

DELTA COUNTY BOARD OF ADJUSTMENT
Special Meeting

Administration Building – Board Room
560 Dodge St., Delta, CO 81416
Thursday, December 15, 2022 @ 5:30 p.m.

Mike Twamley, 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/join/ztYtce-qgDspHtZ7fvq-dO1IX7VDacifDYUA>

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>

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. MEETING MINUTES

1. Regular Board of Adjustment meeting of November 17, 2022.
RECOMMENDATION: Approve the action minutes as presented.

CERTIFICATION OF POSTING

On December 9, 2022, at 11:30 AM, Angie Kemp did post the above AGENDA as public notice of the December 15, 2022 Special 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. **PLN22-024 (Gray)**

Continue public hearing to January 27, 2023. Consider a variance to reduce the required lot size for one 14-acre lot in the A20 zoning designation. The Subject property is a 120.0-acre parcel located north of Ute Trail Road, Cedaredge (Parcel: 319304100003).

RECOMMENDATION: Staff recommends that the Board of Adjustments (BOA) Continue the application for a lot size variance creating a 14-acre lot in the A20 zoning designation located north of Ute Trail Road, Cedaredge (Parcel 319304100003/Gray):.

2. **PLN22-154 (Chapman)**

Application has been amended as a clustered subdivision for consideration by the Planning Commission. The subject property is a 35.79-acre parcel located north of Ute Trail Road, Cedaredge (Parcel ID: 319304200038)

RECOMMENDATION: Cancel the public hearing with the Board of Adjustment.

3. **PLN22-158 (Ballard)**

Consider a variance to reduce the required lot size to allow one, 7.14-acre lot in the A20 zoning designation. The subject property is an 80-acre parcel located south of F Road and west of 2100 Road, Delta (Parcel: 345526100011).

RECOMMENDATION: Staff recommends that the Board of Adjustments (BOA):

- a. Consider required variance criteria and findings as they apply to PLN22-158 (Ballard);
- b. Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) to subdivide an 80-acre parcel into two (2) lots in the A-20 zoning designation located at F Road and 2100 Road, Delta (Parcel 345526100011/Ballard):
 1. Lot 1 (7.14 Acres +/-)
 2. Lot 2 (72.62 Acres +/-)
- c. Authorize the Director to prepare a Resolution reflecting the BOA direction, including evidence relative to the required findings and conditions (as applicable).

4. **PLN22-159 (O'Neal)**

Consider variances to reduce the required lot size to allow two, 13-acre lots in the A20 zoning designation. The subject property is a 26.04-acre parcel located south of Starlight Court, Delta (Parcel: 345521100027).

RECOMMENDATION: Staff recommends that the Board of Adjustments (BOA):

- a. Consider required variance criteria and findings as they apply to PLN22-159 (O'Neal);
- b. Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) to subdivide a 26.04-acre lot into two (2) lots in the A-20 zoning designation located south of Starlight Court, Delta (Parcel 345521100027/O'Neal):
 1. Lot 1 (13 Acres +/-) Vacant, non-irrigated land.
 2. Lot 2 (13 Acres +/-) Vacant, non-irrigated land.

CERTIFICATION OF POSTING

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- c. Authorize the Director to prepare a Resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

5. PLN22-162 (Rice)

Consider a variance to reduce the required lot size to allow one, 2-acre lot in the A20 zoning designation. The subject property is a 40-acre parcel located at 20520 and 20652 Brimstone Road, Cedaredge (Parcel: 319511400017).

RECOMMENDATION: Staff recommends that the Board of Adjustments (BOA):

- a. Consider required variance criteria and findings as they apply to PLN22-162 (Rice);
- b. Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) to subdivide a 40-acre lot into two (2) lots in the A-20 zoning designation located south of Brimstone Road, Cedaredge (Parcel: 319511400017/Rice):
 1. Lot 1 (2 Acres +/-)
 2. Lot 2 (38 Acres +/-)
- c. Authorize the Director to prepare a Resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

E. WORK SESSION

The public can attend and listen to the following Work Session Item, but will not be afforded the opportunity to speak on these items, unless the Board of Adjustment, through the Chair, opens an item up for comment.

1. 2022 Land Use Code Update

Work Session to consider Board of County Commissioner change to the certified 2022 Land Use Code Update relating to Lot Size Variances.

RECOMMENDATIONS: Staff recommends that the Board of Adjustment consider Lot Size Variance criteria as part of the 2022 Land Use Code Update.

F. 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.

G. DEPARTMENT REPORT

ADJOURNMENT

Adjourn to a Regular Meeting on Thursday, January 26, 2023 at 5:30 pm in Delta.

CERTIFICATION OF POSTING

On December 9, 2022, at 11:30 AM, Angie Kemp did post the above AGENDA as public notice of the December 15, 2022 Special 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.



DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

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

**MINUTES
BOARD OF ADJUSTMENTS
SPECIAL MEETING
DELTA COUNTY
560 DODGE ST, DELTA, CO 81416
November 17, 2022**

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

ROLL CALL

Board of Adjustments Members in Attendance:

Mike Twamley, District 1
Brett Hilling, District 2 (via zoom)
Mark Roeber, District 3

Planning Staff in Attendance:

Delta County Community Development & Natural Resource Director, Carl Holm
Delta County Planning & Community Development Planner I, Kate Kelly
Delta County Planning & Community Development Planner I, Angie Kemp
Delta County Planning & Community Development Administrative Assistant, Kim Henderson
Delta County Code Compliance Officer, Everett Neil
Delta County Engineer, Tim McCracken

A. PUBLIC COMMENT

None

B. AGENDA ADDITIONS, DELETION, AND CORRECTIONS

None

C. MEETING MINUTES

- a. Regular Board of Adjustment meeting of October 27, 2022
RECOMMENDATION: Approve the action minutes as presented.

Mark Roeber moved to approve the meeting minutes as presented. Brett Hilling seconded the motion.

Motion carried unanimously

D. PUBLIC HEARING ITEMS:

Item #1

PLN22-045 (Schiros)

Consider a variance to reduce the minimum setback of a gated entry from the required 35 feet to 28 feet. A gated entry has been constructed at 15805 – 15801 Black Bride Road about 100 feet south of a 1-lane bridge near Paonia. (Parcel: 318732200041).

RECOMMENDATION: Staff recommends that the Board of Adjustment (BOA):

- a. Consider required variance findings as they apply to PLN22-045 (Schiros);
- b. Provide direction to either Approve or Deny a variance reducing the required setback from 35 feet to 28 feet for an existing gate located at 15801 – 15805 Black Bridge Road, Paonia (Parcel: 318732200041/Schiros).
- c. Authorize the Director to prepare a Resolution reflecting the BOA direction, including evidence relative to the required findings.

Planner, Angie Kemp and County Engineer, Tim McCracken presented the project. Jeff and Karen Schiros, applicants, were in attendance



The Board asked questions of staff and the applicants relative to the access and local road/traffic conditions.

Mark Roeber moved to approve PLN22-045 with staff recommended findings and conditions. Brett Hilling seconded the motion. The Director noted that this was a final decision for the variance, so now Planning can process the permit.

Motion carried unanimously.

Item #2

PLN22-057 (Kent)

Continued from June 23, 2022. Consider a variance to reduce the required lot size from 35 acres in the A-35 zoning district to five (5) acres. The subject property is located at 13420 County Road 265, Paonia (Parcel: 292303400003).

RECOMMENDATION: Staff recommends that the Board of Adjustment (BOA):

- a. Consider required variance criteria and findings as they apply to PLN22-057 (Kent);
- b. Provide direction to either Approve, Conditionally Approve, or Deny lot size variance for one (1) lot in the A-35 zoning designation located at 13420 County Road 265 (Parcel: 292303400003, Northumberland Group LLC); and
- c. Authorize the Director to prepare a Resolution reflection the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

Planner, Kate Kelly presented the project. Mr. Stephen Kent, applicant, was in attendance

The Board asked questions of staff and the applicant relative to septic and water. The Director noted that this was a final decision for the variance, so now Planning can process the subdivision (Minor Plat).

Mark Roeber moved to approve PLN22-057 with staff recommended findings as well as the condition the septic systems be permitted. Brett Hilling seconded the motion.

Motion carried unanimously.

Item #3

PLN22-065 (R. Thompson/Wacko Springs Ranch LLC)

Consider a variance to reduce the required lot size from 35 acres in the A-35 zoning district. The subject property is 36.99 acres located southwest of Ash Mesa Road with access from/through 1987 Spring Drive, Delta (Parcel: 349313100018).

RECOMMENDATION: Staff recommends that the Board of Adjustment (BOA) continue this matter and provide direction on:

- a. Access/Easement
- b. Lot Design
- c. Water
- d. Responsible Parties (Applicants)

Planner, Kate Kelly presented the project. Mr. Rand Thompson, applicant, was in attendance

Several neighbors spoke regarding their concerns with the proposed design using the access easement. A couple of people spoke in favor of the application. Mr. Ken Emrick will be purchasing a lot from Mr. Rand Thompson if the subdivision is approved was present and spoke in favor of the subdivision. Mr. and Ms. Pike who border Mr. Rand Thompson's property also spoke in favor of the subdivision. Ms. Gwen Welsby Conrad was present and stated how the easement across her property is restricted to farm ground and one (1) residence. Staff clarified the access Easement is between Mr. Thompson, Mr. and Ms. Pike and Conrad and Welsby. Staff also answered the question that the agricultural lot can be placed into a Conservation Easement or a Stewardship Area should Mr. Thompson decide to do a Clustered Subdivision.

The Board asked questions of staff and the applicant. Mr. Thompson stated that his intent is to create two lots for sale to a couple people that work on the farm and the remainder would not be developed.



Staff clarified that this is a 3-lot subdivision with no restriction on Lot 3. However, staff explained an option as a clustered subdivision with a Stewardship Area and/or Conservation Easement where variances are not required. Staff also clarified, the responsible parties to, and restrictions of, the easement as recorded so access needs to be addressed.

Brett Hilling moved to deny PLN22-045. Mark Roeber seconded the motion. The Director noted that the applicant can either appeal the decision to the BoCC or meet with staff to review options to redesign it to address the issues (e.g., clustered subdivision).

Motion carried unanimously.

Item #4

PLN22-071 (McCracken)

Consider variances to reduce the required lot size from a 20.0 acre minimum in the A-20 zoning district. The subject property is a 2.61-acre parcel located at 3386 & 3390 Old Wagon Road (Parcel: 345736402001), Delta.

RECOMMENDATION: Staff recommends that the Board of Adjustment (BOA):

- a. Consider required variance criteria and findings as they apply to PLN22-071 (McCracken);
- b. Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) to subdivide a 2.61-acre lot into two (2) lots in the A-20 zoning designation located at 3386 & 3390 Old Wagon Road, Delta (Parcel: 345736402001/McCracken):
 1. Lot 1 (1.55 Acres)
 2. Lot 2 (1.06 Acres)
- c. Authorize the Director to prepare a Resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

Planner, Angie Kemp presented the project. Vernon and Lela McCracken, applicants, were in attendance

The Board asked questions of staff and the applicants.

Mark Roeber moved to approve PLN22-045 with staff recommended findings and conditions. Brett Hilling seconded the motion. The Director noted that this was a final decision for the variance, so now Planning can process the subdivision (Preliminary Plat).

Motion carried unanimously.

