

DELTA COUNTY BOARD OF ADJUSTMENTS

**Administration Building – Board Room
560 Dodge St., Delta, CO 81416
Thursday, September 23, 2021 @ 5:30 p.m.**

**Mark Roeber, Chair
Brett Hilling, Vice-Chair
Carl Holm, Director**

Instructions for Public Participation:

The public can join the meeting remotely by registering in advance of the meeting at:

https://us02web.zoom.us/meeting/register/tZ0ufu6grDliE9LFgFpKEZBzav8fdG_U3gf

After registering, you will receive a confirmation email containing information about joining the meeting.

You can also obtain a copy of the agenda for this meeting at:

<https://www.deltacounty.com/AgendaCenter/Delta-County-Board-of-Adjustment-8>

REGULAR AGENDA

5:30 P.M. – CALL TO ORDER

ROLL CALL

Mike Twamley, District 1
Brett Hilling, District 2
Mark Roeber, District 3

A. PUBLIC COMMENTS

This is time set aside for the public to comment on matters not on the agenda. The Chair may set a time limit for speakers.

B. AGENDA ADDITIONS, DELETIONS, AND CORRECTIONS

The Board of Adjustment Secretary will announce changes to the agenda that arose after posting of the agenda.

C. APPROVAL OF CONSENT AGENDA

1. PLN21-007/C. Rasmussen. Adopt a resolution with findings and evidence supporting Board of Adjustment action on August 26, 2021 to approve PLN21-007/ C. Rasmussen, subject to conditions.
2. PLN21-010/Corona. Adopt a resolution with findings and evidence supporting Board of Adjustment action on August 26, 2021 to deny PLN21-010/Corona.

CERTIFICATION OF POSTING

On 9/15/2021 at 3:45 PM, Kate Kelly did post the above AGENDA as public notice of the 9/23/2021 meeting. The official notice is placed on the front entrance of the Delta County Courthouse located at 501 Palmer, Delta, Colorado and a courtesy copy is sent to the Delta County website at www.deltacounty.com.

D. SCHEDULED ITEMS

1. Meeting Minutes for August 26, 2021

RECOMMENDATION: Approve the minutes.

2. PLN21-014/N. Hutto

Consider variances to allow re-subdividing two existing lots and creating one additional lot where all lots do not meet the minimum size for parcels in the Agricultural (35-acre) zoning designation (A-35). The property is located at 17095 B Road, Delta.

RECOMMENDATION: Staff recommends that the Board of Adjustments:

- a) Consider the required variance criteria/findings as they apply to PLN21-014/N. Hutto;
- b) Provide direction to staff on the BOA's Intent to Approve/Conditionally Approve/Deny a variance for PLN21-014/N. Hutto, a Minor Plat adjusting two existing lots (Lot 1=28.46, Lot 2=3.25 acres) and creating one additional lot (Lot 3=3.53 acres) in the A-35 zoning designation located at 17095 B Road, Delta Parcels: 349518301002 and 349518301001); and
- c) Direct staff to prepare a resolution reflecting the BOA direction.

3. PLN21-020/Becker-Beeson

Consider a variance to allow subdividing an 80+-acre parcel creating one 2.35-acre lot in the A-35 in the Agricultural (35-acre) zoning designation (A-35). The property is located at 3881 Old Wagon Road, Delta.

RECOMMENDATION: Staff recommends that the Board of Adjustments:

- a) Consider the required variance criteria/findings as they apply to PLN21-020/Becker-Beeson;
- b) Provide direction to staff on the BOA's Intent to Approve/Conditionally Approve/Deny a variance for PLN21-020/Becker-Beeson, a Minor Plat subdividing an 80+-acre parcel into two lots [Lot 1 (78.54 acres) and Lot 2 (2.35 acres)] in the A-35 zoning designation located at 3881 Old Wagon Road, Delta Parcel: 345736200006); and
- c) Direct staff to prepare a resolution reflecting the BOA direction.

E. BOARD COMMENTS, REQUESTS AND REFERRALS

This is time set aside for the Board of Adjustments to comment, request, or refer a matter that is not on the agenda for future consideration.

F. DEPARTMENT REPORT

This is time set aside for the Director to report on matters affecting the Department.

ADJOURNMENT

Adjourn to a Special Meeting on Thursday, October 14, 2021 at 5:30 pm in Delta

CERTIFICATION OF POSTING

On 9/15/2021 at 3:45 PM, Kate Kelly did post the above AGENDA as public notice of the 9/23/2021 meeting. The official notice is placed on the front entrance of the Delta County Courthouse located at 501 Palmer, Delta, Colorado and a courtesy copy is sent to the Delta County website at www.deltacounty.com.

**RESOLUTION
OF THE
BOARD OF ADJUSTMENT
OF THE COUNTY OF DELTA,
STATE OF COLORADO**

PLN21-007/C. RASMUSSEN

RESOLUTION APPROVING A VARIANCE TO REDUCE THE MINIMUM LOT SIZE FROM 35 ACRES TO 21 ACRES IN ORDER TO ALLOW A 2-LOT (MINOR) SUBDIVISION OF A 57-ACRE PARCEL LOCATED ON THE SOUTH SIDE OF J ROAD BETWEEN 3000 ROAD AND 3100 ROAD, HOTCHKISS (PARCEL #:345104201001/ CARL A. RASMUSSEN).

RECITALS

WHEREAS, Carl A. Rasmussen owns Parcel 345104201001 (Account R022277), which according to Assessor records is 57.749 acres; and

WHEREAS, on January 5, 2021, Delta County Board of County Commissioners adopted the Delta County Land Use Code (LUC). Resolution No 2021-R-001 repealed regulations regarding land use and subdivision and adopted a new land use code (including zoning maps); and

WHEREAS, the subject property is zoned per the Delta County Land Use Code as Agriculture (35-acre) or A-35, which requires a minimum acreage of 35 acres per lot; and

WHEREAS, on April 6, 2021, Carl Rasmussen submitted a pre-application form requesting “splitting off approximately 21 acres from existing 56 acres” (PLN21-007); and

WHEREAS, on May 10, 2021, a pre-application conference was held with representatives from the County Planning and Engineering departments; and

WHEREAS, the application consists of a 2-lot subdivision (Minor Plat) from an approximately 57-acre parcel with frontage on the southern boundary of J Road; and

WHEREAS, Minor Plats are issued by the Director upon a finding of compliance with the applicable requirements of the Land Use Code; and

WHEREAS, because of the proposal of a 21 (+/-) acre lot being subdivided from the 57-acre parcel, a variance is required that must meet criteria set forth in the Land Use Code; and

WHEREAS, on June 16, 2021, Mr. Carl Rasmussen submitted an application requesting consideration of the variance prior to submitting materials for consideration of the subdivision; and

WHEREAS, a variance requires posting and public notice sent to adjacent property owners at least 14 days prior to the public hearing; and

WHEREAS, on August 12, 2021, notice was posted on the property and sent to adjacent property owners informing the public of the date, time and place for the Board of Adjustment hearing this matter; and

WHEREAS, the application (PLN21-007/C. Rasmussen) came on for a hearing before the Delta County Board of Adjustment on August 26, 2021.

DECISION

NOW, THEREFORE, BE IT RESOVLED, having considered all the written and documentary evidence, the administrative record, and other evidence presented, the Delta County Board of Adjustment hereby:

- A. Finds, based on evidence presented in the staff report and this resolution, that the project does meet criteria for variation to lot size (Chapter 3, Section 1.A.3 Land Use Code):
 - 1. The subdivision conforms to all other requirements of the Delta County Land Use Code.
 - 2. The new lots have at least the minimum dimensions set out in the standards for the UGA zoning district (75-foot width, 30-foot frontage).
 - 3. As such, the size and configuration of the new lot minimizes disturbance or development of irrigated agricultural portions of a property, and does not interfere with wildlife habitat. Irrigation water would be divided between the properties to continue irrigating the field on Lot 2.
 - 4. The Final Plat is annotated such that no further subdivision of each lot created by this subsection is allowed. Condition #3 requires adding a plat note restricting further subdivision and requires a zoning overlay to illustrate this on the zoning map.

FINDINGS:

A letter from Lazear Domestic Water Corporation, dated June 12, 2021, states that Mr. Rasmussen has been approved for one water tap provided the required funds are paid within three months. They will also need a physical address.

There is an existing access/address that would serve Lot 1. Lot 2 would need to apply for a new access/address to be located along the east property line to minimize impact to Agricultural lands and get to the building site located at the southern half of the property. Lot 1 has frontage of over 700 feet and Lot 2 has a frontage of about 270 feet; Lot 2 narrows to accommodate locating ponds on Lot 1. While it is not dimensioned, staff finds that the narrowest width for Lot 2 appears to be more than 75 feet based on scale. Irrigated lands are currently located on portions of both Lot 1 and the northern half of Lot 2.

At the hearing the applicant expressed their intent for irrigation water to be split 75% for Lot 1 and 25% for Lot 2. A well located on Lot 1 would serve Lot 2. Conditions have been added to reflect this in an Irrigation Plan that will also be reflected on the Final Plat.

