



CANYON COUNTY PLANNING & ZONING COMMISSION  
MINUTES OF REGULAR MEETING HELD  
Thursday, April 6, 2017 6:30 P.M.

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**1<sup>ST</sup> FLOOR PUBLIC MEETING ROOM SUITE 130, CANYON COUNTY ADMINISTRATIVE BUILDING**

**Commissioners Present:** Richard Hall, Chairman  
Sandi Levi, Secretary  
David Scheuerer, Vice Chairman  
Shannon Carrell, Commissioner  
Gary Duspiva, Commissioner  
Rod Garrett, Commissioner

**Staff Members Present:** Patricia Nilsson, Director  
Kyle McCormick, Planner  
Kathy Frost, Recording Secretary

**Chairman Richard Hall** called the meeting to order at 6:30 p.m.

**Secretary Levi** proceeded to the business items on the Agenda.

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**OLD BUSINESS**

**ITEM #1 4D LLC Mineral Extraction**

**CASE #PH2016-69**

4D LLC / Kyle Cooper has requested a mineral extraction permit to include a gravel mining ~~and crushing operation~~ on parcel R34066, approx. 56.6 acres, with planned excavation and mining of up to 16.47 acres of the subject property for a period not to exceed two years. The subject property is located at 21977 Duff Lane, Middleton, ID and is further described as a portion of the NE ¼ of Section 17, Township 4N, Range 2W, Boise-Meridian, Canyon County, Idaho.

**Planner Kyle McCormick:** Reviewed the staff report for the record, including late Exhibits 85-97, Agency letters of conditions of approval and revised Findings of Facts and Conclusions of Law and Conditions of Approval.

**Commissioner Carrell** will abstain from participation due to her absence at the previous hearing regarding this case.

**Chairman Hall:** Affirmed Witnesses to testify.

**Testimony in Favor:** Todd Lakey, Kyle Cooper, Adam Lyman

**Neutral Witnesses:** None

**Testimony in Opposition:** Amy Hebert, Dave Hebert, William Kopp, Timothy Hunihan

Todd Lakey – 11505 Lonestar Ave Nampa ID 83651 Applicant Representative – in favor

- Mr. Lakey will be referencing Exhibit #89, Karl Gebharts response and model of flood events.

- This is an unusual year for flooding, however the current flooding issues are exactly what Karl Gebhart has planned for, analyzed and incorporated into the design regarding the pond. Mr. Gebhart is an expert in his field in the State of Idaho and has walked the site multiple times, and uses the model provided by the Army Corps of Engineers and the technology they utilize.
- The river and the property are doing what Mr. Gebhart proposed that they would do as far as the current flood waters, the model was run at 8400 CFS, and currently it is running at 8120 CFS. Compare that to what was happening on the ground at the property level to his 8400 analysis and it is a good match. His model and his analysis is accurate regarding the property.
- We all want to avoid pit capture, including Mr. Cooper and the other property owners.
- The pond that will be dug includes slopes at a 10 to 1 slope, which is very shallow particularly at the East and West ends of the pond, also extending beyond those points, however the East and West ends are the most likely flood entry points. Mr. Gebhart predicts that the flood water will come in from the West due to the topography and other factors, which is ideal from a pit capture perspective. The 10 to 1 slopes will not be comprised of top soil, they will be comprised of the native cobble material currently onsite, if it is determined that there is not an average of 5- 6 inch cobble, that material will be replaced with cobble.
- Mr. Gerhart's analysis shows that those 10-1 slopes with the appropriate size cobble at those entry points can handle the 100 year flood event, with 4500 CFS coming over the side.
- The 100 year flood event for the Boise River is approximately 16,600 CFS, currently it is running at 8120 CFS. Information from the flood control district states that there was a 20,000 CFS flood event in 1943.
- The 100 year flood event in the Boise River could result in about 900 CFS flowing through the pond, and the pond is designed to handle that.
- There is no significant risk of pit capture regarding the Boise River.