E. BOARD COMMENT, REQUESTS AND REFERRALS

None

F. DEPARTMENT REPORT

Planning Director, Carl Holm provided an update on the following:

1. There are currently 3-4 items scheduled for December 15, 2022, so there will be a meeting.
2. The Planning Commission approved a Certified Copy of the 2022 Land Use Code Update on November 16, 2022. There was language added into the Land Use Code to add a Planning Commission member to serve as the Member-at-large positions on the Board of Adjustments. The Certified Land Use Code removed the language in reference to Variance to Lot Size. The BOA will hear Variances to other standards like setbacks as well as any Appeals of the Planning Director's decisions. The BoCC will consider the Certified Land Use Code on Wednesday, December 7, 2022 at 8:30am.

Meeting adjourned at 7:10 p.m.

Respectfully submitted by:
Administrative Assistant, Kim Henderson



DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

STAFF REPORT

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

Thursday, December 15, 2022 @ 5:30 p.m.

PLN22-024/Gray

**Continue the public hearing to January 26, 2023.
Consider a variance to reduce the required lot to allow one 14-acre lot
in the A20 zoning district. The subject property is a 120.0-acre parcel
located north of Ute Trail Road, Cedaredge (Parcel ID: 319304100003).**

PROJECT INFORMATION:

Property Owner: Gray Family Revocable Living Trust/ John Gray
Applicant: John Gray
Site Address(s): TBD Ute Trail Road, Delta
Parcel ID/Acct: 319304100003 / R025393
Parcel Size: 120.0 Acres
Zoning: A20

Report prepared by: Angie Kemp, Planner I

RECOMMENDATION:

Staff recommends that the Board of Adjustments (BOA):

- a) Continue the application for a lot size variance creating a 14-acre lot in the A20 zoning designation located north of Ute Trail Road, Cedaredge (Parcel 319304100003/Gray).

SUMMARY:

John Gray (owner) is seeking a 2-lot subdivision (Minor Plat) of an approximately 120-acre parcel. As proposed, this would split off 14 acres intended for residential development from a wooded property containing some agricultural land near the

“center” of the property (106 acres). The minimum lot size is 20 acres (A20 zone), so a variance to minimum lot size is required to create a smaller lot.

The applicant initially expressed intent to process a 5-lot subdivision (Preliminary Plat). However, the applicant did not want to invest in the infrastructure required for a larger subdivision. As such, they amended their request to pursuing a 2-lot subdivision (Minor Plat) first. They are proceeding with this variance and Minor Plat with an intent to further subdivide the remainder portion (106 acres) of the property.

Staff issued a public notice based on a complete application. However, the applicant did not make a decision to proceed with the variance process until December 7th, the day before the agenda is posted. As such, there was not adequate time to address all relevant information in the Staff Report. Therefore, staff recommends continuing the public hearing to January 26, 2022 for BOA consideration of the variance.

DISCUSSION

Mr. Gray, applicant/owner, submitted a Development Application form requesting a 5-lot subdivision on March 1, 2022. This was effectively a continuation of SUB20-032 that was expired due to lack of activity. A letter and checklist for a Preliminary Plat were sent to the applicant on March 15, 2022. This letter incorporated comments from meetings in going back to mid-2021.

A number of phone calls and emails have been exchanged between Staff and the applicant discussing possible options for development of the property. The expressed intent is to maintain the current agricultural operations and open space on the upper portion of the property. Staff has recommended rezoning the lower portion or processing a Clustered Subdivision. Involving designation of Stewardship Area could restrict future development from encroaching on the irrigated portion, consistent with their expressed intent.

The scope has changed on many occasions based on requirements such as lot size, process, access, domestic water supply, utilities, and timeline. Ultimately, the applicant determined that the Minor Plat with a variance was the preferred first-step in development of this parcel.

Variance fees and a revised Site Plan were submitted November 1, 2022. Staff communicated with the applicant on November 30th, December 1st, and December 7th regarding the variance process - uncertainty of a variance was a concern of the applicant. Staff explained that the BOA makes a determination based on existing conditions as well as the LUC (criteria and findings), and how the proposed design relates to development of the parcel and the surrounding area.

The variance process itself does not generally involve other agencies. However, a public notice was sent to neighboring property owners, interested parties, and posted on the subject property. No comments have been received as of December 8, 2022.

When/If a subdivision is processed, it will be referred to adjacent property owners and agencies for a 21-day comment period which could affect the subdivision.



DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

STAFF REPORT

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

Thursday, December 15, 2022 @ 5:30 p.m.

PLN22-154/Chapman

Cancel this public hearing. Application has been amended as a clustered subdivision for consideration by the Planning Commission. The subject property is a 35.79-acre parcel located north of Ute Trail Road, Cedaredge (Parcel ID: 319304200038).

PROJECT INFORMATION:

Property Owner: Wanda K. and Jeff S. Chapman
Applicant: Jeff and Wanda Chapman
Site Address(s): TBD Ute Trail Road, Cedaredge
Parcel ID/Acct: 319304200038 / R025393
Parcel Size: 35.79 Acres
Zoning: A20

Report prepared by: Angie Kemp, Planner I

RECOMMENDATION:

Staff recommends that the Board of Adjustments (BOA) cancel the public hearing to consider variances to create lots that do not meet the minimum size for the A20 zone.

SUMMARY:

Mr. and Mrs. Chapman are the owners of a 35.79-acre parcel are seeking a 3-lot subdivision (Preliminary Plat) to allow themselves the option to build on a smaller piece of property (Lot 2, 2.34 acres), and to provide a neighboring location for their family to own 4.64 acres (Lot 1) and build a residence there. The property is located generally

north of Ute Trail and has no road frontage, access is provided within an easement to the south.

After noticing the BoA hearing to consider variances, staff worked with the applicant on a clustered subdivision design concept which requires a Stewardship Area. Staff expressed that the variance process was intended as an exception and not intended for multiple lots, where by the zoning is circumvented. Staff finds that the upper portion of the property meets the clustering design criteria for habitat value creating a corridor connected with other properties. The applicant expressed a desire to proceed with a clustered subdivision. In the case of a Clustered Subdivision there is no minimum lot size, so a variance is not required.

As such, the applicant has withdrawn their variance request and will be pursuing a Clustered Subdivision design, subject to review by the Planning Commission. Under the 2022 LUC Update, the PC is the decision-making body for a Preliminary Plat.

PUBLIC COMMENT

Jennifer Maxfield and Sybil Halliday (neighboring property owners) each shared documentation about Horse Park Ditch, and maps of how it runs through the property, nearby the proposed lot sites. Concern with how development may affect the ditch was the primary concern expressed. These comments will be addressed with the Preliminary Plat.

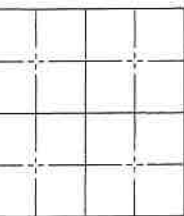
Attached material list, in order as attached:

- Aerial view
- Public Comment (Jennifer Maxfield)

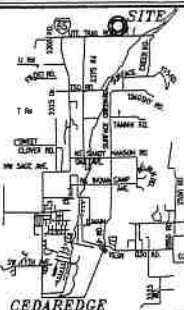
KRAMER / SAJAKA, LLC BOUNDARY ADJUSTMENT
WITHIN THE NW1/4 OF SEC.4, T.13S., R.94W., 6TH P.M.
DELTA COUNTY, COLORADO

PLAT REFERENCES
BOUNDARY ADJUSTMENT PREPARED FOR MILTON E. AND
REBECCA C. KRAMER PER REC. NO. 616636
ADMINISTRATIVE RE-SUBDIVISION OF LOT 2 OF WILDERNESS
MINOR SUBDIVISION REC. NO. 581091.

SEC. 4
SEE PLAT



CONTROL MAP



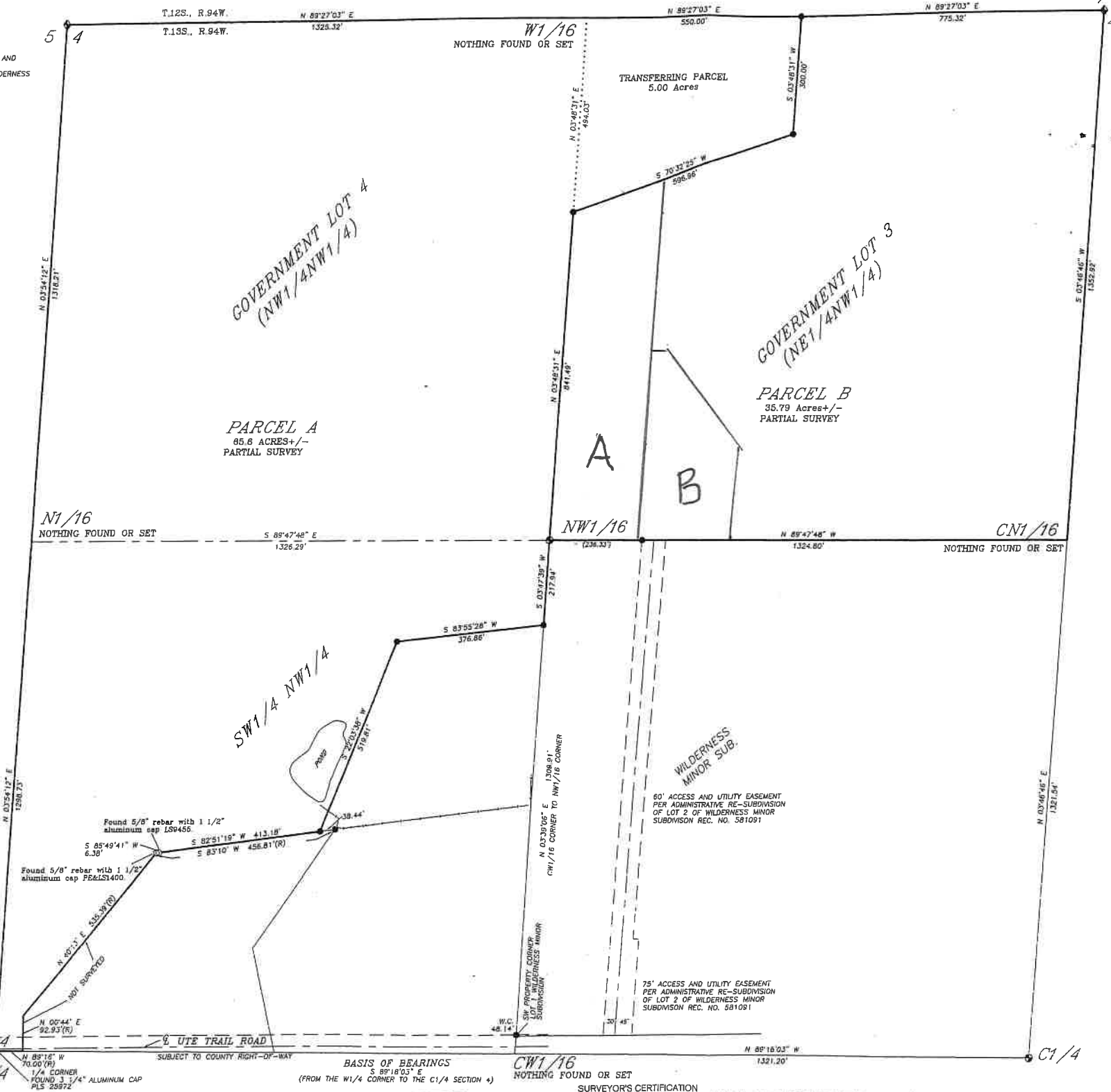
AREA LOCATOR

TYPICAL LEGEND

- Set mag nail in asphalt
- Found 5/8" rebar with 2" aluminum cap PLS25972
- Set 5/8" rebar / 2" aluminum cap as Witness Corner or Locap PLS25972
- Monument as noted
- Found 3/4" rebar with 3-1/4" aluminum cap PLS25972
- 1908 USGLO Brass Cap
- Record Deed calls
- Parcel lines
- Electric (overhead)
- Electric (underground)
- Water line
- Basement
- Previous Parcel Boundary
- Edge stream/river
- Irrigation ditch

BASIS OF BEARINGS:

S 89°18'03" E FROM
W1/4 COR. TO
THE CENTER 1/4 COR.
OF SEC. 4
ASTRONOMICAL NORTH
GPS OBSERVATION
SCALE 1"=150 U.S. SURVEY FEET



This survey was performed without the benefit of a title insurance commitment or a title insurance policy. Corner monuments were set, or found and accepted as indicated hereon.