The proposed lot line follows that fence line to separate the lots. In addition, a “notch” towards the north end of the property is for a well that is used for irrigation to stay with Lot 1. As a result, there is an irrigation ditch (easement) running north-south through the property that traverses the proposed lot line. Following the fence line minimizes impact to Agricultural lands. Condition #3 has been included to create/apply a zoning overlay designation that reflects this restriction on the zoning maps in order to clearly identify where a variance has been approved.

- B. Further finds, based on evidence presented in the staff report and this resolution, that the project does meet findings for a variance (Chapter 10, Section 2.A.2 Land Use Code):
1. Due to the exceptional narrowness, shallowness, or shape of the subject property on the effective date of this Code, or exceptional topographic conditions, or other extraordinary and exceptional situation or condition of the subject property, the strict application of a regulation in this Code would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the subject property.
 2. A variance from strict application of the regulations at issue would relieve such difficulties or hardship.
 3. The requested variance would not create substantial detriment to the public good or substantially impair the intent and purpose of this Code.

FINDINGS:

There are no unique physical conditions relative to shape or topography of the property. The stated purpose for this variance is to create a second lot where there is not enough land to meet the acreage required by zoning. According to the application, the reason provided for requesting a variance/subdivision is that the owner cannot afford to keep the house and property going into retirement. Also, they cannot afford to sell and buy an existing home and property considering the elevated real estate market.

Pursuant to the Land Use Code, adequacy to sunlight for solar energy devices installed after January 1980 can be a possible consideration in determining difficulty or hardship. Staff finds that there is no solar on the property to be considered in determining difficulty or hardship.

Lot 2 would be designed with Ag in the front (north) and a residence toward the center/back. There is sufficient area to build a residence on the southern portion of the property. Condition #4 requires establishing a building envelope where it would not impact the agricultural lands.

The BOA finds that holding to the strict regulations for A35 zoning would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the subject property. This variance will allow the owner to retain the property and continue some agricultural operations. Lot 2 has limited agricultural land that will be minimally impacted by this subdivision.

- C. Approves a variance for PLN21-007/C. Rasmussen, a Minor Plat allowing a 21-acre parcel in the A-35 zoning designation as part of a 2-Lot subdivision located on the south side of J Road between 3000 Road and 3100 Road, Hotchkiss (Parcel: 345104201001).

ADOPTED AS SET FORTH ABOVE on this 23rd day of September, 2021 upon motion of Board member Mike Twamley, seconded by Board member Brett Hilling, by the following vote:

AYES: Twamley, Hilling, Roeber
NOES: None
ABSENT: None
ABSTAIN: None

COUNTY OF DELTA
STATE OF COLORADO

Carl P. Holm, AICP
Planning Commission Secretary

Dated: _____

EXHIBIT A

Conditions of Approval PLN21-007/C. Rasmussen

1. Prior to recording a Final Plat, include/provide easements necessary for water delivery systems and for the removal of tail/wastewater. Provide an easement for the well located on Lot 1, serving Lot 2.
2. Provide an Irrigation Plan explaining rights to irrigation water. Approval was based on testimony that irrigation shares would be divided 75%/25% between Lot 1 and Lot 2, respectively. The Final Plat shall reflect how irrigation water is assigned.
3. Include a note on the plat that Lot 1 and Lot 2 cannot be subdivided further. An overlay zoning designation will be created for this property to highlight that these properties cannot be subdivided further.
4. The Final Plat shall include a building envelope for Lot 2 that minimizes impact to the irrigated Ag lands located on the northern part of the property.

**RESOLUTION
OF THE
BOARD OF ADJUSTMENT
OF THE COUNTY OF DELTA,
STATE OF COLORADO**

PLN21-010/CORONA

RESOLUTION DENYING VARIANCES TO CREATE THREE (3) LOTS OF 2.5 TO 3.0 ACRES IN THE A-5 ZONING DISTRICT AS PART OF A 4-LOT (PRELIMINARY PLAT) SUBDIVISION OF A 34.36-ACRE PARCEL LOCATED AT 5884 2100 ROAD, DELTA (PARCEL: 345524210003/RICARDO CORONA).

RECITTALS

WHEREAS, Pleasant Valley Major Subdivision (MJ 02-020) subdivided about 142 acres north, south, and east of the subject property into 35 lots ranging in size from 1.92 to 10.01 acres, including a 4.80-acre pond area located within the subject property' and

WHEREAS, "Hood Mobile Home Subdivision" (MJ07-013) subdivided a 35.2-acre parcel into three lots: Lots 1 & 2 (2.5 acres each), and Lot 3 (35.2 acres), which includes the following statements (notes):

- *"The SCS report indicates there may be severe limitations for homes, septic systems due to slope, shallow and steepness, high shrink/swell potential, very slow internal drainage"*
- *Lot 1 and Lot 2 are restricted to no further subdivision, Lot 1 to one single family dwelling and 3 RV spaces and Lot 2 to two single family dwellings."*

The subject 35-acre parcel is the remainder from that subdivision, and includes a detention pond to serve that development; and

WHEREAS, Ricardo Corona owns Lot 3 of the Hood Mobile Home Subdivision (Parcel 345524210003, Account R023258), which according to Assessor records is 34.36 acres; and

WHEREAS, on January 5, 2021, Delta County Board of County Commissioners adopted the Delta County Land Use Code (LUC). Resolution No 2021-R-001 repealed regulations regarding land use and subdivision and adopted a new land use code (including zoning maps); and

WHEREAS, the subject property is zoned per the Delta County Land Use Code as Agriculture (5-acre) or A-5, which requires a minimum acreage of 5.0 acres per lot; and

WHEREAS, on April 2, 2021, Ricardo Corona submitted a pre-application form requesting to "subdivide property" (PLN21-010); and

WHEREAS, on May 3, 2021, a pre-application conference was held with representatives from the County Planning and Engineering departments; and

WHEREAS, the application consists of a 4-lot subdivision (Preliminary Plat) from an approximately 34-acre parcel with frontage on the east side of 2100 Road and the north side of Pleasant Valley Road; and

WHEREAS, Subdivisions consisting of three or more (3+) lots are subject to a Preliminary Plat presented to the Planning Commission (Public Hearing) for a recommendation to the Board of County Commissioners; and

WHEREAS, variances are required to create three (3), 2.5 (+/-) acre lots, which do not meet the 5.0 acre minimum in the A-5 zone; and

WHEREAS, on June 15, 2021, Mr. Ricardo Corona submitted an application requiring consideration of the variances prior to consideration of the subdivision; and

WHEREAS, a variance requires posting and public notice sent to adjacent property owners at least 14 days prior to the public hearing; and

WHEREAS, on August 12, 2021, notice was posted on the property and sent to adjacent property owners informing the public of the date, time and place for the Board of Adjustment hearing this matter; and

WHEREAS, the application (PLN21-010/Corona) came on for a hearing before the Delta County Board of Adjustment on August 26, 2021.

DECISION

NOW, THEREFORE, BE IT RESOVLED, having considered all the written and documentary evidence, the administrative record, and other evidence presented, the Delta County Board of Adjustment hereby:

- A. Finds, based on evidence presented in the staff report and this resolution, that the project does not meet criteria for variation to lot size (Chapter 3, Section 1.A.3 Land Use Code):
 - 1. The subdivision conforms to all other requirements of the Delta County Land Use Code.
 - 2. The new lots have at least the minimum dimensions set out in the standards for the UGA zoning district (75-foot width, 30-foot frontage).
 - 3. As such, the size and configuration of the new lot minimizes disturbance or development of irrigated agricultural portions of a property, and does not interfere with wildlife habitat. Irrigation water would be divided between the properties to continue irrigating the field on Lot 2.
 - 4. The Final Plat is annotated such that no further subdivision of each lot created by this subsection is allowed. Condition #3 requires adding a plat note restricting further subdivision and requires a zoning overlay to illustrate this on the zoning map.

FINDINGS:

Subdivisions are required to prove adequate (domestic) water supply for each lot created (Chapter 8, Section 3 LUC). The applicant would be required to demonstrate that this is feasible with the water company, and include easements for access to service the infrastructure. All lots would require approved septic systems for wastewater.

Each lot fronting 2100 Road or Pleasant Valley Road would have their own access from that road. Access for the 28-acre lot must be located where it most closely aligns with the intersection of Paradise Road given the topography.

- B. Further finds, based on evidence presented in the staff report and this resolution, that the project does not meet findings for a variance (Chapter 10, Section 2.A.2 Land Use Code):

1. Due to the exceptional narrowness, shallowness, or shape of the subject property on the effective date of this Code, or exceptional topographic conditions, or other extraordinary and exceptional situation or condition of the subject property, the strict application of a regulation in this Code would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the subject property.
2. A variance from strict application of the regulations at issue would relieve such difficulties or hardship.
3. The requested variance would not create substantial detriment to the public good or substantially impair the intent and purpose of this Code.

FINDINGS:

There are no unique physical conditions relative to shape or topography of the property. The stated purpose for these variances is to create lots along 2100 Road that follow the pattern created by the Hood Mobile Home Subdivision (MJ07-013). Holding to the strict regulations for A5 zoning would not result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the subject property because the site can support lots that meet the minimum requirement. There is the ability to create lots that are 5 acres (2-3 lots) vs. 2.5-acre lots such that no variance is required.