Kyle Cooper – 581 N Carswell Star Idaho 83669 – Applicant in favor

- Has been on the property almost every other day since the beginning of March, and has worked extensively with Karl Gebhart, learning about the study that he put together.
- The Base Flood Elevation (BFE) will not be changed, by stockpiling gravel as we will not be stockpiling, this is a load and remove operation. Conditional letter of map revision (CLOMR) allows for the potential to alter the BFE, this requires proof that neighbors or land downstream will not be harmed. The “No Rise Certificate” is the first step of showing FEMA that the hole being dug will not cause any problems, and that the fill will not cause damage.
- The flood plain administrator (Director Patricia Nilsson) is who we will work on the flood permits that are needed.
- The road grade level will not be altered.
- The 8 foot berm will be on the northern border of the property. The berm was a suggestion from one of the neighbors to reduce noise, we agreed and will build it from the top soil removed from the site. The berm will remain permanently.
- Test holes have been dug to determine that there is plenty of gravel on the site.
- Surrounding gravel pit operations are currently de-watering their ponds, which is why they are empty. They would be full if they were not de-watering.

Adam Lyman – 2101 Delta Drive Nampa Idaho 83687 – Applicant representative in favor

- We have incorporated Karl Gebharts design into our plans, which include a 10 to 1 slope on the east and west side of the pit, with a 5 to 1 and a 5 foot bench, to prevent flooding and erosion if there were a 100 year flood event from the river into the pond.

- There have been no recommended changes to the reclamation plan based on current flooding in the area.
- Calculations in our study for the amount of cubic yards coming out of the pit are accurate, considering the slopes that will be excavated. We will not be crushing or double handling material, it will be excavated and removed from the site.
- Pit capture would be used during construction and in a flood event. During the winter months when the operation is not running the pit will be allowed to fill.

William Kopp – 10205 Gabica St Middleton Idaho 83644 – opposed

**Motion:** Commissioner Garrett moved that Mr. Kopp be allowed ten minutes of testimony. Seconded by Commissioner Scheuerer. Voice vote, motion carried.

- Because of life experience, Mr. Kopp is familiar with high water and what it can do, and is a land use advocate.
- Cited a gravel pit in Eagle that the Army Corps of Engineers is dispatching emergency staff to mitigate a flood risk for thousands of people, homes and property. An apartment building in Barber Park is now flooded. These are projects that were approved and supported by engineers and attorneys who advocated for the projects in a biased way. There are subdivisions in East Boise that are sliding off of mountains, these projects were approved and maybe should have been more carefully considered. There was a project in Washington, where thirty people lost their lives because a development project was allowed to move forward despite many warnings. I consider this project in the same way as these projects, the authorities who approved those projects probably have regrets for not thinking more about what they were approving. Mr. Kopp does not want this project to become another headline.
- Grew up on this property with the land owners and understand this land well. Had the first house in the area. My property has flood water coming onto it.
- Tried to work with Mr. Cooper in order to reduce the project to where it would not have pit caving or flood risk. We have made progress however a 16 acre lake is still the goal of the project. This is a high risk project and benefits one person's selfish desires for a ski lake. If it were not a ski lake the risk of pit caving is gone.
- The upriver side, outside of Mr. Cooper's property is breaching into the project area on the most easterly location. Photos of flooding are presented.
- There is water under the subsurface all over the properties in this area, special efforts were required to dig a well due to the water filling the holes.
- Photo showing the river breaching the bank at current levels, digging a trench in this area is going to increase flooding and the risk of pit caving. When flooding occurs it could uproot trees and force them into the Middleton Bridge, causing flooding to Middleton City. This may be a minimal risk, however it is not worth the risk.
- This is not a good project and the flood study done by Mr. Gebhart is not accurate based on the flood event we are currently having. There was a statement that there is no significant risk of pit capture. No significant risk is not good enough, people's lives are at stake.
- The difference between a 16 acre ski lake and a 16 acre lake, is the noise.

Amy Hebert – 10100 Gabica St Middleton Idaho 83644 – opposed

- Referencing Exhibit 91, photos show current flooding on the proposed property.
- This property regularly floods, there is a historical crest chart that shows the relationship of CFS levels between the Glenwood Bridge and the Middleton Bridge. This month, Middleton

levels have been higher than the Glenwood Bridge. The last 18 years there have been CFS levels higher than 6000, eleven of those are higher than 7000. This is a regular occurrence.

- Erosion is not constant and the factors of the erosion rate is not linear, it can't be anticipated. Once the river breaches it is more likely to breach in the future.