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.

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. I further certify that the monuments shown hereon actually exist, and that their positions are as shown. I further certify that the boundary adjustment is made according to the agreement of the parties hereto and that no new parcels were created.

Date: 10/23/14
COLORADO PROFESSIONAL LAND SURVEYING, INC. #25972

ASSENTMENT:
We SAJAKA, LLC, and Rebecca C. Kramer being the Owners of the land as shown hereon do hereby agree to the boundary lines as shown hereon and that no new parcels were created by this boundary line agreement.

In witness whereof Rebecca C. Kramer has subscribed her name this 1st day of November, A.D. 2014.

By: Rebecca C. Kramer
Rebecca C. Kramer

NOTARIAL:
State of Colorado)
County of Delta)

The foregoing instrument was acknowledged before me this 1st day of November, A.D. 2014, by Rebecca C. Kramer

My commission expires: 11/20/17

My address is: 1444 Mesa View Dr.

Delta, CO 81414

Witness my hand and official seal.

In witness whereof SAJAKA, LLC has subscribed their name this 1st day of November, A.D. 2014.

By: Jim W. Nottingham, manager of SAJAKA, LLC

NOTARIAL:
State of Colorado)
County of Delta)

The foregoing instrument was acknowledged before me this 1st day of November, A.D. 2014, by Jim W. Nottingham, manager of SAJAKA, LLC

My commission expires: 09/15/2016

My address is: 7210 N. 1st St.

Delta, CO 81414

Witness my hand and official seal.

COMMISSIONER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID NUMBER
IN COMMISSION EXPIRES 10/20/16



NOTARY PUBLIC
STATE OF ARIZONA
Pima County
DIANA MARIE LANE
My Commission Expires April 20, 2016

PARCEL A

The SW1/4 of the NW1/4, and Lot 4 (NW1/4 NW1/4), all in Section 4, T. 13 S., R. 94 W. of the 6th P.M., TOGETHER WITH
A parcel of land located within Lot 3 (NE1/4 NW1/4), Township 13 South, Range 94 West of the 6th P.M. described as follows:
Beginning at the NW corner of said Lot 3 and running along the section line common to Sections 4 and 33 N.89°27'03"E. 550.00 feet; thence S.03°48'31"W. 300.00 feet; thence S.70°32'25"W. 596.96 feet to the west line of the said Lot 3; thence along said line N.03°48'31"E. 494.03 feet to the Point of Beginning, said parcel contains 5.00 acres, more or less.
It is the intention of the parties hereto that the parcels described above shall become one parcel and that none of such parcels shall be sold, transferred or conveyed separate and apart from the other, nor shall the combined parcel be otherwise subdivided, without further approval of the board of County Commissioners of Delta County, in accordance with Delta County Subdivision Regulations.
EXCEPTING THEREFROM Parcels Nos. 1 and 2 described as follows, to-wit:
PARCEL NO. 1:
A tract of land in the SW1/4 of the NW1/4, Section 4, T. 13 S., R. 94 W. of the 6th P.M. described as follows: Beginning at a point on the SW1/4 of the NW1/4 of said Section 4 from which the NW1/4 corner of said Section 4 bears N.89°27'03"E. and distance of 70.00 feet; thence N.04°41'32"E. 92.93 feet; thence N.07°13'55"E. 535.39 feet; thence N.83°10'10"E. 456.81 feet; thence S.35°01'W. 363.70 feet; thence S.10°58'E. 271.40 feet to the south line of said SW1/4 NW1/4; thence N.89°18'W. a distance of 643.45 feet more or less to the point of beginning. (Containing 6.13 Acres, of which 0.44 Acres are in County road right of way, leaving a net of 5.69 Acres.)
PARCEL NO. 2:
A tract of land in the SW1/4 of the NW1/4, Section 4, T. 13 S., R. 94 W. of the 6th P.M. described as follows: Beginning at the Southeast corner of the SW1/4 NW1/4 of said Section 4, thence N.07°22'E. 831.70 feet; thence S.87°10'W. 499.30 feet; thence S.35°01'W. 363.70 feet; thence S.10°58'E. 271.40 feet to the south line of said SW1/4 NW1/4; thence S.89°18'E. a distance of 816.10 feet more or less to the point of beginning. (Containing 8.37 acres, of which 0.87 Acres are contained in County Road right of way on extreme east edge of the property and 0.42 Acres are reserved for County road right of way on the extreme south edge of the property leaving a net of 7.68 Acres.)
ALSO EXCEPTING
A parcel of land located with the SW1/4 NW1/4 of Section 4, Township 13 South, Range 94 West of the 6th P.M., having a description based upon a bearing of N.00°04'36"E. from the 1/4 corner common to Sections 4 and 5 (monumented by a 3 1/4" alum. cap PLS 25972) to the section corner common to Sections 4 and 5 (monumented by a 3 1/4" USGLO Brass Cap), with all other bearings relative thereto and more particularly described as follows: Beginning at a point from which the 1/4 corner common to Sections 4 and 5 bears S.59°25'17"W. 1116.50 feet (monumented by a 2" al. cap PLS 25972); thence N.14°12'23"E. 486.94 feet (monumented by a 2" al. cap PLS 25972); thence N.83°55'28"E. 317.71 feet (monumented by a 2" al. cap PLS 25972); thence S.07°48'13"W. 459.70 feet (monumented by a 1 1/2" al. cap PLS 9455); thence S.87°22'52"W. 407.67 feet to the Point of Beginning, said parcel contains 3.78 acres.
ALSO EXCEPTING
A parcel of land located within the SW1/4 NW1/4 of Section 4, Township 13 South, Range 94 West of the 6th P.M., having a description based upon a bearing of S.89°18'01"E. from the 1/4 corner common to Sections 4 and 5 (monumented by a 3 1/4" alum. cap PLS 25972) to the center 1/4 corner Section 4 (monumented by a 3 1/4" alum. cap PLS 25972), with all other bearings relative thereto and more particularly described as follows: Beginning at a point from which the 1/4 corner common to Sections 4 and 5 bears S.55°22'38"W. 996.94 feet; thence N.22°03'38"E. 519.81 feet; thence N.83°55'28"E. 50.15 feet; thence S.14°12'29"W. 486.94 feet; thence S.87°22'52"W. 97.04 feet; thence S.82°51'19"W. 38.44 feet to the Point of Beginning, said parcel contains 1.02 acres more or less.
County of Delta,
State of Colorado.

TRANSFERRING PARCEL
A parcel of land located within Lot 3 (NE1/4 NW1/4), Township 13 South, Range 94 West of the 6th P.M. described as follows:
Beginning at the NW corner of said Lot 3 and running along the section line common to Sections 4 and 33 N.89°27'03"E. 550.00 feet; thence S.03°48'31"W. 300.00 feet; thence S.70°32'25"W. 596.96 feet to the west line of the said Lot 3; thence along said line N.03°48'31"E. 494.03 feet to the Point of Beginning, said parcel contains 5.00 acres, more or less.
County of Delta,
State of Colorado.

NOTE:
The purpose of the boundary adjustment and deed is to complete the adjustment that should have occurred when the original deed was recorded as reception number 58178, Delta County records.

PARCEL B

Government Lot 3 (NE1/4 NW1/4) of Section 4, Township 13 South, Range 94 West of the 6th P.M., Except a parcel of land located within Government Lot 3 (NE1/4 NW1/4), Township 13 South, Range 94 West of the 6th P.M. described as follows:
Beginning at the NW corner of said Government Lot 3 and running along the section line common to Sections 4 and 33 N.89°27'03"E. 550.00 feet; thence S.03°48'31"W. 300.00 feet; thence S.70°32'25"W. 596.96 feet to the west line of the said Lot 3; thence along said line N.03°48'31"E. 494.03 feet to the Point of Beginning, said parcel contains 5.00 acres, more or less.
County of Delta,
State of Colorado.

WILMORE & COMPANY
PROFESSIONAL LAND SURVEYING, INC.
406 Grand Avenue P.O. Box 1692
P.O. Box 1692
Phoenix, Colorado 81428
www.wilmorelandsurveying.com
Defining Boundaries EMAIL: wilmoreandcompany@ids.net

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

KRAMER / SAJAKA, LLC BOUNDARY ADJUSTMENT
WITHIN THE NW1/4 OF SEC.4, T.13S., R.94W., 6TH P.M.
DELTA COUNTY, COLORADO
J14154FINAL | OCTOBER 20, 2014