The area south of G Road and west of 2100 Road is zoned A-35 and consists of larger Ag properties. This subject property and the Pleasant Valley area is zoned A-5 under the new Land Use Code. The minimum acreage for subdividing this parcel is 5 acres per lot. Pursuant to the Land Use Code, adequacy to sunlight for solar energy devices installed after January 1980 can be a possible consideration in determining difficulty or hardship. There is no solar on the property to be considered in determining difficulty or hardship.

- C. Denies variances for PLN21-010/Corona, to create three 2.5-acre lots in the A5 zoning district. The property is located at 5884-5898 2100 Road, Delta (Parcel: 3455-242-10-003).

ADOPTED AS SET FORTH ABOVE on this 23rd day of September, 2021 upon motion of Board member Brett Hilling, seconded by Board member Mike Twamley, by the following vote:

AYES: Twamley, Hilling, Roeber
NOES: None
ABSENT: None
ABSTAIN: None

COUNTY OF DELTA
STATE OF COLORADO

Carl P. Holm, AICP
Planning Commission Secretary

Dated: _____



REGULAR BOARD OF ADJUSTMENTS MEETING MINUTES

DELTA COUNTY
560 DODGE ST, DELTA, CO 81416
August 26, 2021

Board of Adjustments Members in Attendance:

Mike Twamley
Brett Hilling
Mark Roeber

Planning Staff in Attendance:

Delta County Community Development & Natural Resource Director, Carl Holm
Delta County Planning & Community Development Technician II, Kate Kelly
Delta County Planning & Community Development Administrative Assistant, Kim Henderson

Chairman Mark Roeber called the meeting to order at 5:30 p.m. in the Administration Building Commissioner's Meeting Room.

- Item #1: PLN21-007 - Rasmussen 2 Lot Subdivision
Consider a variance to allow creating one 21-acre parcel in the Agricultural (35-acre) zoning designation (A-35). The property is located on the south side of J Road between 3000 Road and 3100 Road, Hotchkiss.
RECOMMENDATION: Staff recommends that the Board of Adjustments:
- Consider the required variance criteria/findings as they apply to PLN21-007/Rasmussen; and
 - Provide direction to staff on the BOA's Intent to Approve/Conditionally Approve/Deny a variance for PLN21-007/Rasmussen, a Minor Plat allowing a 21-acre parcel in the A35 zoning designation as part of a 2-Lot subdivision located on the south side of J Road between 3000 Road and 3100 Road, Hotchkiss (Parcel:345104201001); and
 - Continue the matter to September 23, 2021 and direct staff to prepare a resolution reflecting the BOA direction.

Motion/Second: Mike Twamley moves to approve PLN21-007 Rasmussen 2 Lot Subdivision with the condition for an overlay that will identify that a variance has been approved on this property and cannot be subdivided again unless the zoning changes to A5 as well as an Easement for the Well located on Lot 1 that services Lot 2 and identifying how the irrigation water will be shared. Brett Hilling seconds the motion.

Action: Motion carried unanimously.

- Item #2: PLN21-010 – Corona Preliminary Plat and Variances
Consider variances to create three (3) 2.5-acre lots in the A5 zoning district. The property is located at 58784-5898 2100 Road, Delta.
RECOMMENDATION: Staff recommends that the Board of Adjustments:
- Consider the required variance criteria/findings as they apply to PLN21-010/Corona; and
 - Provide direction to staff on the BOA's Intent to Approve/Conditionally Approve/Deny a variance for PLN21-010/Corona, a Preliminary Plat creating three (3) 2.5-acre parcels in the A5 zoning designation as part of a 4-Lot subdivision located at 5884-5898 2100 Road, Delta (Parcel: 345524210003); and
 - Continue the matter to September 23, 2021 and direct staff to prepare a resolution reflecting the BOA direction.

Motion/Second: Brett Hilling moves to deny PLN21-010 Corona 4 Lot Subdivision. Mike Twamley seconds the motion. It was stated after the motion was made and seconded that the Board would like the applicant to follow the 5 acre regulations as that is what his property is zoned as.



DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

295 W 6th Street
Delta, Colorado 81416
planning@deltacounty.com
970.874.2110

Action: Motion carried unanimously.

Meeting adjourned at 6:11 p.m.

Respectfully submitted by:
Administrative Assistant, Kim Henderson

DRAFT



STAFF REPORT

**Board of Adjustment
Board Room
560 Dodge Street, Delta, CO 81416**

Thursday, September 23, 2021 @ 5:30 p.m.

PLN21-014/Nancy Hutto

Consider a variance to allow re-subdividing two existing lots and creating one additional lot where all lots do not meet the minimum size for parcels in the Agricultural (35-acre) zoning designation (A-35).

The property is located at 17095 B Road, Delta.

PROJECT INFORMATION:

Property Owner: Nancy J. Hutto

Applicant/Representative: Nancy Hutto

Site Address: 17095 B Road, Delta

Location: Government Lot 4 (SW $\frac{1}{4}$, SW $\frac{1}{4}$) of Sec. 18, T.15S, R.10W

Parcel ID/Acct: 349518301002/349518301001

Parcel Size: 34.06/2.05 acres (36.11 total acres)

Zoning: A35

RECOMMENDATION:

Staff recommends that the Board of Adjustments:

- a) Consider the required variance criteria/findings as they apply to PLN21-014/N. Hutto;
- b) Provide direction to staff on the BOA's Intent to Approve/Conditionally Approve/Deny a variance for PLN21-014/N. Hutto, a Minor Plat adjusting two existing lots (Lot 1=28.46, Lot 2=3.25 acres) and creating one additional lot (Lot



3=3.53 acres) in the A-35 zoning designation located at 17095 B Road, Delta
Parcels: 349518301002 and 349518301001); and

c) Direct staff to prepare a resolution reflecting the BOA direction.

Recommended conditions are attached if the BOA intends to approve this application.

SUMMARY:

Ms. Nancy Hutto, owner/applicant, owns two parcels totaling about 36.1 acres located at the northeast corner of B Road and Ash Mesa Road. This application is to re-subdivide these two lots (Sayre Minor Subdivision, 1997) into three lots with frontage on B Road. Existing conditions:

- Lot 1 (2.05 Ac): Single family home plus Ag outbuildings (17095 & 17103 B Road). This lot received a water tap from Tri-County Water (Tap #: 6565850533). In 1997, this lot was assigned 2 shares of the Uncompahgre Valley Water Users Association. The home is served by an existing septic system.
- Lot 2 (34.06 Ac): Vacant. Irrigated fields. A Plat note in 1997 reflects this lot had no domestic water available. No new development was allowed on Lot 2 until there was proof of purchasing a water tap and the Board of County Commissioners approved removing said note. This lot was assigned 32 shares of the Uncompahgre Valley Water Users Association.

The surrounding area generally consists of larger agricultural parcels where some have homesteads.

As proposed, the existing 2.05-acre lot that had been considered as Lot 1 of the Sayre Minor Subdivision would be incorporated into the larger Ag parcel and referenced as Lot 1. As a result, the existing home and Ag buildings would be the developed portion of the new Lot 1 (28.46 acres). Lot 2 (3.25 acres) and Lot 3 (3.53 acres) would be vacant lots created in the southeast corner of the property. The minimum acreage for subdividing this parcel is 35 acres per lot and the proposal includes creating three lots that do not meet standards for acreage set forth in the Land Use Code (LUC). Therefore, the Board of Adjustment must approve variances for this project to proceed.

In the pre-application conference, staff questioned the lot design, specifically the purpose for three lots where Lots 2 and 3 would impact land that is currently irrigated agriculture. We understand that the reasoning is generally as financial to support the main agricultural ranch/operation (Lot 1), and the intent would be for the new owners to have small agricultural use (orchard, livestock, etc.). Staff also discussed access locations for Lots 2 & 3, and expressed preference for a shared access between Lots 2 & 3.

The Director cannot take action on the Minor Plat until/unless the Variance is approved. The application checklist requested enough detail, professionally drawn, for the BOA to be able to make a fully informed decision on the variance. The Plat, with and without an aerial overlay, is attached (**Attachment**).



Staff finds that the LUC implicitly limits property owners to one (new) lot that does not meet the minimum lot size. This project includes one lot that is currently 2.05 acres. A critical part in determining if a variance should be approved or denied is how the BOA defines exceptional practical difficulties and hardship. Staff recommends that the BOA take an action expressing intent to approve, conditionally approve, or deny this request for a variance. Based on that direction, staff will return with a resolution for the BOA to adopt. At that point, an aggrieved party could appeal the BOA decision to the Board of County Commissioners.

If the intent is to conditionally approve the project, staff also requests direction for conditions. Recommended conditions include establishing building envelopes on Lots 2 & 3 to restrict development to a specific portion of the property and encourage Ag use on the remainder. Also, an Irrigation Plan is required and should provide water to Lots 2 & 3 for agricultural purposes.