Dave Hebert – 10100 Gabica St Middleton Idaho 83644 – opposed

- Presented a letter from Bill Hamlin (Exhibit no.94) regarding back up alarms in relation to noise levels at the site.
- The agencies with jurisdiction are: 1. OSHA, for On-site construction. 2. Department of Transportation for Off-site transport. 3. MSHA for Mineral extraction.
- Ron Heath a safety inspector with MSHA confirmed that, if an "Observer" is not provided at all times that equipment is being operated, then one of three types of audible alarms must be used. "Alarms shall be audible above surrounding noise level" that level must be distinguishable above the approximate 80 decibels of ambient equipment noise levels anticipated.
- The measures suggested by the applicant's representative to mitigate unreasonable noise levels, do not lower sound levels.
- The 2020 Comprehensive Plan states that 84% of the total land area of the County is Agriculture, if the precedent is set for a mining operation, and CUP approval directly adjacent to a long established residential neighborhood without demonstrating proper sound mitigation, what neighborhood in the County is safe from unreasonable sound impacts?

Timothy Huninan – 10055 Gabica St Middleton Idaho 83644 – opposed

- "Water is where it is supposed to be" has been said multiple times, I agree with that, what does not belong is a gravel pit.
- Originally the estimated amount of gravel was 200,000 yards, 4D LLC knew it would be more than that, our estimate was 300,000 yards. The study was allowed to be done, knowing that it was underestimated. There is also an estimate of 70,000 yards of overburden, there is nowhere to put that without changing the floodway.
- Watching what is currently happening in other areas should be a warning as to what can happen here.
- There is financial burden that can happen as a result of this project, Canyon County will be left to pick up that financial burden.
- Trees coming down as a result of flooding could take out the bridge.

**Rebuttal: Todd Lakey**

**Motion:** Commissioner Scheuerer moved to allow Mr. Lakey 10 minutes of rebuttal testimony, seconded by Commissioner Levi. Voice vote motion carried.

- This application is a compromise resulting from a substantial effort to be reasonable and responsive on behalf of Mr. Cooper to listen and communicate with the neighbors and to address their concerns. By reducing the scope and nature of the plan and by getting the best experts to do the technical analysis.
- The application was modified to reduce the size of the pond. The plan will result in a high quality, low density residential property. A nice pond with four homes on fifty six acres.
- The application has been significantly modified since it first came before the County, the duration of the operation has been reduced from 4 years to 2 years. The pond size was

reduced 40%, from twenty six acres to sixteen acres, including the meandering edges, the shallow riparian areas, and the areas around the pond as separation for wildlife.

- The crushing operation has been eliminated, the stockpiling of gravel material has been eliminated.
- This is not a typical gravel pit, and should not be compared to a traditional gravel pit.
- The modified site plan will be complied with.
- Mr. Cooper will be living on the property as the pond is being dug.
- Traffic study was completed and updated with the modifications. The road can safely handle the traffic and we will comply with the conditions. Trucks will not be flying up and down the road, the speed limit will be 25 MPH.
- There will typically be one type of machinery used.
- The hours are limited to 7:00 am – 5:00 pm and no weekends.
- Most of the digging will occur below the surface level of the property, the sound will be buffered as a result of that and the corresponding berm. The white noise backup alarm will comply with OSHA and other agency requirements.
- The generator used is a quiet model as specified in the conditions and has to be placed on the far side of the property. Pumps operate below the surface level and we will be removing wet material and will not be crushing so the dust will be minimal, roads will be watered regularly.
- There has been a good effort to minimize the dust, noise and traffic of this short term operation.
- There has been an archeological study, it is in the staff report.
- Aquafer impacts have been studied and will be complied with.
- The submission by the opposition, entitled Common Sense Excavation and Vehicular Analysis, does not reflect this project.
- The testimony heard tonight is a matter of science, hydrology and geo-technology, coming from the expertise of Karl Gebhart. The 10 -1 slopes can deal with a 100 year flood event. Mr. Gebhart is aware of the site and the history and the design of the ponds addresses the ability to not have risk of pit capture.
- We should not be using projects from other cities as a general comparison of projects that have failed, or that are at risk of failing, those site specifics are different and we don't know what was done there.
- Irrigation season will pull out 4000 CFS out of the river.
- Flood waters do originate from the west but can overrun in the east, which is why each end of the pond will have a 10 -1 slope.