CHAPMAN WANDA K
Parcel ID: 319301200038
Tax Acct: R024098
Tax Acres: 35.79

24273 UTE TRAIL RD

LIEBE TRAU LLOYD J
Parcel ID: 319304101007
Tax Acct: R025392
Tax Acres: 15.422

HALSDAY SIBYL L
Parcel ID: 319304204001
Tax Acct: R018060
Tax Acres: 16.64

LUHRIS OTTO
Parcel ID: 319304204002
Tax Acct: R018061
Tax Acres: 18.8

PEDOTTO DOROTHY A
Parcel ID: 319304200008
Tax Acct: R001712
Tax Acres: 14.64

Horse park ditch

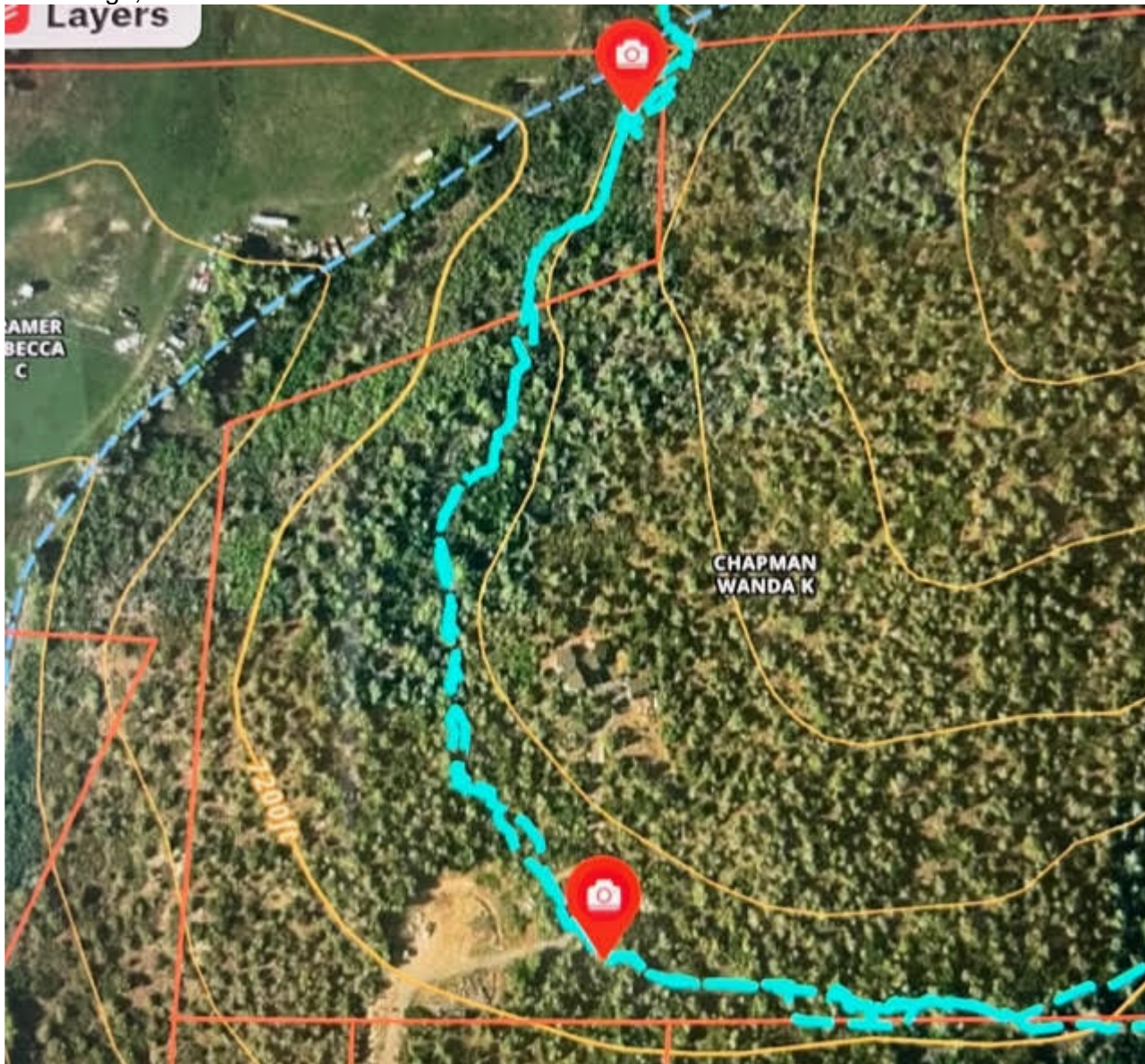
1 message

Jennifer Maxfield [REDACTED]
To: "planning@deltacounty.com" <planning@deltacounty.com>

Thu, Dec 1, 2022 at 3:03 PM

This is a map of our part of Horse park ditch, I do not have it mapped for the Halliday's part, which drops down from the lower camera icon into Ottos lot.
Please call with any questions.

Jen Maxfield [REDACTED]
[REDACTED] Ute Trail Road
Cedaredge, CO 81413





DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

STAFF REPORT

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

Thursday, December 15, 2022 @ 5:30 p.m.

PLN22-158/Ballard

Consider a variance to reduce the required lot size from a 20.0 acre minimum in the A20 zoning designation to approximately 7.14 acres for Lot 1. The subject property is an 80-acre parcel located south of F Road and west of 2100 Road, Delta (Parcel ID: 345526100011).

PROJECT INFORMATION:

Property Owner: Sonya Ballard
Applicant: Fred Ballard
Site Address(s): TBD F Road, Delta
Parcel ID/Acct: 345526100011 / R025130
Parcel Size: 80.28 Acres
Zoning: A20

Report prepared by: Angie Kemp, Planner I

RECOMMENDATION:

Staff recommends that the Board of Adjustments (BOA):

- a) Consider required variance criteria and findings as they apply to PLN22-158 (Ballard);
- b) Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) to subdivide an 80-acre parcel into two (2) lots in the A20 zoning designation located at F Road and 2100 Road, Delta (Parcel 345526100011/Ballard):
 - a. Lot 1 (7.14 Acres +/-)
 - b. Lot 2 (72.62 Acres +/-)

- c) Authorize the Director to prepare a resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

SUMMARY:

Fred Ballard (applicant) and Sonya Ballard (owner) are seeking a 2-lot subdivision (Minor Plat) of an approximately 80-acre parcel. As proposed, this would split off 7.14 acres of non-irrigated land from an agricultural property. The minimum lot size is 20 acres (A20 zone), so a variance to minimum lot size is required to create a smaller lot.

As designed, this lot would generally follow the alignment of an irrigation ditch (eastern property line), and wrap around a 1.39-acre parcel owned by the Fire District (created through a separate Boundary Line Adjustment). The 7-acre lot utilizes a non-irrigated portion of the lot and is intended for residential development.

The applicant has expressed intent to maintain the current agricultural operations and refrain from building on the “remainder” (72.62 acres/Lot 2); however, there is no restriction from future development. Therefore, both are considered buildable lots through this subdivision and need to meet standards of the Land Use Code such as proof of water, access, and utilities (*See Discussion, below*).

Generally, a variance requires that the Final Plat shall be annotated such that no further subdivision of either lot created by this subsection is allowed. [Chapter 3, Section 1.A.3.d LUC]. The applicant has been made aware that we have been applying a timeline to the restriction. However, there could be an exception for a clustered subdivision or if the property is rezoned. The intent is that there are no further exceptions (e.g., variances). In this case, the remainder (Lot 2) could be divided into two 35+ acre parcels, which is exempt from County Subdivision Regulations (*See Condition No. six (6) below*).

DISCUSSION:

Sonya Ballard owns an 80.28-acre parcel located at the southwest corner of F Road and 2100 Road (Parcel 345526100011). Irrigation ditches run through the property including what is labelled as “UnNamed Ditch”, and some channels that lead to “UnNamed Ditch”. Generally, the northwest portion of the property is non-irrigated land. This parcel is undeveloped except for some livestock pens located in the southwest corner of the property. A 98+ acre parcel south of this parcel, also owned by Sonya Ballard, has multiple structures with multiple addresses (Parcel ID: 345526100001).

The subject parcel is zoned A20, so the minimum acreage for subdividing this parcel is 20 acres per lot. Properties to the east, west and south are also zoned A20, and consist of larger lots. Properties to the north are zoned A5 and consist of a number of smaller lots. F Road is a dividing line between A20 and A5 zoning.

The application is for a 2-lot subdivision (Minor Plat) designed as follows:

- Lot 1 (7.14 acres). An irregular-shaped lot in the northwest corner of the subject parcel. An irrigation ditch would border the east property line of Lot 1. There is a 1.39-acre parcel that was separated out through a separate Boundary Line Adjustment (Parcel 345526100012) and is currently owned by the Fire District. A 50-foot access easement off of F Road (about 260 feet in length) is located adjacent to the eastern boundary of the Fire District lot.
- Lot 2/ Remainder parcel (72.62 acres).
- Road Dedication A (0.10 acres). Western portion of frontage (F Road) for Lot 1.
- Road Dedication B (0.28 acres). Eastern portion of frontage (F Road) for Lot 1.

Lot 1 does not meet the minimum acreage set forth in the LUC for the A20 zone, so a variance is required before a subdivision can be processed. Lot 2 (remainder) meets the minimum lot size and requires no variance.

The proposed design, as explained by the applicant, is intended to preserve ag on the larger portion and only divide off non-irrigated land to be developed. There is no restriction on this land. There is a non-irrigated area within the remainder parcel (Lot 2) that could access off 2100 Road, if developed in the future. This location could be designated as the building envelope and effectively protect the agricultural operation.

There was discussion between County staff and the Applicant about how this proposal should be defined, because it involves one parcel that will remain over 35-acres in size, and how Senate Bill 35 should be interpreted. The applicant has contested that any remaining parcel/lot that is over 35 acres is considered exempt. CRS § 30-28-101 states that the definition of a subdivision does *“not apply to any division of land which creates parcels of land each of which comprises thirty-five or more acres of land and none of which is intended for use by multiple owners”*. Staff interprets this statute as “each” refers to exempting divisions where all of the parcels created are 35+ acres. Creating the 7.14-acre parcel makes this proposal a 2-lot subdivision (Minor Plat). If the applicant wanted to subdivide this land into two 35+ acre parcels, then it would be exempt from the County’s subdivision regulations.

The subject property has frontage on F Road and 2100 Road. Both are public roads that are maintained by the County. Existing access to Parcel B (Fire District) is located across from Pansy Road pursuant to a recorded 50-foot easement for ingress/egress (Reception No. 722829). This easement is located on what would be Lot 1, and extends the length of the eastern property line for Parcel B (about 250 feet). This would be used as a shared access between Parcel B (Delta County Fire District 1) and the proposed Lot 1. Engineering must sign off on access for both lots/parcels before a Final Plat is recorded (See Condition 3 below).

Parcel B is not part of the subdivision request, and is under ownership of Delta County Fire Protection District 1. Parcel B was created in such a manner to leave a “peninsula” of land approximately 150 feet by 250 feet, as part of the subject property. This strip of

land is largely disconnected from the remaining property, and Lot 1 has been designed to wrap around it in a “C” shape.

No other access for Lot 2 has been proposed, and agricultural access(es) have not been identified. The locations of agricultural access will need to be shown on the subdivision plat, if access is taken through Lot 1. In addition, a Shared Access and Maintenance Agreement will be required between Lot 1 and Parcel B (*See Condition No. four (4), below*). Furthermore, staff recommends that a “no access strip” be applied along 150 feet between Parcel B and the neighboring property (*See Condition No. five (5), below*).

Engineering reviews plats as part of the referral process, subsequent to the variance. Determining the amount of roadway dedication that might be required generally depends on existing conditions and the classification of adjacent roads. The applicant expressed concerns with impacting irrigation ditches if this requirement is applied to the agricultural portion of the subject property (the remainder/Lot 2).

The Plat displays a total of 0.36 acres of Road Dedication in two areas. Road Dedication A (0.10 acres) dedicates 30 feet from the centerline of F Road, generally between the Fire District (Parcel ID: 345526100012) and the western property line. Road Dedication B (0.26 acres) dedicates 30 feet from the centerline of F Road, generally between the Fire District (Parcel ID: 345526100012) and the east property line of Lot 1. This is the amount of dedication the applicant is willing to offer the County for Right-of-Way. Staff finds that this amount of dedication is proportional to the request.

Proof of an adequate domestic water supply will need to be provided for both Lot 1 and the remainder (Lot 2). The LUC requires a tap/meter for each lot/parcel be installed prior to recording a Plat. The applicant contends that proof of water is not required for the “remainder” since it is over 35 acres. As noted above, staff disagrees with this interpretation of the applicable statute(s), and noted that there is no restriction on the remainder parcel (Lot 2).

In order to defer the proof of water for Lot 2 (remainder), as suggested by the applicant, staff feels that a condition is necessary to include a plat note that reflects the stated intent of the owner: *“The remainder portion of the property is for agricultural purposes only. A Development Application is required through County Planning before the site is developed. No residential or commercial use will be permitted until/unless the County is provided proof of adequate domestic water supply pursuant to the Land Use Code”* (See Condition 2 below). A domestic water tap/meter must be installed for Lot 1 prior to accepting/recording the Final Plat (See Condition 1 below).

This will allow any owners to understand constraints of the remainder parcel and that proof of domestic water has not yet been provided. This plat note is meant to protect the agricultural portion of the property, and matches the intent of the applicant to keep it in agricultural use and to not be developed (no residential use that would call for

domestic water). If the applicant does not accept this plat note, then they will need to provide proof of water for the remainder parcel (Lot 2).

PROCESS

Variances are presented at a public hearing to the Board of Adjustments (BOA) for either Approval, Approval with Conditions, or Denial considering the required criteria (4) and findings (3). Staff finds that the parcel could be subdivided if the BOA finds that it meets the required criteria and findings. Lot sizes of properties in the surrounding area vary broadly, most are for ag-residential uses. Therefore, the primary question is if the BOA finds that the hardship criteria/findings are met.