DISCUSSION:

The Board of Adjustment (BOA) is designated as the decision-making authority to consider variance applications. Chapter 1, Section 6.C.4 requires the concurring vote of three members of a 3-member BOA, meaning actions by the BOA must be unanimous in order to pass. In consideration of a variance, there are four criteria and three findings for the BOA to consider. Once a decision has been made by the BOA, the process will either proceed with the Subdivision or the owner has a right to appeal the BOA's decision to the Board of County Commissioners (BoCC).

Subdivisions consisting of three or more (3+) lots are subject to a Preliminary Plat presented to the Planning Commission (Public Hearing) for a recommendation to the Board of County Commissioners (BoCC). However, the net result is one additional lot and the Director has interpreted that creating only one additional lot would be considered a Minor Plat that is subject to Administrative Review.

The following narrative reflects staff's analysis regarding if/how the project complies with these regulations, depending on how the BOA defines hardship in this case.

Variation to Lot Size (Criteria): Chapter 3, Section 1.A.3 of the LUC states that the County may approve the creation of new lots that do not conform to the size requirements provided they meet four (4) criteria:

1. The subdivision conforms to all other requirements of the Delta County Land Use Code.

Lot 1 received a water tap from Tri-County Water (Tap #: 6565850533), and is served by an existing septic system. Prior to approving the Plat, the applicant will need to provide proof of an adequate water supply for Lots 2 & 3 (Condition 2).



The property has been assigned 34 shares of the Uncompahgre Valley Water Users Association. The plat illustrates that the shares would be assigned as follows: Lot 1 (29 shares), Lot 2 (2.5 shares), Lot 3 (2.5 shares). The applicant will need to prepare an Irrigation Plan for assigning these shares to the proposed lots that will need to be on the Plat (Condition 3).

Lot 1 has an existing access. Lots 2 & 3 will share access, which will require an easement and maintenance agreement (Condition 4).

2. The new lots have at least the minimum dimensions set out in the standards for the UGA zoning district (75-foot width, 30-foot frontage).

The narrowest frontage/width of the proposed lots is 264 feet.

3. The size and configuration of the new lot minimizes disturbance or development of irrigated agricultural portions of a property, and does not interfere with wildlife habitat.

The property currently includes irrigated lands surrounding the 2+ acres where the homestead has been developed. Irrigation patterns are illustrated on the Preliminary Plat. Lots 2 and 3 would impact land that is currently irrigated agriculture. The applicant has stated that the reasoning of this project is generally financial to support the main agricultural ranch/operation (Lot 1), and the intent would be for the new owners to have small agricultural use (orchard, livestock, etc.). Condition 5 requires building envelopes on Lots 2 & 3 that restrict the area to be developed and retains land for agricultural purposes.

4. The Final Plat is annotated such that no further subdivision of each lot created by this subsection is allowed.

If the variance is approved, a Minor Plat is required that includes a Plat note reflecting this restriction. Condition #1 also requires a zoning overlay designation that reflects this restriction for Lots 1-3 in order to clearly identify where a variance has been approved.

Variance (Findings): Chapter 10, Section 2 of the LUC states that no variance shall be authorized unless the Board of Adjustment (BOA) makes three findings:

1. Due to the exceptional narrowness, shallowness, or shape of the subject property on the effective date of this Code, or exceptional topographic conditions, or other extraordinary and exceptional situation or condition of the subject property, the strict application of a regulation in this Code would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the subject property.



There are no unique physical conditions relative to shape or topography of the property. The applicant has stated that the reasoning of this project is generally financial. Existing conditions include one parcel that is 2.05 acres around the developed homestead. Lots 2 and 3 would be 3.25 and 3.53 acres respectively.

2. A variance from strict application of the regulations at issue would relieve such difficulties or hardship.

The applicant has stated that the reasoning of this project is generally financial to support the main agricultural ranch/operation (Lot 1). Adequacy to sunlight for solar energy devices installed after January 1980 can be a possible consideration in determining difficulty or hardship. There is no solar on the property to be considered in determining difficulty or hardship.

3. The requested variance would not create substantial detriment to the public good or substantially impair the intent and purpose of this Code.

The intent would be for the new owners of Lots 2 and 3 to have small agricultural use (orchard, livestock, etc.). Condition 5 requires building envelopes on Lots 2 & 3 that restrict the area to be developed and retains land for agricultural purposes.

OTHER AGENCY INVOLVEMENT

A pre-application conference was held with the owner on May 3, 2021. At that meeting, representatives from multiple County departments were present to identify applicable regulations and address potential issues. The purpose of a pre-application conference (meeting) is to inform the applicant of pertinent regulations and identify any potential issues.

Attached material: list, in order as attached

- Recommended Conditions of Approval
- Sketch Plan
- Sketch Plan, Aerial



Recommended Conditions of Approval
N. Hutto Minor Plat (PLN21-014)
BOA, September 23, 2021

1. Include a note on the plat that Lot 1, Lot 2 and Lot 3 cannot be subdivided further. An overlay zoning designation will be created for this property to highlight that these properties cannot be subdivided further.
2. Prior to approving the Plat, the applicant shall provide proof of an adequate water supply for Lots 2 & 3.
3. The applicant shall submit an Irrigation Plan assigning irrigation shares to the proposed lots, and include a Plat note explaining rights to irrigation water.
4. The applicant shall submit an easement and Maintenance Agreement for shared access between Lots 2 and 3.
5. Include building envelopes on Lots 2 & 3 that restrict the area to be developed and retains land for agricultural purposes.

PRELIMINARY PLAT
HUTTO MINOR SUBDIVISION
A RE-SUBDIVISION OF LOTS 1 AND 2, SAYRE MINOR SUBDIVISION
WITHIN GOVERNMENT LOT 4 (SW1/4 SW1/4) OF SEC. 18, T.51N., R.10W., N.M.P.M.
DELTA COUNTY, COLORADO

SUBDIVISION DEDICATION
I, Nancy Jessica Hutto a.k.a. Nancy J. Hutto, being the owner of land described as follows:
LEGAL DESCRIPTION
Lots 1 and 2,
Sayre Minor Subdivision,
County of Delta,
State of Colorado.

In Delta County, Colorado, under the name of HUTTO MINOR SUBDIVISION, has laid out, platted and/or subdivided the same as shown on this plat and do hereby dedicate to the public at large the streets, alleys, roads and other public areas as shown hereon and those portions of land labeled as easements for the installation and maintenance of public utilities as shown hereon.

In witness whereof Nancy Jessica Hutto a.k.a. Nancy J. Hutto
have subscribed their names this _____ day of _____, A.D. 20____.

By: _____
Nancy Jessica Hutto a.k.a. Nancy J. Hutto

NOTARIAL:
State of _____ } ss.
County of _____ }
The foregoing instrument was acknowledged before me this _____ day of _____, A.D. 20____, by Nancy Jessica Hutto a.k.a. Nancy J. Hutto

My commission expires: _____

My address is _____

Witness my hand and official seal.

DELTA COUNTY PLANNING DEPARTMENT APPROVAL

This plat of the above subdivision has been checked for compliance by _____ on this _____ day of _____.

Planning Staff

BOARD OF COUNTY COMMISSIONERS APPROVAL

The within plat of HUTTO MINOR SUBDIVISION is approved this _____ day of _____, A.D. 20____, and the roads and other public areas are hereby accepted provided, however, that such acceptance shall not in any way be considered as an acceptance for maintenance purposes.

Maintenance of, or snow removal from, the subject roads shall be only upon a separate resolution of the Board of County Commissioners passed in accordance with such policies, resolutions or regulations in effect at that time.

Chairman _____
Attest _____

County Clerk _____

CERTIFICATE OF TAXES PAID

I, the undersigned, do hereby certify that the entire amount of taxes and assessments due and payable as of _____ upon all parcels of real estate described on this plat are paid in full. Dated this _____ day of _____, A.D. 20____.

Treasurer of Delta County, Colorado _____

COUNTY SURVEYOR'S CERTIFICATE:

Approved for content and form only and not as to the accuracy of survey, computations or drafting, pursuant to CRS 38-51-106.

County Surveyor _____

Date _____

SURVEYOR'S CERTIFICATION

I, Randy A. Wilmore, do hereby certify that the above described parcel has been surveyed by me and under my direct supervision and that such survey is accurately represented hereon, and is based upon my knowledge, information and belief, and is in accordance with applicable standards of practice and is not a guaranty or warranty, either expressed or implied.