**MOTION:** Commissioner Levi moved to close testimony on Case: PH2016-69, 4D LLC, seconded by Commissioner Scheuerer. Voice vote motion carried.

**Commissioner Comments:**

- **Commissioner Garrett:** Mr. Gebhart has put together a very good study however the photos of the flooding, cause concern. The historical information is also helpful. The river is controlled by Dams, but they can only control so much water, at some point they have to let loose to avoid major damage. Concerned about the close proximity to the river, the river can and will change course. Would feel more comfortable with this project if the property was further away from the actual flow of the river. Gravel trucks on Duff lane for two years is also a concern.
- **Commissioner Scheuerer:** Rivers can and will change, this project is very close to the river. Trees falling off the banks due to flooding can cause major damage downstream. The engineering studies were professionally done and should be considered. The gravel pit is a

short term operation, however the ultimate use of the completed project and the impact on the neighbors should be considered.

- **Commissioner Duspiva:** This is a high water table area. We don't know what the road base is under Duff Lane, if there is a 4-5 foot water table, heavy equipment such as gravel trucks can compromise the road. The photos show the current changes in the river and changes can occur within days. The underground probably has large deposits of gravel and sediment. While the applicant's property rights should be considered, the issues with the river and the traffic are too great of a concern. Alternative recreation for the lake could be considered by the applicant.
- **Commissioner Levi:** Thank you to the applicant and the opposition for the time and effort that has gone into this project. There is a lot of information to this project. Property rights are important not only for the applicant but also the current property owners. The property owner has a right to build on his property and should be allowed to enjoy quality of life, however the long term safety for the current homeowners must be considered. It looks like a beautiful project, but unfortunately it would only benefit a small number of people. The applicant has been accommodating in many ways from the initial application, and I appreciate the willingness to make accommodations. Overall the major concern is with the flooding potential from the river and the truck traffic.
- **Commissioner Hall:** The timing of this project is unfortunate, considering all of the flooding we have had this year. Concerns about the pit capture have been alleviated due to the engineering report, FEMA's involvement and the CLOMR. The opposition could have presented their own expert study. While we must look at the application before us, we also have to consider the ultimate goal of the project which is to build a private lake for water skiing. While supporting the property owner's right to do what they wish with their property we also should support the surrounding property owners, who purchased their property with an expectation of peace and quiet. There is concern regarding the proximity of the river and the unpredictability of the river.

**MOTION:** Commissioner Duspiva moved to deny Case 4D LLC, case no. PH2016-69 and direct staff to prepare revised Findings of Facts and Conclusions of law and Conditions of Approval to support the Commission's decision and bring the revisions back at date certain, April 20, 2017. Seconded by Commissioner Scheuerer. Roll call vote, 5 in favor 0 opposed.

**Cited conditions for denial are:**

- Condition no. 4, Will the proposed use be injurious to other property in the immediate vicinity and/or negatively change the essential character of the area?
- Condition no. 7, Will there be undue interference with existing or future traffic patterns?

**ITEM #2 APPROVAL OF MINUTES:**

- a. March 16, 2017

**MOTION:** Commissioner Carrell moved to approve the minutes of March 16, 2017 as presented, seconded by Commissioner Scheuerer. Voice vote motion carried.

**ITEM #3 PLANNER and COMMISSION COMMENTS:**

- Director Nilsson briefed the Commissioners on the order for April 20, 2017 hearing, to include cases and a training session with Southwest District Health District.
- Director Nilsson discussed the future of the Commission and a way to stagger the terms, and recruit new members.

- Treasure Valley Renewables was approved by the Board of County Commissioners, the written decision will be back before the Board on April 27, 2017. The PUD appeal will also be before the Board on April 27, 2017.
- There is a “Citizens Planning Academy” meeting in Boise, if there is interest among the Commissioners, the schedule will be made available.

**ITEM #4 ADJOURNMENT: 9:15 pm**

**MOTION:** Commissioner Scheuerer moved to adjourn, seconded by Commissioner Duspiva. Voice vote motion carried.

**Signed this 20th day of April, 2017**

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Richard Hall, Chairman

**ATTEST:**

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Kathy Frost, Recording Secretary