The LUC requires a unanimous vote of the BOA in order to pass. Once a decision has been made by the BOA, the process will either proceed with the Subdivision process if approved, or, if denied, the applicant will have 10 (calendar) days to appeal the BOA's decision to the Board of County Commissioners (BoCC). If the BOA finds that variance(s) can be approved, then staff recommends conditions (listed below).

Pursuant the LUC, Minor Plat (2-lot subdivisions) are handled Administratively, which means that the Director of Community Development and Natural Resources makes a final decision. The Director cannot act on the Minor Plat until/unless the Variance is approved. The application checklist requested enough detail for the BOA to be able to make a fully informed decision on the variance. The Minor Plat is attached (**Attachment**).

FINDINGS

The Land Use Code (LUC) includes four (4) criteria that must *all* be met for granting a variance to lot size. In addition, there are three (3) findings that must *all* be met to allow a variance of land use regulation. These criteria/findings are listed below with an initial assessment by staff:

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.*

There are no existing structures, just some irrigation infrastructure. The Land Use Code requires minimum setbacks (all structures, including septic) of 25 feet from the edge of ROW for all roads (public and private) and 15 feet from all interior property lines. In addition, a setback of 25 feet is required from the edge of any ditch, and 50 feet from the top of bank of a river, stream, or creek. The lots have more than adequate space to meet the setback requirements when developed.

Land Use Code Chapter 5, Section 3 requires proof of an adequate water supply when development is proposed. A subdivision is development. A domestic water tap/meter must be installed for Lot 1 prior to accepting/recording the Final Plat (Condition 1). In order to defer the proof of water for the remainder parcel, as suggested by the applicant, a plat note is required that reflects the stated intent of the owner: *"The remainder portion of the property is for agricultural purposes only. A Development Application is required through County Planning before the site is developed. No residential or commercial use will be permitted until/unless the County is provided proof of adequate domestic water supply pursuant to the Land Use Code"* (Condition 2).

Parcel B is not part of the subdivision request, and is under ownership of Delta County Fire Protection District 1. Parcel B was created in such a manner to leave a "peninsula" of land approximately 150 feet by 250 feet, as part of the subject property. This strip of land is largely disconnected from the remaining property, and Lot 1 has been designed to wrap around it in a "C" shape. A "no access strip" shall be applied along 150 feet between Parcel B and the neighboring property (Condition 5). Access shall be built to County standards and permitted as residential access for Lot 1 (Conditions 3-5).

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).*

Both lots conform to the minimum dimension standards for width: Lot 1 is approximately 200 feet wide at its narrowest point, and Lot 2 is approximately 500 feet wide at its narrowest point. Both Lot 1 and Lot 2 meet the 30 feet frontage minimum requirement, as designed.

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.*

This property contains a large amount of irrigated land. The proposed design is intended to preserve ag on the larger portion and divide off about 7 acres of non-irrigated land to be developed. There is no restriction on the remainder parcel; however, there is a non-irrigated area within the remainder parcel that could access off 2100 Road if developed in the future.

As designed and conditioned, non-irrigated land will be split from the irrigated portion, resulting in little to no impact to irrigated land. Lot 1 is designed to use an irrigation ditch as the eastern property line boundary. As such, no irrigation ditches would be impacted by this subdivision.

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

The applicant has raised concerns about how this restriction could defect the right to divide the remaining portion utilizing an Exemption as provided in CRS § 30-28-101. The BOA finds that this would not affect that right in any way, because if the owner wished to pursue a 35+ subdivision where each lot is at least 35 acres, and not intended for use by multiple owners, it would be exempt from County subdivision regulations. Condition 6 establishes a 10-year timeframe and recognizes the state statute exemption.

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.*

The question is if the BOA finds that holding to the strict regulations for A20 zoning “*would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the subject property.*” Staff finds the only unique condition is that Parcel B (Fire station) is located in such a way that it makes the proposed Lot 1 “wrap” around it in a “C” shape. The configuration is unusual; however, there is sufficient area for reasonable development that meets all applicable standards without additional variance(s).

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

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.

Properties north of F Road are zoned A5 reflecting smaller lot subdivisions. Property south of F Road, including the subject parcel, are zoned A20. Creating this 7-acre lot south of F Road would could be considered consistent with the surrounding properties.

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

Zoning is applied broadly, but we recognize that it may not fit every situation. The variance process affords an avenue to request a smaller lot if required

criteria/findings can be justified (e.g., physical constraint, hardship). Staff interprets that the exception for a variation to lot size is to create a single exception to address a unique situation.

Findings/Hardship

The ability to approve any variance depends largely on defining *unnecessary/undue* hardship. There is no simple formula for determining, what is enough. Hence, the BOA holds a quasi-judicial hearing and renders a decision based on evidence presented.

Hardship should be more than mere inconvenience or a preference for a more lenient standard. An applicant should demonstrate how their situation compares to others subject to the same restriction in the vicinity of their project. For example, 1) does strict compliance with the Code totally prevent improvement of the property in a manner which is reasonable, customary and consistent with other properties in the area; or (2) are there conditions peculiar to the property that cause practical difficulty in strict compliance with the ordinance, due to significant or unjustified expense in light of the scope of the project, destruction or demolition of attractive features of the property, or similar reasons?

An unnecessary hardship should be peculiar to the subject property, not general to the neighborhood or the applicant's personal circumstances. A hardship should not result from actions taken by the applicant or property owner (self-created). For example, the alleged practical difficulty was not created as a result of any action taken by the applicant or predecessors in interest of the property which was unlawful, or which could have been reasonably foreseen to create difficulty in complying with the ordinance for future improvements.

Another way of looking at variances is if granting it would create special privilege to this property that would not be granted to another property with similar conditions (size, shape) in the same zoning designation. Also, that because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of this Code is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.

Arguments that tend to be legally successful include the following:

1. That the particular physical surroundings, shape or topographical condition of the specific property involved would bring particular hardship upon the owner (not just a mere inconvenience), if the strict letter of the zoning regulation were to be carried out;
2. That the conditions upon which the petition for variance relates would not be applicable generally to other property within the same zoning district;
3. That the purpose of the variance is not based exclusively upon a desire to make more money out of the property;

4. That the alleged difficulty or particular hardship has not been created by any person presently having an interest in the property or by the applicant;
5. That the granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located;
6. That the proposed variance will not:
 - a. Impair an adequate supply of light and air to adjacent property;
 - b. Substantially increase the hazard from fire or other dangers to said property or adjacent property;
 - c. Otherwise impair the public health, safety, comfort, morals or general welfare of the inhabitants of the Town/City;
 - d. Diminish or impair property values within the neighborhood;
 - e. Unduly increase traffic congestion in the public streets and highways;
 - f. Create a nuisance; or
 - g. Result in an increase in public expenditures.
7. That the variance requested is the minimum variance that will make possible the reasonable use of the land, building or structure.

CONDITIONS

If the BOA finds that the variance can be approved per the required findings, the BOA could apply conditions to address issues as part of the subdivision review. Staff has identified items that will be addressed as part of the subdivision, prior to accepting the Final Plat:

1. The applicant shall provide proof of an adequate domestic water supply for Lot 1. A domestic water tap/meter shall be installed prior to accepting/recording the Final Plat.
2. Prior to recording a Final plat, a plat note shall be included as follows: *"The remainder portion of the property is for agricultural purposes only. A Development Application is required through County Planning before the site is developed. No residential or commercial use will be permitted until/unless the County is provided proof of an adequate domestic water supply pursuant to the Land Use Code"*. Alternatively, the applicant can provide proof of an adequate domestic water supply for the remainder parcel similar to Condition 1 for Lot 1.
3. Access shall be constructed and accepted by the County Engineer prior to accepting/recording the Final Plat. The applicant shall submit an application for access. The County Engineer will assess access options and the access shall be built to rural access standards.
4. Lot 1 shall be a shared access with Parcel B (Delta County Fire District 1) and the proposed Lot 1. A Shared Access and Maintenance Agreement for the existing 50-foot access easement shall be required between Lot 1 and Parcel B prior to accepting the Final Plat.

5. The Final Plat shall include a 1-foot wide “no access strip” between Parcel B and the neighboring property to the west (about 150 feet). No access to F Road from/through this portion of Lot 1 shall be considered without County approval to amend the Final Plat (replat).
6. The Final Plat shall be annotated such that: “No further subdivision of either lot created by this subsection is allowed for ten (10) years from the date the plat is recorded. This restriction does not apply to dividing the remainder where all parcels are at least 35 acres.”

OTHER AGENCY INVOLVEMENT

The Development Application form and variance fees were submitted on September 30, 2022. A letter and checklist were sent to the applicant on October 14, 2022.

The variance process itself does not generally involve other agencies. However, a public notice was sent to neighboring property owners, interested parties, and posted on the subject property. No comments have been received as of December 8, 2022. When/If a subdivision is processed, it will be referred to adjacent property owners and agencies for a 21-day comment period which could affect the subdivision.

Attached material list, in order as attached:

- Variance Application Materials
- Subdivision Plat

3. REZONING. Complete this section if requesting an amendment to the district zoning maps.

Applicant wishes to amend the Delta County Zoning Maps by changing the above specified parcel

FROM: ☐ UGA ☐ RI/C ☐ A-5 ☐ A-20 ☐ A-35 Zoning District

TO: ☐ UGA ☐ RI/C ☐ A-5 ☐ A-20 ☐ A-35 Zoning District

Describe the purpose of this amendment: _____

4. REPLAT, LOT/BOUNDARY LINE ADJUSTMENTS, AND MERGERS. Complete this section if requesting minor amendments/corrections to a recorded plat, adjusting lot/parcel lines, removing/amending a plat note, merging land, etc.

Name, Recorded Date and Reception Number of previously approved Plat: _____

Description and purpose of proposed change: _____

Existing Parcel Size(s): _____

Adjusted Parcel Size(s): _____

Please list all landowners (as shown on title), along with their parcel number, who will be involved in this process:

Owner #1: _____ PARCEL: _____

Owner #2: _____ PARCEL: _____

Attach additional sheet(s) if necessary to represent ownership of additional parcels.

5. VARIANCE. Complete this section if requesting lots that do not meet the minimum size or to reduce development standards (e.g., setbacks) See LUC or request a *Variance Criteria and Findings* handout from the Planning Department.

Provide justification on how the requested Variation to Lot Size meets the required criteria (**Chapter 3, Section 1.A.3 LUC**):

- New lots have at least the minimum dimensions set out in the UGA zoning district (**Table 3.a LUC**):
 - Lot Size (7,500 square feet min.): Proposed: 7.14 AC
 - Lot Width (75 feet min.): Proposed: Varies 253'-750'
 - Lot Frontage (30 feet min): Proposed: 550'
- Minimize disturbance or development of irrigated agricultural portions of a property, and does not interfere with wildlife habitat.

Explain the reason(s) for requesting a variance (Findings):

Describe unique conditions of the property: Proposed lot is on nonirrigated land. Will preserve the irrigated portion of property

Explain the hardship created by not approving a variance (special circumstances):

Irrigated land would be disturbed

Describe how the variance would not create a detriment to the public:

Existing drive way and utilities to property

Attach additional sheet(s) if necessary to explain/justify meeting the required criteria and findings.