Date: _____ Signed: _____
COLORADO PROFESSIONAL LAND SURVEYOR #25972

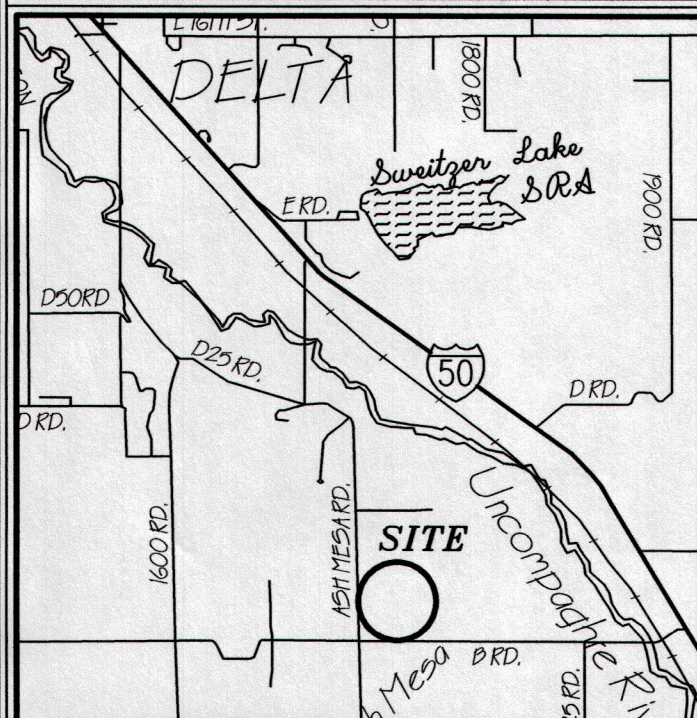
NOTE: According to Colorado law any legal action based upon a defect in this survey must be commenced within three years after such defect is discovered. In no event may any action based upon any defect in this survey be commenced more than ten years from the date shown on the certification hereon.

PLAT REFERENCES:

*SAYRE MINOR SUBDIVISION--RECORDED NOVEMBER 4, 1997 UNDER RECEPTION NO. 509040.

*BOUNDARY SURVEY PREPARED FOR JAMES A. & ROSEMARY S. ANDERSON--RECORDED APRIL 26, 2005 UNDER RECEPTION NO. 590590.

AREA LOCATOR



TYPICAL LEGEND

- Set Mag Nail in Asphalt
- Set 5/8" rebar 30" long with 2" aluminum cap PLS25972
- Set 5/8" rebar 30" long with 2" aluminum cap as Witness corner or linepin PLS25972
- Found 5/8" rebar with 2" aluminum cap PLS25972
- Found 5/8" rebar with 2" aluminum cap as Witness corner or linepin PLS25972
- Found 3/4" rebar 30" long with 3-1/4" aluminum cap PLS25972 per monument record
- Found 5/8" rebar 30" long with 2" aluminum cap PLS25972
- Found 5/8" rebar with 1 1/2" aluminum cap RLS 1456 or as noted

—X— Fencelines
—E— Electric (overhead)
—UE— Electric (underground)
—W— Water line
----- Easement
..... Previous Parcel Boundary

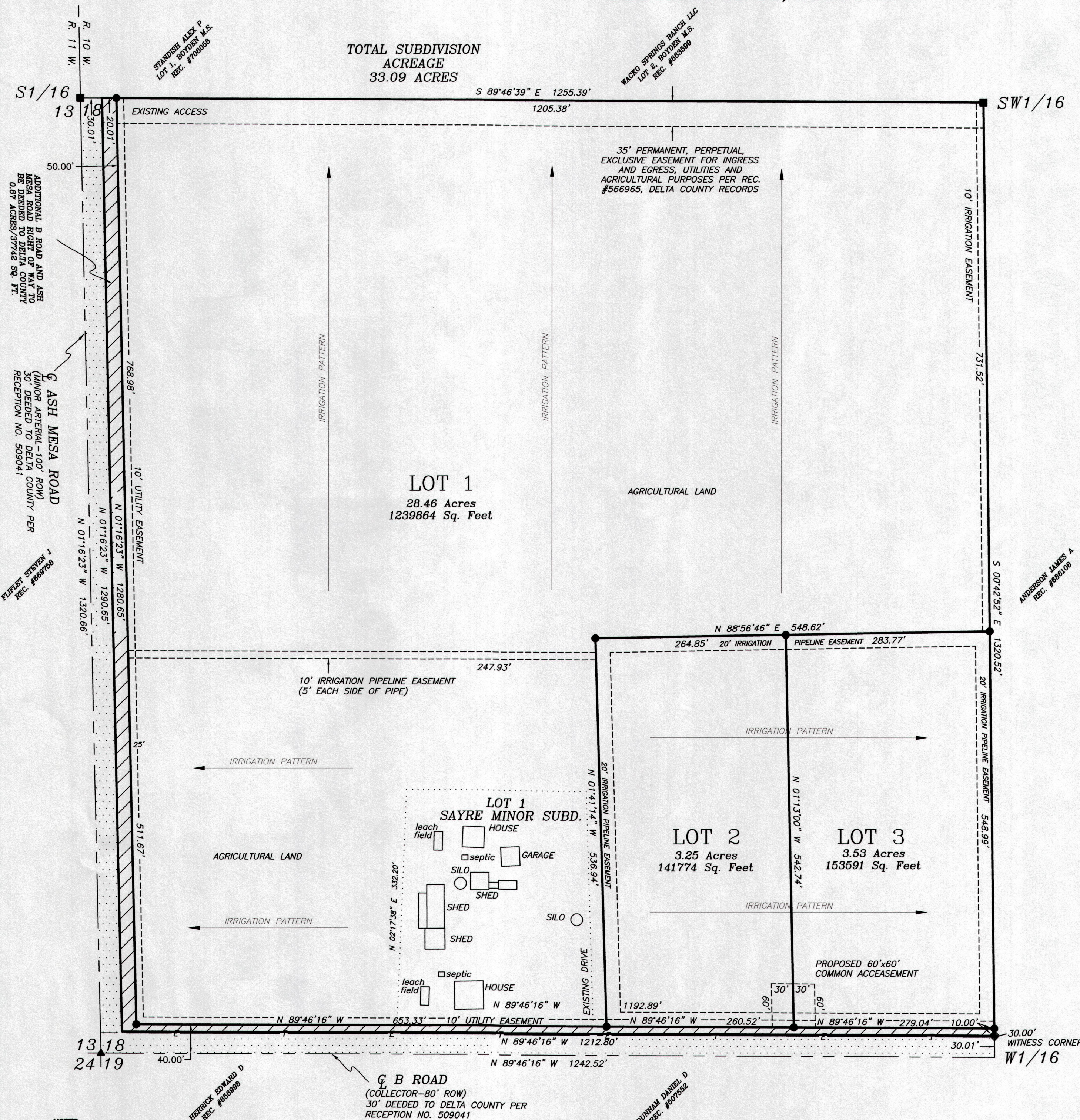
▨ New Quit Claim to Delta County
▨ Previous R.O.W. to Delta County

BASIS OF BEARINGS:

N.01°35'20"E. FROM THE SECTION CORNER COMMON TO SEC. 11, 12, 13 & 14 TO THE S1/16 COR. COMMON TO SEC. 11 & 12
GEODETIC NORTH
GPS OBSERVATION

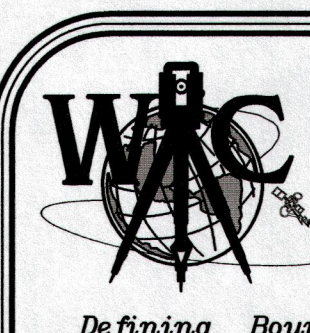
SCALE 1"=100 U.S. SURVEY FEET

0 50 100 200



NOTES:

- OUTDOOR LIGHTING SHALL BE HOODED OR SHIELDED SO THAT LIGHT IS DIRECTED DOWNWARD SO AS NOT TO GLARE ONTO THE ADJACENT PROPERTY OR DILUTE THE NIGHT SKY.
- ALL DEVELOPMENT IN DELTA COUNTY IS SUBJECT TO THE DELTA COUNTY RIGHT TO FARM AND RANCH POLICY, ADOPTED AS RESOLUTION 99-R-020 BY THE BOARD OF COUNTY COMMISSIONERS ON SEPTEMBER 27, 1999.
- THIS PROPERTY IS LOCATED IN AN AGRICULTURAL AREA. NORMAL AGRICULTURAL ACTIVITIES WILL CONTINUE UNABATED IN THE SURROUNDING AREAS AND MUST NOT BE A BASIS FOR A LAWSUIT, EXCEPT IN CASES OF PROVEN GROSS NEGLIGENCE.
- ACCESS TO ALL SHOWN OR UN-SHOWN IRRIGATION DITCHES FOR CLEANING AND MAINTENANCE PURPOSES IS PERMITTED.
- COLORADO IS AN "OPEN RANGE" STATE. IT IS NOT THE RESPONSIBILITY OF A LIVESTOCK OWNER TO FENCE IN LIVESTOCK.
- IF THERE ARE COVENANTS, RESTRICTIONS OR OTHER DOCUMENTS FOR THE PROPERTY IN THIS SUBDIVISION, THEY WILL BE RECORDED IN THE OFFICE OF THE DELTA COUNTY CLERK AND RECORDER.
- EACH LOT OWNER SHALL BE PERSONALLY RESPONSIBLE TO CONTROL UNDESIRABLE, NOXIOUS WEEDS WITHIN THE BOUNDARIES OF THAT LOT, TO PREVENT THE SPREADING OF SUCH WEEDS TO OTHER LANDS AND TO COMPLY WITH THE RECOMMENDATIONS OF THE DELTA COUNTY WEED MANAGEMENT ADVISORY COMMISSION CONCERNING THE CONTROL OF SUCH WEEDS.
- UNLESS APPROVED OTHERWISE, ALL LOTS WITHIN THIS SUBDIVISION HAVE BEEN APPROVED FOR ONE SINGLE RESIDENTIAL USE ONLY. ANY FURTHER SUBDIVISION OR ANY CHANGE OF USE TO OTHER THAN SINGLE FAMILY RESIDENTIAL OR AGRICULTURAL USE REQUIRES THE LOT OWNER TO PROCESS THE REQUEST IN ACCORDANCE WITH THE REGULATION OF DELTA COUNTY.
- ALL UTILITIES MUST BE PLACED UNDERGROUND ON ALL PARCELS.
- THE MINIMUM SET BACKS FOR ALL STRUCTURES (INCLUDING ONSITE WASTEWATER TREATMENT SYSTEMS), IN THIS SUBDIVISION SHALL BE:
ANY PUBLIC ROAD ROW 25'
INTERIOR PROPERTY LINE 15'
- SHARES OF IRRIGATION WATER CONVEYED TO LOTS AT THE TIME OF PLAT RECORDING MAY OR MAY NOT BE SOLD SEPARATELY FROM THE PROPERTY AND MAY NOT RUN WITH THE LAND.
- 34 shares of Uncompahgre Valley Water Users Assoc. irrigation water shall be assigned as follows:
Lot 1 - 29 shares (Uncompahgre Valley Water Users Assoc.)
Lot 2 - 2.5 shares (Uncompahgre Valley Water Users Assoc.)
Lot 3 - 2.5 shares (Uncompahgre Valley Water Users Assoc.)
Shares of irrigation water conveyed to lots at the time of plat recording may or may not be sold separately from the property and may not run with the land, are subject to the Irrigation Plan (dated *****) included with this subdivision.
- THIS SITE HAS BEEN IDENTIFIED BY THE COLORADO DEPARTMENT OF NATURAL RESOURCES, DIVISION OF WILDLIFE AS BEING IN A CRITICAL WILDLIFE HABITAT AREA. PROPERTY OWNERS MAY SUFFER DAMAGE TO LANDSCAPING, TREES, FENCES, ETC. FROM WILDLIFE AND SUCH DAMAGE SHOULD BE ANTICIPATED.



