, Opposed-0. The names and address of the individuals speaking or submitting comments are part of the record. The Public Testimony by affected parties had comments regarding:

- Agree that the county guidelines were followed
- Subject parcels are legally created and eligible for building permits
- Adequate Best Management Practices were in place to approve this plan
- If needed, financial guarantee amount to stabilize the site is being held by the county
- A notarized site disturbance agreement has been provided for this project
- No verbiage in the ordinance that states a parcel needs to be buildable
- A deed of conveyance recorded before 11-17-95 for a parcel that meets the minimum lot size for its zone does create a legal parcel, referenced in Ordinance #401

Appellant's Rebuttal: Scott Brown, appellant representative, stated the applicants site disturbance application describes the construction of structures and provides no design calculations for that permit. Pertaining to the stormwater agreement, code requires that the financial bond be in place prior to the issuance of the building permit. Without signatures the site disturbance agreement is not valid, it is just a letter. The reference to the retaining wall provides no explanation why it is on the property line. The staff report speaks to the expired permit stating a notice was sent to the developer to revoke the permit due to inactivity. Mr. Brown added due to all the dates in discussion he has provided a timeline of events in his submitted letter so it would be easier to track. Since these applications have been submitted the County has made two significant amendments to the Site Disturbance Ordinance and they will have significant impacts on how this site eventually gets developed. The vesting process works by being vested under the specified ordinance at the date of application submittal. The reason the site disturbance applicants are required to put how much earth they are moving is so that staff can tell whether the bond is adequate. In referring back to the calculations in questions there is no way staff could tell if the construction costs are even close to what they should be because they do not have any design calculations. The Subdivision Ordinance states a parcel to be buildable must comply with all the County ordinances. Mr. Brown added that this is the first time they have heard about the Deed of Conveyance of 11-17-95 and a parcel can only be divided under the Subdivision Ordinance. Doug Marfice, appellant attorney, wanted to bring attention to a significant discrepancy in the record. This is a substantive due process issue for the Hearing Examiner to contend with in so far as the County has raised this issue of timeliness and mootness of the question concerning the Site Disturbance Permit. If he understood the staff's presentation it was eluded to that essentially this was an issue that could have been raised at the time of the BOCC consideration of the condominium application and therefore now moot. Since the condominium determination is on judicial appeal to the District Court he referenced Kootenai County case CV-2011-8056, transcript of record CON11-0001. The clerk's record of appeal that has been prepared and the page citation 43, line 7 transcript of BOCC 08-23-11 was provided (HE 1006). To the extent that there is an argument being made at this point that the matter is moot because it should have been raised at that time is fundamentally incorrect.

There being no further comments from the public, testimony was closed on this item at 7:08 p.m. The Hearing Examiner, Lisa Key, will submit an Order of Decision within two weeks.

Submitted by,

Kathryn Ford
Recording Secretary

HEARING EXAMINER MINUTES
NOVEMBER 17, 2011

CASE NO. APP11-0004

Type: Appeal, request by Tom and Connie Fudge, appealing the August 1, 2011 interpretation of the Administrator. The site is described as Tax# 22892 [IN LT 5-SEC 4 & SE4-SEC 5] in Section 4, Township 49 North, Range 03 West, N.M., Kootenai County Idaho.

Appellant Presentation: Scott Brown, appellant representative, submitted a brief summary (HE 1002) prior to addressing the Administrative Interpretation (AI). The AI was requested approximately 6 months ago and provided to Mr. Brown 48 hours before the Board of County Commissioners public hearing for the condominium plat. This turn around of the AI response was so close to the public hearing that written comment could not be provided for the Boards packet. The issue of a legally created, buildable lot was not addressed in the AI. There is no evidence in the record on the side of the county how this parcel was legally created except for one statement made in 2008. There is no evidence in the record on the part of the department how they concluded that the lot was buildable. For these reasons a request to correct Mr. Clark's interpretation due to unsubstantiated statements, no reference to code, and no supporting evidence.

Staff Presentation: Scott Clark, Director, stated the matter in 2008 is moot. The issue of the condominium plat is mentioned under Staff Analysis with focus in 2008 stating the BOCC rendered a decision specifically on the boundary line adjustment concluding that this was not an issue. A District Court appeal has been filed and in that the condominium concerns were laid out and not necessary for this appeal hearing. The timeline provided by Mr. Brown looks to be accurate. The Board of County Commissioners made their decision and he believes the Hearing Examiner is bound by that decision. In the Board's Analysis there is discussion regarding the buildability of the parcel, the lot line adjustments and all that was taken into consideration and discussed and they approved the condominium plat. There is not another answer to be provided. The only other testimony heard tonight was regarding the legitimacy of the parcel and this was not addressed in any of the issues requested for the Administrative Interpretation.

Exhibits: HE 1000 – Memo regarding AI of 08-02-11 submitted by Doug Marfice.
HE 1001 – Exhibits A-5 to A-9 from APP11-0004 submitted by Scott Clark.
HE 1002 – Letter dated 11-17-11 submitted by Scott Brown.
HE 1003 – Letter dated 11-17-11 submitted by Darrel Haarr.

Public Testimony: Comment Sheets submitted: 6, Applicant/Representatives – 4; In Favor (support of county)-2, Neutral-0, Opposed-0. The names and address of the individuals speaking or submitting comments are part of the record. The Public Testimony by affected parties had comments regarding:

- BOCC approved twice that this was a legal buildable lot
- There have been multiple permits issued on this parcel over the years
- Ordinance #401 includes a definition of a lot
- Deeds are recorded on this lot with the County Recorder's Office

Appellant's Rebuttal: Scott Brown, appellant representative, added the Special Notice Permit that Mr. Clark references was noticed stating it was to add a 200 square foot mailbox area. The Fudge's choose not to participant in the legal process after reading the legal notice for a mailbox area. It is an improper procedure to approve a boundary line adjustment at a hearing for a Special Notice Permit. There is no evidence how the parcel was created. The notice was improper and the procedure was flawed. The Board does not have the authority to approve boundary line adjustments. If the correct process was completed that Special Notice Permit has expired since the mailroom was never built. The many permits issued on this site over the years were all prior to the boundary line adjustment. In Ordinance 401 definition of a lot has a critical part stating a lot needs to have approved access to a public right-of-way. They never have had access to parcels 49N003W-05-7850 and 49N003W-04-5670. Doug Marfice, appellant attorney, added there are constraints to the exhaustion of the administrative remedies dilemma that we all face in these constructs and that is in large part why this appeal is being presented tonight. Because of both the mootness arguments and the potential argument at the District Court level that matters have not been properly appealed through this process and therefore it's untimely before the District Court.

HEARING EXAMINER MINUTES
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There being no further comments from the public, testimony was closed on this item at 7:37 p.m. The Hearing Examiner, Lisa Key, will review this case and submit her written report to the Board of County Commissioners within two weeks.

Submitted by,

Kathryn Ford
Recording Secretary