ACKNOWLEDGEMENTS - Please initial each of the following acknowledging that you have read, understand and agree with these terms:

X F.B. *The subdivision must conform to all other requirements of the Delta County Land Use Code (LUC)*

F.B. *The size and configuration must be designed to minimize disturbance or development of irrigated agricultural portions of the property. To make this finding, a condition may be applied to limit development through application of a building envelope.*

F.B. *The Final Plat must note that no further subdivision of either lot will be allowed.*

F.B. *A variance for lot size is limited to a Minor Plat creating one additional lot.*

F.B. *No variance shall be authorized unless the Board of Adjustments (BOA) finds all of the requirements laid out in Chapter 10, Section 2. Variances, and Chapter 3, Section 1.A are met*

F.B. *Lots involved with granting a variance may not be subdivided further pursuant to Land Use Code Chapter 3, Section 1.A.3.d.*

F.B. *The County may consider creation of new lots that do not conform provided specific findings are met: unique conditions (e.g., shape or topography), special circumstances (e.g., hardship), and conforms to other land use standards.*

6. LAND USE CODE AMENDMENT. Complete this section if requesting an amendment to the Land Use Code (text)

Describe the proposed amendment: _____

7. APPEALS. Complete this section if appealing a decision/determination by the Director or Board of Adjustments.

Please refer to **Chapter 12, Appeals**, of the Code.

1. How did the action lack clear evidence to support the decision/determination?

2. How was action beyond the authority of the Director? _____

BALLARD SUBDIVISION

SITUATED IN SECTION 26, TOWNSHIP 15 SOUTH, RANGE 95 WEST, 6TH PRINCIPAL MERIDIAN
COUNTY OF DELTA, STATE OF COLORADO



VICINITY MAP
N.T.S.

DEDICATION

I, Sonya Ballard, being the owner of the land described as follows:

A parcel of land situated in the NE1/4 NE1/4 of Section 26, Township 15 South, Range 95 West, 6th Principal Meridian, being better described as beginning at the E1/16 corner common to Sections 23 and 26;
Thence along to North line of said NE1/4 NE1/4 S88°19'18"E 150.90 to the NW corner of Parcel B Ballard/Ballard Boundary Line Adjustment recorded at Reception No. 721884;
Thence the following three courses along boundary of said Boundary Line Adjustment S01°33'35"W 289.00 feet;
S88°19'18"E 209.00 feet;
N01°33'36"E 289.00 feet to the North line of said NE1/4 NE1/4;
Thence along said North line S88°19'18"E 402.05 feet;
Thence S01°40'42"W 34.80 feet;
Thence S49°02'31"W 216.94 feet;
Thence S33°39'21"W 660.02 feet;
Thence S02°09'44"W 84.10 feet;
Thence N88°12'04"W 253.85 feet to a point on the West line of the said NE1/4 NE1/4;
Thence along said West line N01°47'56"E 825.18 feet to the Point of Beginning.
Containing 7.15 acres more or less as described.

To be divided from Parcel A Ballard/ Ballard Boundary line Adjustment recorded at Reception No. 721884, Delta County Records

under the name of BALLARD SUBDIVISION, have 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 Sonya Ballard has subscribed her name this ____ day of _____, AD 2022.

By: _____
Owner

State of Colorado }
County of Delta } ss.

The foregoing instrument was acknowledged before me this ____ day of _____, AD 2022, by Sonya Ballard.
My Commission expires: _____

My address is _____
Witness my hand and official seal.

Notary Public
(Seal)

F Road Right-of-Way Descriptions:

Parcel A:
A parcel of land situated in the NE1/4 NE1/4 of Section 26, Township 15 South, Range 95 West, 6th Principal Meridian, being better described as beginning at the E1/16 corner common to Sections 23 and 26;
Thence along the North line of said NE1/4 NE1/4 S88°19'18"E 150.90 feet to the Northwest corner of Parcel B Ballard/Ballard Boundary Line Adjustment recorded at Reception No. 721884;
Thence along the west line of of said boundary line adjustment S01°33'35"W 30.00 feet;
Thence leaving said west line N88°19'18"W 151.03 feet to a point on the West line of said NE1/4 NE1/4;
Thence along said West line N01°47'56"E 30.00 feet to the Point of Beginning.
Containing 0.10 acres more or less as described.

Parcel B:
A parcel of land situated in the NE1/4 NE1/4 of Section 26, Township 15 South, Range 95 West, 6th Principal Meridian, being better described as beginning at the Northeast corner of Parcel B Ballard/Ballard Boundary Line Adjustment recorded at Reception No. 721884, a point S88°19'18"E 359.90 feet from the E1/16 corner common to Sections 23 and 26;
Thence along the North line of said NE1/4 NE1/4 S88°19'18"E 402.05 feet;
Thence leaving said North line S01°40'42"W 30.00 feet;
Thence N88°19'18"W 401.99 feet to a point on the east line of Parcel B Ballard/Ballard Boundary Line Adjustment recorded at Reception No. 721884;
Thence along said east line N01°33'35"E 30.00 feet to The Point of Beginning.
Containing 0.28 acres more or less as described.

STANDARD 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.
- 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 residential lots within this subdivision have been approved for one single residential use only. Any further subdivision on any lot requires the owner of said lot to apply for a subdivision of the land in compliance with the Regulations of Delta County. Any change of use to other than residential or agricultural use requires the lot owner to process the request in accordance with the Specific Development Regulation of Delta County.
- All new utilities must be placed underground on all parcels.
- The minimum setbacks in this subdivision shall be from:
Any Public Road ROW 25'
Front Property Line 25'
Side and Rear Property Lines 25'
- Soils in this area may have severe limitations for septic tank systems and for certain types of construction. Septic tank systems may require engineered systems designed by a Professional Engineer registered in the State of Colorado.

BASIS OF BEARINGS:

The bearing along the East line of the E1/2 NE1/4 is S01°38'48"W (Colorado Central State Plane Coordinate)

LINEAL UNITS STATEMENT:

The Lineal Unit used on this plat is U.S. Survey Feet

SURVEYORS CERTIFICATE:

I, Frederick A. Ballard, hereby certify that I am a Registered Land Surveyor of the State of Colorado, that this map consisting of 1 sheet, correctly represents a survey made under my supervision, that all monuments shown hereon actually exist and their positions are as shown. This survey does not include easements except those specifically shown hereon.

PRELIMINARY

Frederick A. Ballard, PLS37690

DELTA COUNTY SURVEYOR'S APPROVAL

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

County Surveyor Date

DELTA COUNTY PLANNING DEPARTMENT APPROVAL

This plat of the above subdivision has been checked for compliance on this ____ day of _____, AD 202__.

Planning Department

BOARD OF COUNTY COMMISSIONERS APPROVAL

- The within plat of BALLARD SUBDIVISION, is approved this ____ day of _____, AD 202__, 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 _____, AD 202__.

Treasurer of Delta County, Colorado

DELTA COUNTY CLERK AND RECORDER'S ACCEPTANCE

This plat was accepted for filing in the office of the Clerk and Recorder of Delta County, Colorado, on this

____ day of _____, AD 202__.

Reception Number _____ Time _____ Book _____ Page _____

Date _____

County Clerk

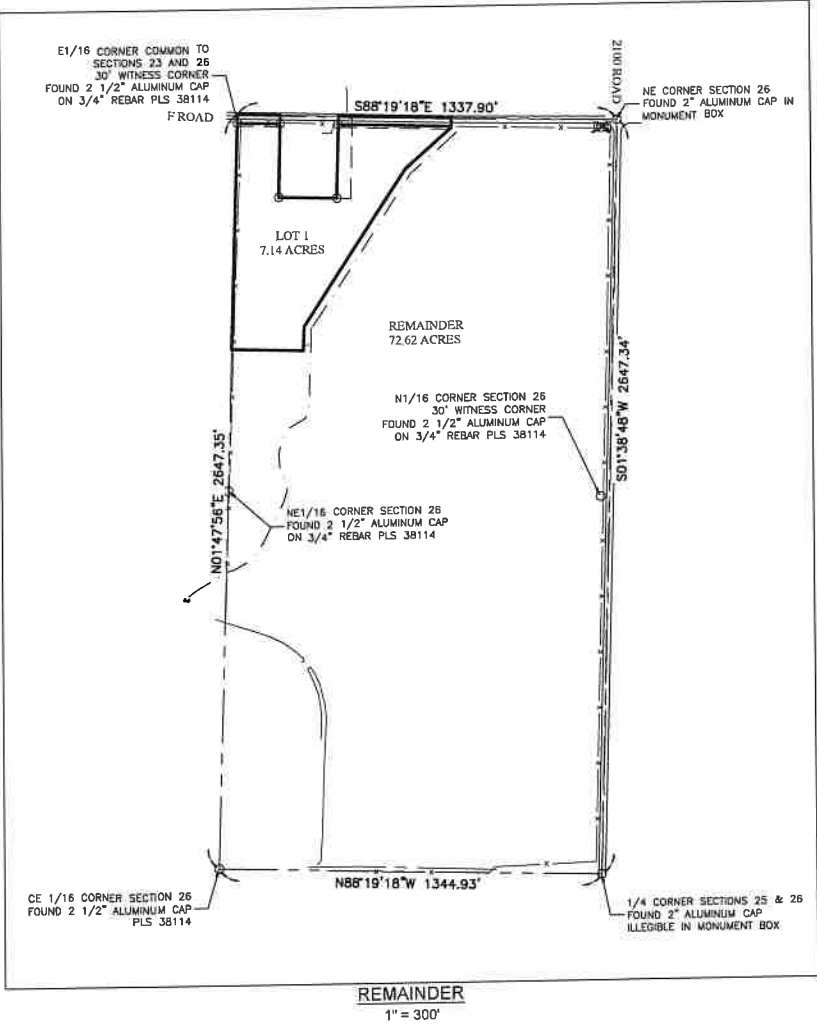
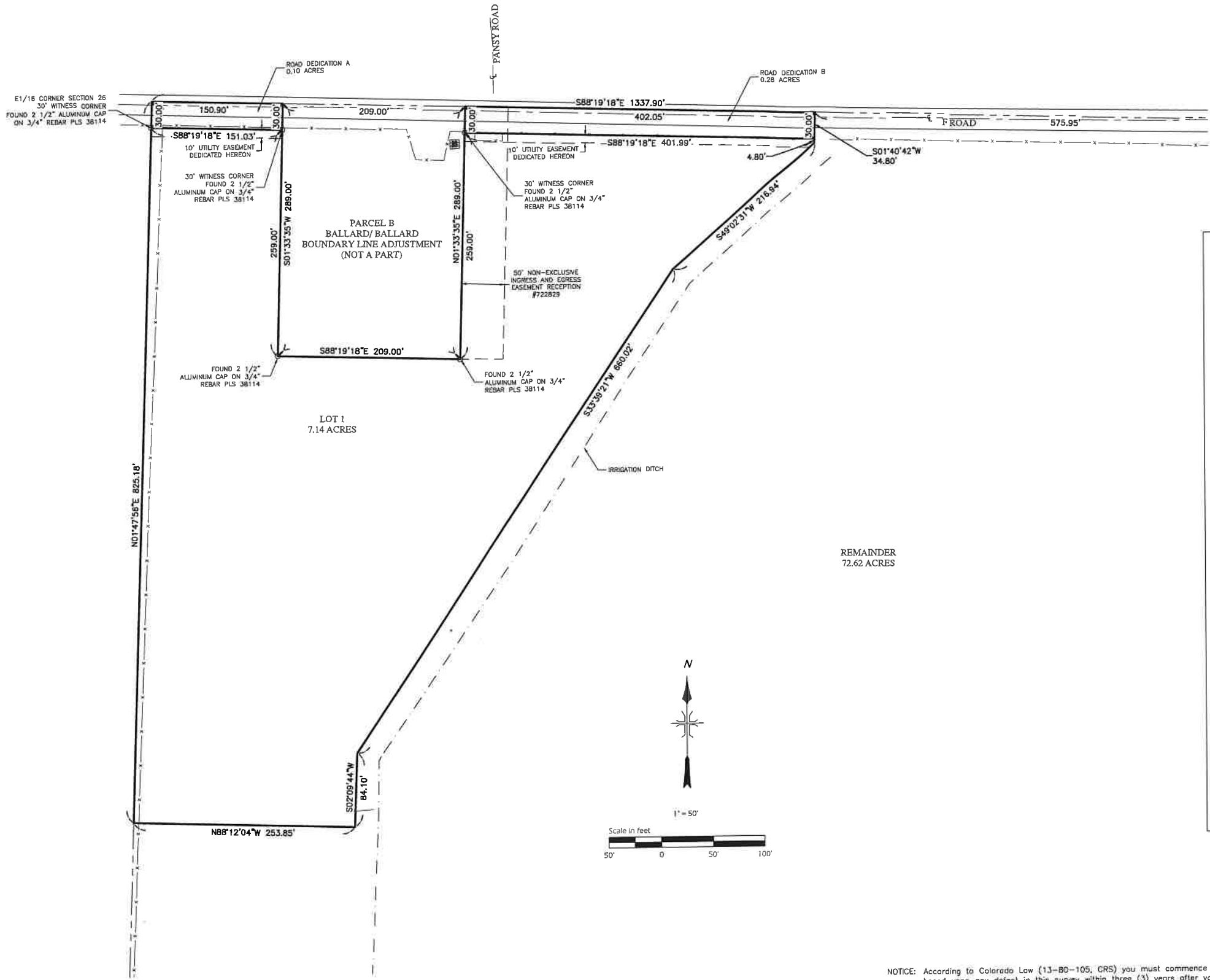
THE BALLARD SUBDIVISION