WILMORE & COMPANY
PROFESSIONAL LAND SURVEYING, INC.

406 Grand Avenue P.O. Box 1662
Paonia, Colorado 81428
870.527-4200 PHONE
870.260-4130 PHONE
www.wilmorelandsurveying.com
EMAIL: randy@wilmorelandsurveying.com

FIELD CREW:
RAW, CW
DRAFTER:
RAW
CHECKED BY:
KC

HUTTO MINOR SUBDIVISION
WITHIN GOVERNMENT LOT 4 OF SEC. 18, T.51N., R.10W., N.M.P.M.
DELTA COUNTY, COLORADO

J20364FINAL

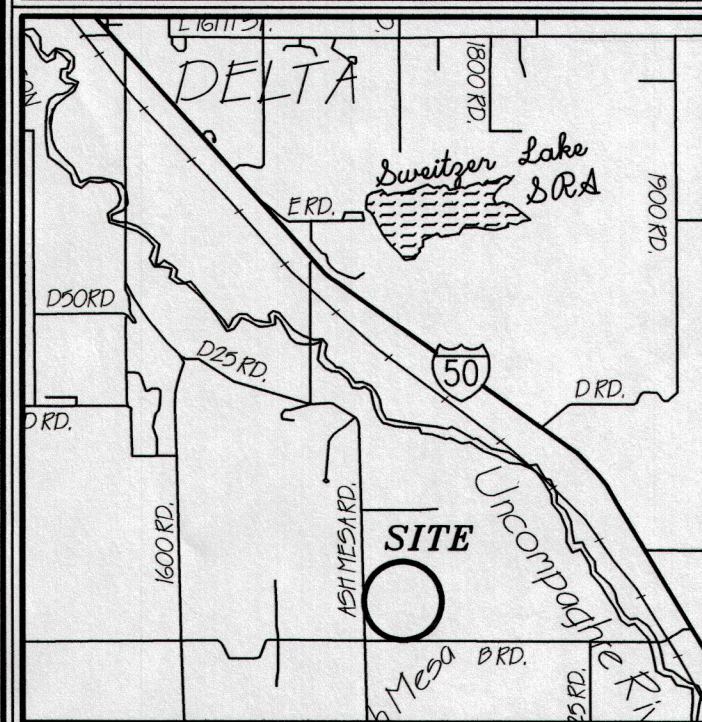
30 JULY 2021

PRELIMINARY PLAT
HUTTO MINOR SUBDIVISION
A RE-SUBDIVISION OF LOTS 1 AND 2, SAYRE MINOR SUBDIVISION
WITHIN GOVERNMENT LOT 4 (SW1/4 SW1/4) OF SEC. 18, T.51N., R.10W., N.M.P.M.
DELTA COUNTY, COLORADO



PLAT REFERENCES:
"SAYRE MINOR SUBDIVISION"—RECORDED NOVEMBER 4, 1997 UNDER RECEPTION NO. 509040.
"BOUNDARY SURVEY PREPARED FOR JAMES A. & ROSEMARY S. ANDERSON"—RECORDED APRIL 26, 2005 UNDER RECEPTION NO. 590590.

AREA LOCATOR



TYPICAL LEGEND

- Set Mag Nail in Asphalt
- Set 5/8" rebar 30" long with 2" aluminum cap PLS25972
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- Found 5/8" rebar with 1 1/2" aluminum cap RLS 1456 or as noted

- Fencelines
- Electric (overhead)
- UE Electric (underground)
- W Water line
- Easement
- Previous Parcel Boundary
- ▨ New Quit Claim to Delta County
- ▨ Previous R.O.W. to Delta County

BASIS OF BEARINGS:

N.01°35'20"E. FROM THE SECTION CORNER COMMON TO SEC. 11, 12, 13 & 14 TO THE S1/16 COR. COMMON TO SEC. 11 & 12 GEODETIC NORTH
GPS OBSERVATION

SCALE 1"=100 U.S. SURVEY FEET

0 50 100 200

SUBDIVISION DEDICATION
I, Nancy Jessica Hutto a.k.a. Nancy J. Hutto, being the owner of land described as follows:
LEGAL DESCRIPTION
Lots 1 and 2,
Sayre Minor Subdivision,
County of Delta,
State of Colorado.

In Delta County, Colorado, under the name of HUTTO MINOR SUBDIVISION, has laid out, platted and/or subdivided the same as shown on this plat and do hereby dedicate to the public at large the streets, alleys, roads and other public areas as shown hereon and those portions of land labeled as easements for the installation and maintenance of public utilities as shown hereon.

In witness whereof Nancy Jessica Hutto a.k.a. Nancy J. Hutto
have subscribed their names this _____ day of _____, A.D. 20____.

By: _____
Nancy Jessica Hutto a.k.a. Nancy J. Hutto

NOTARIAL:
State of _____ } ss.
County of _____ }
The foregoing instrument was acknowledged before me this _____ day of _____, A.D. 20____, by Nancy Jessica Hutto a.k.a. Nancy J. Hutto

My commission expires: _____

My address is _____

Witness my hand and official seal.

DELTA COUNTY PLANNING DEPARTMENT APPROVAL

This plat of the above subdivision has been checked for compliance by _____ on this _____ day of _____.

Planning Staff

BOARD OF COUNTY COMMISSIONERS APPROVAL

The within plat of HUTTO MINOR SUBDIVISION is approved this _____ day of _____, A.D. 20____, and the roads and other public areas are hereby accepted provided, however, that such acceptance shall not in any way be considered as an acceptance for maintenance purposes.

Maintenance of, or snow removal from, the subject roads shall be only upon a separate resolution of the Board of County Commissioners passed in accordance with such policies, resolutions or regulations in effect at that time.

Chairman

Attest

County Clerk

CERTIFICATE OF TAXES PAID

I, the undersigned, do hereby certify that the entire amount of taxes and assessments due and payable as of _____ upon all parcels of real estate described on this plat are paid in full. Dated this _____ day of _____, A.D. 20____.

Treasurer of Delta County, Colorado

COUNTY SURVEYOR'S CERTIFICATE:
Approved for content and form only and not as to the accuracy of survey, computations or drafting, pursuant to CRS 38-61-106.

County Surveyor

Date

SURVEYOR'S CERTIFICATION
I, Randy A. Wilmore, do hereby certify that the above described parcel has been surveyed by me and under my direct supervision and that such survey is accurately represented hereon, and is based upon my knowledge, information and belief, and is in accordance with applicable standards of practice and is not a guaranty or warranty, either expressed or implied.

Date: _____ Signed: _____
COLORADO PROFESSIONAL LAND SURVEYOR #25972

NOTE: According to Colorado law any legal action based upon a defect in this survey must be commenced within three years after such defect is discovered. In no event may any action based upon any defect in this survey be commenced more than ten years from the date shown on the certification hereon.

WILMORE & COMPANY
PROFESSIONAL LAND SURVEYING, INC.
406 Grand Avenue P.O. Box 1659
Pacifica, Colorado 81428
970.527-4200 PHONE
970.260-4130 PHONE
www.wilmorelandsurveying.com
EMAIL: randy@wilmorelandsurveying.com

FIELD CREW
RAW, CW
DRAFTER:
RAW
CHECKED BY:
KC

HUTTO MINOR SUBDIVISION
WITHIN GOVERNMENT LOT 4 OF SEC. 18, T.51N., R.10W., N.M.P.M.
DELTA COUNTY, COLORADO
J20364FINAL 30 JULY 2021



STAFF REPORT

**Board of Adjustment
Board Room
560 Dodge Street, Delta, CO 81416**

Thursday, September 23, 2021 @ 5:30 p.m.

PLN21-020/Becker-Beeson

Consider a variance to allow subdividing an 80+-acre parcel creating one 2.35-acre lot in the Agricultural (35-acre) zoning designation (A-35). The property is located at 3881 Old Wagon Road, Delta.

PROJECT INFORMATION:

Property Owner: John H Beeson Trust (Thelma Starner, Trustee)
Applicant/Representative: Shawn Becker
Site Address: 3881 Old Wagon Road
Location: E½ NW¼, Sec. 36, T.15S, R.96W
Parcel ID/Acct: 345736200006/R015736
Parcel Size: 80.3628 acres
Zoning: A35

RECOMMENDATION:

Staff recommends that the Board of Adjustments:

- a) Consider the required variance criteria/findings as they apply to PLN21-020/Becker-Beeson;
- b) Provide direction to staff on the BOA's Intent to Approve/Conditionally Approve/Deny a variance for PLN21-020/Becker-Beeson, a Minor Plat subdividing an 80+-acre parcel into two lots [Lot 1 (78.54 acres) and Lot 2 (2.35 acres)] in the A-35 zoning designation located at 3881 Old Wagon Road, Delta Parcel: 345736200006); and
- c) Direct staff to prepare a resolution reflecting the BOA direction.

Recommended conditions are attached if the BOA intends to approve this application.



SUMMARY:

The John H Beeson Trust owns an 80+-acre parcel located on the west side of Old Wagon Road, north of D50 Road. This application is to subdivide off about 2.35+ acres (Lot 2) in the northeast corner of the parcel leaving a remainder of 78.5454 acres (Lot 1). The surrounding area generally consists of larger agricultural parcels where some have homesteads.

The property is zoned A-35, meaning a minimum acreage for subdividing this parcel is 35 acres per lot. This proposal includes creating a lot that does not meet standards for acreage set forth in the Land Use Code (LUC). Therefore, the Board of Adjustment must approve variances for this project to proceed. If the variance is approved, the LUC requires restricting the entire 80 acres from further subdivision.

Access will be from Old Wagon Road creating a new driveway off of the existing homestead drive (shared access). A 30-foot wide dedication to the centerline of Old Wagon Road is included (proposed) on the Plat (1.8174 acres). The applicant will need to provide proof of an adequate domestic water supply and include easements for access to service the infrastructure before the Plat can be approved. All other utilities will need to be installed for the proposed development; electrical and plumbing permits for the new house will have to be applied for through the State.

Three granaries and three outbuildings are located on the site. All but one granary meet the required setbacks, so the one granary along the new property line would be removed. In addition, an existing farm hydrant located exists where it would be located on the new Lot 2, so would be disconnected.

The Director cannot take action on the Minor Plat until/unless the Variance is approved. The application checklist requested enough detail, professionally drawn, for the BOA to be able to make a fully informed decision on the variance. The Plat, and a schematic site plan for the new lot (Lot 2), is attached (**Attachment**).

Staff finds that the LUC implicitly limits property owners to one (new) lot that does not meet the minimum lot size. A critical part in determining if a variance should be approved or denied is how the BOA defines exceptional practical difficulties and hardship. Staff recommends that the BOA take an action expressing intent to approve, conditionally approve, or deny this request for a variance. Based on that direction, staff will return with a resolution for the BOA to adopt. At that point, an aggrieved party could appeal the BOA decision to the Board of County Commissioners. If the intent is to conditionally approve the project, staff also requests direction for conditions.

DISCUSSION:

Minor Plats for the creation of two lots, replats, or lot line adjustments approvals are issued by the Director (Director of Community Development and Natural Resources) upon finding compliance with applicable requirements of the Land Use Code (LUC).



However, the minimum acreage for subdividing this parcel is 35 acres per lot so the proposal to subdivide a 2.35+ acre lot from the 80-acre parcel does not meet standards set forth in the LUC. As such, a variance is required for Lot 2, and Lot 1 meets the minimum acreage.

The Board of Adjustment (BOA) is designated as the decision-making authority to consider variance applications. Chapter 1, Section 6.C.4 requires the concurring vote of three members of a 3-member BOA, meaning actions by the BOA must be unanimous in order to pass. In consideration of a variance, there are four criteria and three findings for the BOA to consider. Once a decision has been made by the BOA, the process will either proceed with the Subdivision or the owner has a right to appeal the BOA's decision to the Board of County Commissioners (BoCC).

The following narrative reflects staff's analysis regarding if/how the project complies with these regulations, depending on how the BOA defines hardship in this case.

Variation to Lot Size (Criteria): Chapter 3, Section 1.A.3 of the LUC states that the County may approve the creation of new lots that do not conform to the size requirements provided they meet four (4) criteria:

1. *The subdivision conforms to all other requirements of the Delta County Land Use Code.*
2. *The new lots have at least the minimum dimensions set out in the standards for the UGA zoning district (75-foot width, 30-foot frontage).*
3. *The size and configuration of the new lot minimizes disturbance or development of irrigated agricultural portions of a property, and does not interfere with wildlife habitat.*
4. *The Final Plat is annotated such that no further subdivision of each lot created by this subsection is allowed.*

Prior to approving the Plat, the applicant will need to provide proof of an adequate water supply for Lot 2 (Condition 2). A septic permit is required when the site is developed.

The property has an existing water tap from Tri-County Water that will remain with Lot 1 (3881 Old Wagon Road). The applicant will need to prepare an Irrigation Plan for assigning irrigation shares to the proposed lots (source and quantity) that will also need to be stated on the Final Plat (Condition 3).

Lot 1 has an existing access. Lot 2 will use the same point of access off Old Wagon Road and then will become a private driveway at the property line of Lot 2. The shared access will require an easement and maintenance agreement (Condition 4).



Lot 2 dimensions are at least 250 feet by 360 feet. Lot 2 is located in an area where there is about 1+ acre of hayfield and that contained a residence that was removed several years ago. The intent is to construct a new residence and shop where there is infrastructure from the original homestead, keeping the developed portion contained in the northeast corner of the property.

If the variance is approved, a Minor Plat is required that includes a Plat note reflecting this restriction. Condition #1 also requires a zoning overlay designation that reflects this restriction for Lots 1 and 2 in order to clearly identify that a variance has been approved.

Variance (Findings): Chapter 10, Section 2 of the LUC states that no variance shall be authorized unless the Board of Adjustment (BOA) makes three findings:

1. *Due to the exceptional narrowness, shallowness, or shape of the subject property on the effective date of this Code, or exceptional topographic conditions, or other extraordinary and exceptional situation or condition of the subject property, the strict application of a regulation in this Code would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the subject property.*
2. *A variance from strict application of the regulations at issue would relieve such difficulties or hardship.*
3. *The requested variance would not create substantial detriment to the public good or substantially impair the intent and purpose of this Code.*

There are no unique physical conditions relative to shape or topography of the property. However, Lot 2 includes a portion of the property that has been developed as part of the original homestead, bordered by existing access roads. The reasoning of this project is generally to allow Mr. Shawn Becker to own and construct a new residence. Granting a variance would restrict the remaining 78+ acre from being subdivided further.

Adequacy to sunlight for solar energy devices installed after January 1980 can be a possible consideration in determining difficulty or hardship. There is no solar on the property to be considered in determining difficulty or hardship.

OTHER AGENCY INVOLVEMENT

In this case, the Director waived the requirement for a pre-application conference. However, Planning consulted the other County land use agencies, and a letter was sent informing the applicant of pertinent regulations and potential issues.

Under the 2021 Delta County Land Use Code, a Minor (2-lot) Plat is handled administratively, meaning the Director can take final action if the variance is approved by the BOA. If the variance is approved, then the matter would be placed on hold until the remaining information for the plat is provided. Once a complete application is



received, the materials will be routed to applicable agencies for review and comment. Referral agencies are afforded up to three weeks to respond. Adjacent property owners are sent notice that will coincide with this referral period. Once this referral step is complete, staff will inform the applicant if we receive any recommendations affecting their application.

Attached material: list, in order as attached

- Recommended Conditions of Approval
- Minor Plat
- Site Plan



**Recommended Conditions of Approval
Becker-Beeson Minor Plat (PLN21-020)
BOA, September 23, 2021**

1. Include a note on the plat that Lot 1 and Lot 2 cannot be subdivided further. An overlay zoning designation will be created for this property to highlight that these properties cannot be subdivided further.
2. Prior to approving the Plat, the applicant shall provide proof of an adequate water supply for Lot 2.
3. The applicant shall submit an Irrigation Plan assigning irrigation shares to the proposed lots, and include a Plat note explaining rights to irrigation water.
4. The applicant shall submit an easement and Maintenance Agreement for shared access between Lots 1 and 2.
5. Include a building envelope on Lot 1 that restrict the area to be developed and retains land for agricultural purposes.