DMC		DEL-MONT CONSULTANTS, INC. ENGINEERING & SURVEYING 138 CHURCH ST. • DELTA, CO 80621 • (970) 764-2222 • (970) 764-2241 FAX www.delmont.com • E-mail:delmont@delmont.com		CURT:	
FIELD BOOK:	DRAWN BY:	DATE:	2022-09-20	ADDRESS & PHONE:	
1 of 2	FILE:	22119V_BDRY	22119	TYPE:	SUBDIVISION

NOTICE: According to Colorado Law (13-80-105, CRS) you must commence any legal action based upon any defect in this survey within three (3) years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten (10) years from the date of the certification shown hereon.

BALLARD SUBDIVISION

SITUATED IN SECTION 26, TOWNSHIP 15 SOUTH, RANGE 95 WEST, 6TH PRINCIPAL MERIDIAN
COUNTY OF DELTA, STATE OF COLORADO



NOTICE: According to Colorado Law (13-80-105, CRS) you must commence any legal action based upon any defect in this survey within three (3) years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten (10) years from the date of the certification shown hereon.

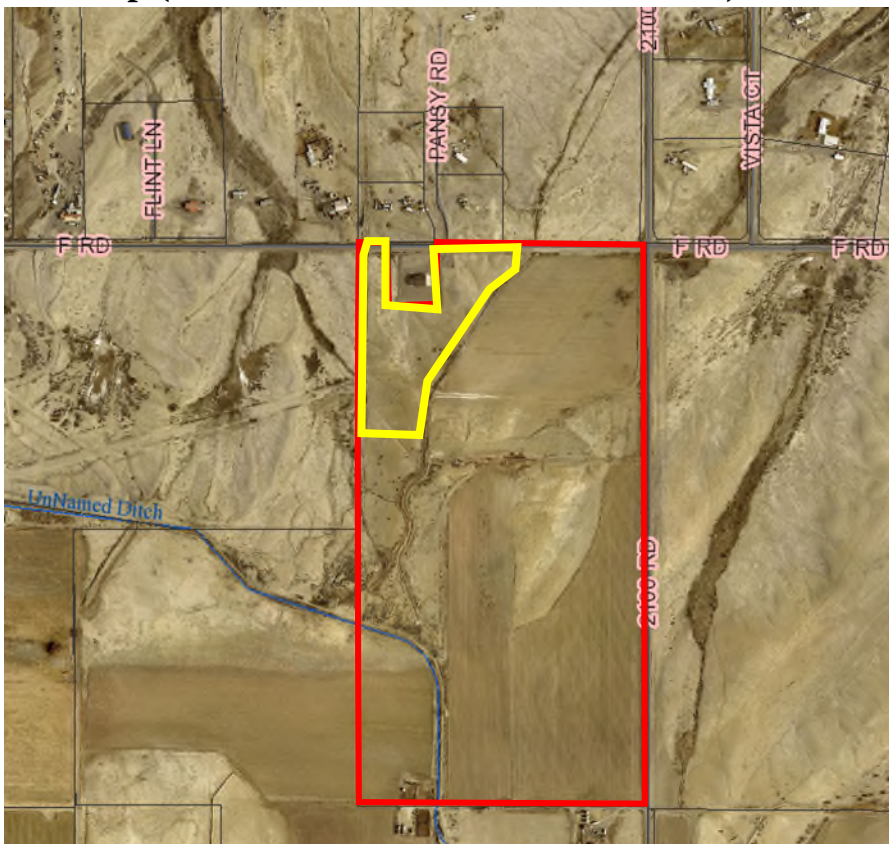
DMC				DEL-MONT CONSULTANTS, INC. ENGINEERING & SURVEYING 1225 Colorado Ave. • Fort Collins, CO 80504 • P (970) 244-2331 • F (970) 244-2332 FAX www.deltacounty.com • T delmont@delmont.com		BALLARD SUBDIVISION	
FIELD BOOK		DRAWN BY: DCC		DATE: 2022-09-20		CLIENT:	
SHEET: 2 of 2		FILE: 22119V BDY		JOB NO.: 22119		ADDRESS & PHONE:	
						TYPE: SUBDIVISION	



Vicinity Map



Site Map (Parcel #345526100011, F Rd. Delta)





DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

STAFF REPORT

Board of Adjustment

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

Thursday, December 15, 2022 @ 5:30 p.m.

PLN22-159/O'Neal

Consider variances to reduce the required lot size to allow two, 13-acre lots in the A20 zoning designation. The subject property is a 26.04-acre parcel located south of Starlight Court, Delta (Parcel ID: 345521100027).

PROJECT INFORMATION:

Property Owner: Moon Dance Development LLC
Applicant: Jim O'Neal
Site Address(s): TBD Starlight Court, Delta
Parcel ID/Acct: 345521100027 / R024670
Parcel Size: 26.04 Acres
Zoning: A20

Report prepared by: Angie Kemp, Planner I

RECOMMENDATION:

Staff recommends that the Board of Adjustments (BOA):

- a) Consider required variance criteria and findings as they apply to PLN22-159 (O'Neal);
- b) Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) to subdivide a 26.04-acre lot into two (2) lots in the A20 zoning district located south of Starlight Court, Delta (Parcel 345521100027/O'Neal):
 - a. Lot 1 (13 Acres +/-) Vacant, non-irrigated land.
 - b. Lot 2 (13 Acres +/-) Vacant, non-irrigated land.

- c) Authorize the Director to prepare a resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

SUMMARY:

Jim O'Neal, applicant/owner, is seeking a Minor Plat (2-lot subdivision of 26+ acres). As proposed, this would create two (2) 13 acre lots of non-irrigated land adjacent to a neighborhood that was previously planned to expand into this area in subsequent phases. The minimum lot size is 20 acres (A20 zone), so variances to minimum lot size is required to create the smaller lots. The Minor Plat has been designed to create two (2) lots consisting of;

Lot 1: (Approximately 13 Acres) Vacant, non-irrigated land with 30-feet of frontage on Starlight Court.

Lot 2: (Approximately 13 Acres) Vacant, non-irrigated land with 30-feet of frontage on Starlight Court.

Lots will have a shared access from Starlight Court and will each consist of some topographically challenging landscape, including some wetland areas that appears to drain into a draw that cuts across the western section of the property in a northwest to southeast manner. The wetlands should be avoided (*See Condition 4, below*). Other areas that should be avoided include Transmission Line Easements (Reception No.655909, 655910), Utility Easements (Reception No.663761) and Irrigation Pipeline Easement (Reception No.663761).

The two lots are intended for residential development and divided generally by a partially constructed cul-de-sac. UVWUA pipeline location has been approximated on the *Moondance Major Subdivision Phase 1* Plat (Reception No. 663761) which shows the ditch running underneath the cul-de-sac access from Starlight Court.

A variance requires that the Final Plat shall be annotated such that no further subdivision of either lot created by this subsection is allowed. [Chapter 3, Section 1.A.3.d LUC]. The applicant has been made aware that we have been applying a timeline to the restriction. However, there could be an exception for a clustered subdivision or if the property is rezoned. The intent is that there are no further exceptions (e.g., variances).

DISCUSSION:

Mr. O'Neal, Manager/ Member of Moon Dance Development LLC, owner of 26.04 acres is seeking a 2-lot subdivision (Minor Plat) to create two residential lots where a later phase of *Moondance Major Subdivision* (MJ09-004) was once proposed, now expired. *Moondance Major Subdivision* (MJ09-004) consisted of a 19-lot subdivision meant to be created in four (4) phases.

On January 8, 2013 a Final Plat was recorded for Phase I (Reception No. 663761), creating Lot 1 and Lot 16. On March 3, 2018 a Final Plat was recorded for Phase II (Reception No. 701949) creating Lots 2-6. In total, the subdivision resulted in seven (7) lots created. On July 5, 2022, the Delta County Board of County Commissioners held a public hearing in regards to the disposition of subdivision application that preceded adoption of the 2021 Land Use Code. At that meeting the BoCC determined that Phases 3 & 4 of MJ09-004/Moon Dance Major Subdivision (Lots ## to ##) were formally vacated and the file was closed.

The applicant, along with a business partner, were the developers of the major subdivision development on Starlight Court. The base of a road proposed with that subdivision phasing has been established from Starlight Court and it runs generally along the center of where Mr. O'Neal is proposing this split, see *Moondance Major Subdivision Phase I* (Reception No. 663761, **attached**).

The zoning applied here is A20, so, the minimum acreage for subdividing this parcel is 20 acres per lot. Neither Lot 1 nor Lot 2 meet the minimum acreage set forth in the LUC for the A20 zone, so a variance is required before a subdivision can be processed.

The site has some development challenges, including wetlands and varied topography. Wetland areas were delineated on the *Moondance Major Subdivision Sketch Plan* (**attached**). These wetlands have not been identified on the Site Plan, but will need to be included on the Minor Plat as no build zones. Aligning with development that occurred previously, Staff is recommending designation of building envelopes to establish the buildable areas and avoid important drainages and the wetlands on the site (*See Condition 4, below*).

The subject property has 60-feet of frontage on Starlight Court, where access is proposed. Lot 1 & Lot 2 are proposed to each have 30-feet of frontage from the centerline of a shared access driveway from Starlight Court. A shared access is proposed, utilizing the existing base of the original *Moondance Major Subdivision Road* "Moon Dance Drive", which had never been completed. The access may need to be brought up to County Standards for a shared driveway. The original plan called for a cul-de-sac for emergency vehicle turn-around. If variances are approved, the County Engineering Department is one of the referral agencies that will have 3-weeks to assess the Subdivision Plat and provide comments on access improvements.