26 | 25

N 89°59'33" W

1326.92'

(REBAR - 1-1/2" METAL CAP - MARKING ILLEGIBLE, REFERENCE MONUMENTS ACCORDING TO MONUMENT RECORD. REBAR WITH 2" METAL CAP STAMPED PLS 20138 AS REFERENCE MONUMENT. "X" STAMPED ON 3" GALVANIZED CAP AND PIPE REFERENCE MONUMENT)

N

0' 50' 100' 200'

U.S. SURVEY FEET

OWNERS: S. & R. SHEA;
BK. 886 - PG. 539.

NW1/16
CORNER

N 00°02'27" E 2644.06'

#6 REBAR - 2" METAL CAP
30.0' EAST OF CORNER ON
1/16 LINE

OWNERS: M. & V. RIPP;
BK. 959 - PG. 426.

S 89°59'33" E 1326.91'

1033.27'

EXISTING ACCESS ROAD TO DITCH

APPROXIMATE LOCATION
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OF IRRIGATION PIPELINE

BASIS FOR BEARINGS:

BEARINGS ARE BASED ON THE BEARINGS FROM THE PLAT OF THE KHAFRA MINOR SUBDIVISION RECORDED IN THE REAL ESTATE RECORDS OF DELTA COUNTY UNDER RECEPTION NO. 586651. THE EAST LINE OF THE E1/2 NW1/4 OF SECTION 36 BEARS S 00° 04' 48" W.

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 41°53'40" W	36.94'
L2	S 02°45' E	9.1'
L3	S 63°05' W	35.8'
L4	S 78°09' W	24.5'
L5	N 64°14' E	45.2'
L6	N 53°24' E	34.4'

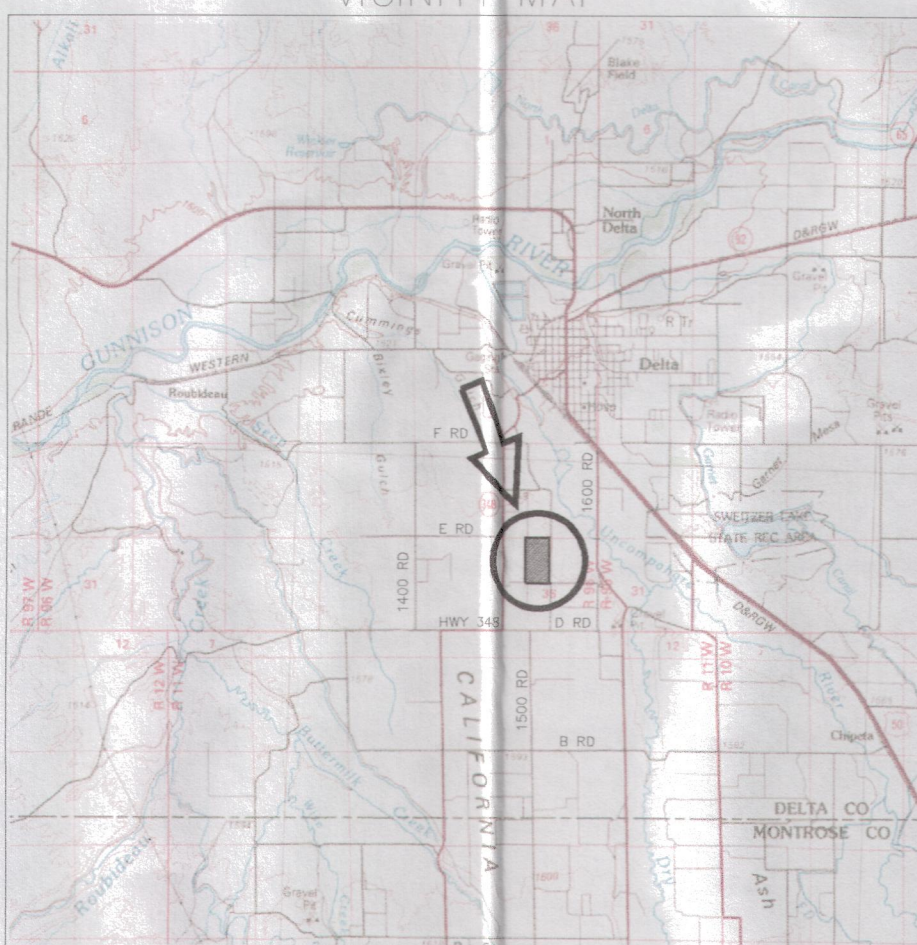
PROPERTY DESCRIPTION:

THE E1/2 NW1/4, SECTION 36, T 15 S, R 96 W, 6TH PRINCIPAL MERIDIAN, COUNTY OF DELTA, STATE OF COLORADO.

LEGEND:

- SECTION CORNER MONUMENT FOUND, AS INDICATED.
- 1/4 OR 1/16 CORNER MONUMENT FOUND, AS INDICATED.
- PROPERTY CORNER MONUMENT FOUND, AS INDICATED.
- PROPERTY CORNER MONUMENT SET, A #5 REBAR 30" LONG WITH A 1-1/2" DIAMETER METAL CAP STAMPED MESSENGER AND PLS 14621.
- WITNESS MONUMENT OR PROPERTY LINE MARKER FOUND, AS INDICATED.
- WITNESS MONUMENT TO PROPERTY CORNER SET, A #5 REBAR 30" LONG WITH A 1-1/2" DIAMETER METAL CAP STAMPED MESSENGER AND PLS 14621 OR AS NOTED.
- EXISTING FENCE LINE.
- EXISTING IRRIGATION DITCH OR DRAINAGE.
- EXISTING OVERHEAD POWER LINE.
- EASEMENT LINE.
- ALLOTMENT SECTION LINE.
- CULVERT.
- ROAD RIGHT-OF-WAY BEING QUILCLAIM DEEDED TO DELTA COUNTY, 1.8174 ACRES AS SHOWN.
- OWNER: DOE;
BK. 000 - PG. 000.
- OWNERSHIPS SHOWN ARE FROM THE RECORDS OF THE DELTA COUNTY ASSESSOR ON MAY 27, 2021.
- TRI-COUNTY WATER CONSERVANCY DISTRICT TAP NUMBER.

VICINITY MAP



NOT TO SCALE

OWNERS: B. & D. GRODA JR.
BK. 540 - PGS 523 & 911.

(MAC NAIL)

RECORDED/DEPOSITED PLATS PERTAINING TO THIS SURVEY ARE AS FOLLOWS:
EXEMPTION NO. 1482; R-450240.
GARVER MINOR SUBDIVISION; R-502758.
KHAFRA MINOR SUBDIVISION; R-586651.
MCCRACKEN FAMILY SPLIT SUBDIVISION; R-601228.
MCCRACKEN - HAWKINS BOUNDARY ADJUSTMENT; R-627893.
LENTZ PLACE SUBDIVISION; R-631825.
GRODA, III SUBDIVISION; R-688118.
RE-PLAT LOT 2 OF GARVIN MINOR SUBDIVISION; R-691496.
REPLAT OF LOTS 2 AND 3, LENTZ PLACE SUBDIVISION; R-696225.

OWNER: THE JOHN H. BEESON TRUST, THELMA STARNER, TRUSTEE.
P.O. BOX 45, DELTA, CO. 81416

APPLICANT: SHAWN BECKER
550 BOND STREET, DELTA, CO. 81416

THE JOHN H. BEESON TRUST	
SUBDIVISION PLAT	
BECKER-BEESON MINOR SUBDIVISION	
THE E1/2 NW1/4, SECTION 36, T 15 S, R 96 W, 6TH P.M., DELTA COUNTY, COLORADO	
MESSENGER & ASSOCIATES LLC	
Austin, Co 81410 (970) 835-3953	
Acct. No.	21-009
Sheet	1 of 1

Becker Lot

Write a description for your map.

Becker Lot

Write a description for your map.

Feature 1

Feature 2

Feature 1

Feature 2

Feature 1

Feature 2

NORTH

West

~~proposes property boundaries~~

We are planning on a new fence and landscape along Old Wagon Road, with a few fruit trees.

Landscaping will be a mix of conventional/dry-scape around the house and drive.

The North end of the property, last 60-80 feet will have an above ground sprinkler system and a few native trees.

The new proposed lot does not have any existing utilities located on the property.

EAST

Septic system proposed
location - Tank - Leach Field

Approx 2400 SF home with attached garage. With landscape around home 40' out from structure. Structure 40x100 proposed-SINGLE Story

60'-10 1/4"

40x60 shop metal building - with drive apron, RV, boat, atv storage

35'-3/4"

Structure to be removed once property is purchased by applicant

EXISTING STRUCTURES ON ORIGINAL HOME STEAD

SOUTH

UTILITIES WOULD FOLLOW THE DRIVE
TO THE SHOP AND THEN ACROSS TO THE
RESIDENCE



-  Phone/Data
-  Electric
-  Water
-  Natural Gas

EXISTING GAS SERVICE

EXISTING UTILITIES
WATER/POWER/PHONE

3881 Old Wagon Road

Google Earth

▲
N