Starlight Court was created with the Moondance Major Subdivision Phase 1 (MJ09-004). The Road is intended to be completed and accepted by the County for maintenance in accord with a subdivision improvements agreement recorded March 5, 2018 (Reception No. 701845). At this point in time, and until all improvements are complete it is considered a Private Road, classified as a Local Road. Starlight Court connects to G Road (County Road, County Maintained), as G Road extends west it transitions to 5th Street within City of Delta limits, and becomes a City Road, City Maintained.

The GHC Lateral ditch appears to run adjacent to the property and near or piped beneath the access drive. UVWUA will have the opportunity to review the subdivision as one of the referral agencies, and may have comments on how or if this access could be affected.

Proof of an adequate domestic water supply will need to be provided for both Lot 1 and Lot 2. The taps and meters must be installed prior to recording a Plat. The nearest fire hydrant is 0.5 miles from the proposed subdivision near 1900 and G Road.

A number of properties in the area have residential and agricultural uses, there is also an abutting gravel pit and a nearby airstrip. From a planning perspective, utilizing non-irrigated property for the development of homes follows the development pattern in the area. The portion that is proposed to be developed has some varying topography, and may require a large amount of grading work that could justify the need for a Stormwater discharge permit from CDPHE, when development occurs.

Generally, a variance requires that the Final Plat shall be annotated such that “No further subdivision of either lot created by this subsection is allowed. [Pursuant to Chapter 3, Section 1.A.3.d (Variations to Lot Size-Criteria)].” Because of the intent to further subdivide this property, the applicant has been made aware that in most cases we are not recommending no further subdivision in perpetuity, but applying a timeline to the restriction.

PROCESS

Variances are presented at a public hearing to the Board of Adjustments (BoA) for either Approval, Approval with Conditions, or Denial considering the required criteria (4) and findings (3). Staff finds that the parcel could be subdivided if the BoA finds that it meets the required criteria and findings. Lot sizes of properties in the surrounding area vary broadly, most are for residential uses. Therefore, the primary question is if the BoA finds that the hardship criteria/findings are met.

The LUC requires a unanimous vote of the BoA in order to pass. Once a decision has been made by the BoA, the process will either proceed with the Subdivision process if approved, or, if denied, the applicant will have 10 (calendar) days to appeal the BoA’s decision to the Board of County Commissioners (BoCC). If the BoA finds that variance(s) can be approved, then staff recommends four (4) conditions (listed below).

Pursuant the LUC, Minor Plat (2-lot subdivisions) are handled Administratively, which means that the Director of Community Development and Natural Resources makes a final decision. The Director cannot act on the Minor Plat until/unless the Variance is approved. The application checklist requested enough detail for the BoA to be able to make a fully informed decision on the variance. The Site Plan is attached (**Attachment**).

FINDINGS

The Land Use Code (LUC) includes four (4) criteria that must *all* be met for granting a variance to lot size. In addition, there are three (3) findings that must *all* be met to allow a variance of land use regulation. These criteria/findings are listed below with an initial assessment by staff:

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.*

The Land Use Code requires minimum setbacks (all structures, including septic) of 25 feet from the edge of ROW for all roads (public and private) and 15 feet from all interior property lines. In addition, a setback of 25 feet is required from the edge of any ditch, and 50 feet from the top of bank of a river, stream, or creek. The lots have more than adequate space to meet the setback requirements when developed. There are no existing structures. Access shall be built to County standards and permitted as residential access.

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).*

Both lots conform to the minimum dimension standards for width Lot 1 is approximately 400ft wide at its narrowest point, Lot 2 is approximately 400 ft wide at its narrowest point. Both Lot 1 and Lot 2 will meet the 30ft frontage, exactly, as designed, if the road is improved to County Road standards and named, there will be of 700ft of frontage for each lot.

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 Land Use Code calls for minimizing impact to irrigated ag lands. This property does not contain any irrigated ag land, there will be no impact. However, the ditch that bisects the property is utilized in ag operations and should not be encumbered.

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

If variance(s) is/are approved, the LUC requires a condition that restricts further subdivision. Staff recommends the BOA consider future development here and

make a decision on the plat note for at timeline restricting further subdivision where variances to lot size are required.

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.*

The question is if the BoA finds that holding to the strict regulations for A20 zoning “*would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the subject property.*” Staff finds that there are no physical constraints at the subject property, and that the fact that there is no ag land and that it is adjacent to small-lot residential, there is much opportunity to continue developing this portion of land.

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

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. Splitting this lot as proposed and designed would could be considered consistent with the surrounding properties.

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

Zoning is applied broadly, but we recognize that it may not fit every situation. The variance process affords an avenue to request a smaller lot if required criteria/findings can be justified (e.g., physical constraint, hardship). Staff interprets that the exception for a variation to lot size is to create a single exception to address a unique situation.

Findings/Hardship

The ability to approve any variance depends largely on defining *unnecessary/undue* hardship. There is no simple formula for determining, what is enough. Hence, the BOA holds a quasi-judicial hearing and renders a decision based on evidence presented.

Hardship should be more than mere inconvenience or a preference for a more lenient standard. An applicant should demonstrate how their situation compares to others

subject to the same restriction in the vicinity of their project. For example, 1) does strict compliance with the Code totally prevent improvement of the property in a manner which is reasonable, customary and consistent with other properties in the area; or (2) are there conditions peculiar to the property that cause practical difficulty in strict compliance with the ordinance, due to significant or unjustified expense in light of the scope of the project, destruction or demolition of attractive features of the property, or similar reasons?

An unnecessary hardship should be peculiar to the subject property, not general to the neighborhood or the applicant's personal circumstances. A hardship should not result from actions taken by the applicant or property owner (self-created). For example, the alleged practical difficulty was not created as a result of any action taken by the applicant or predecessors in interest of the property which was unlawful, or which could have been reasonably foreseen to create difficulty in complying with the ordinance for future improvements.

Another way of looking at variances is if granting it would create special privilege to this property that would not be granted to another property with similar conditions (size, shape) in the same zoning designation. Also, that because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of this Code is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.

Arguments that tend to be legally successful include the following:

1. That the particular physical surroundings, shape or topographical condition of the specific property involved would bring particular hardship upon the owner (not just a mere inconvenience), if the strict letter of the zoning regulation were to be carried out;
2. That the conditions upon which the petition for variance relates would not be applicable generally to other property within the same zoning district;
3. That the purpose of the variance is not based exclusively upon a desire to make more money out of the property;
4. That the alleged difficulty or particular hardship has not been created by any person presently having an interest in the property or by the applicant;
5. That the granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located;
6. That the proposed variance will not:
 - a. Impair an adequate supply of light and air to adjacent property;
 - b. Substantially increase the hazard from fire or other dangers to said property or adjacent property;
 - c. Otherwise impair the public health, safety, comfort, morals or general welfare of the inhabitants of the Town/City;
 - d. Diminish or impair property values within the neighborhood;

- e. Unduly increase traffic congestion in the public streets and highways;
 - f. Create a nuisance; or
 - g. Result in an increase in public expenditures.
7. That the variance requested is the minimum variance that will make possible the reasonable use of the land, building or structure.

CONDITIONS

If the BOA finds that the variance can be approved per the required findings, the BOA could apply conditions to address issues as part of the subdivision review. Staff has identified items that will be addressed as part of the subdivision, prior to accepting the Final Plat:

1. The applicant shall provide proof of an adequate domestic water supply for all lots. Domestic water (tap/meter) shall be installed prior to accepting/recording the Final Plat.
2. Access shall be constructed and accepted by the County prior to accepting/recording the Final Plat. A shared access maintenance agreement will need to be accepted for Lot 1 and Lot 2.
3. The final plat shall be annotated such that no further subdivision of either lot created by this subsection is allowed for twenty years from the date the plat is recorded. [Pursuant to Chapter 3, Section 1.A.3.d (Variations to Lot Size-Criteria)].
4. Building Envelopes shall be established and identified on the plat to avoid wetland areas. All wetland areas shall be protected from development and displayed on the Final Plat.

OTHER AGENCY INVOLVEMENT

The Development Application form and variance were submitted to Planning on October 4, 2022. A letter and checklist were sent to the applicant on October 17, 2022.

The variance process itself does not generally involve other agencies. However, a public notice was sent to neighboring property owners, interested parties, and posted on the subject property. When/If a subdivision is processed, it will be referred to adjacent property owners and agencies for a 21-day comment period which could affect the subdivision.

PUBLIC COMMENT

On December 5, 2022 Planning received a public comment from neighboring property owners Les and Melissa Hamilton. The preference expressed is that the property stay as a single parcel. These neighbors urge the BOA to include the stipulation that no further divisions will be made on the property, if the variance is approved.

Attached material list, in order as attached:

- Variance Application Materials
- Site Plan
- *Moondance Major Subdivision Phase I* (Reception No. 663761).
- *Moondance Major Subdivision Phase II* (Reception No. 701949).
- *Moondance Sketch Plan*
- Public Comment from Les Hamilton

☐ YES ☒ NO Do all of the lots within the subdivision have the minimum acreage (gross area)?

- UGA (7,500 Square Feet) ➤ RI/C (2.0 Acres)
- A-5 (5.0 Acres) ➤ A-20 (20.0 Acres)
- A-35 (35.0 Acres)

☒ YES ☐ NO Are all of the lots within the subdivision at least 75 feet wide (narrowest spot)?

☒ YES ☐ NO Do all the new lots within the subdivision have at least 30-foot of frontage onto the primary road?

☒ YES ☐ NO Does the lot design minimize disturbance or development of irrigated agricultural portions of a property, and does not interfere with wildlife habitat?

Explain the reason(s) for requesting a variance (Findings):

Describe unique conditions of the property: Could not do Phase 3 based on no prospect for buyers and it would not parcel economically

Explain the hardship created by not approving a variance (special circumstances):

Describe how the variance would not create a detriment to the public: The smaller lots in Phase 2 would not be effected by making 2 parcels out of the 24 Acres

Attach additional sheet(s) if necessary to explain/justify meeting the required criteria and findings.

ACKNOWLEDGEMENTS - Please initial each of the following acknowledging that you have read, understand and agree with these terms:

☒ The subdivision must conform to all other requirements of the Delta County Land Use Code (LUC)

☒ The size and configuration must be designed to minimize disturbance or development of irrigated agricultural portions of the property. To make this finding, a condition may be applied to limit development through application of a building envelope.

☒ The Final Plat must note that no further subdivision of either lot will be allowed.

☒ A variance for lot size is limited to a Minor Plat creating one additional lot.

☒ No variance shall be authorized unless the Board of Adjustments (BOA) finds all of the requirements laid out in Chapter 10, Section 2. Variances, and Chapter 3, Section 1.A are met

☒ Lots involved with granting a variance may not be subdivided further pursuant to Land Use Code Chapter 3, Section 1.A.3.d.

☒ The County may consider creation of new lots that do not conform provided specific findings are met: unique conditions (e.g., shape or topography), special circumstances (e.g., hardship), and conforms to other land use standards.

MOON DANCE SUBDIVISION

Legend

16784 GR

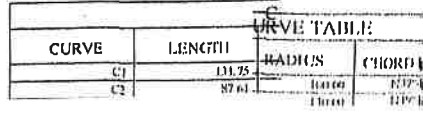


400 ft

Google Earth

©2021 Google





MOON DANCE MAJOR SUBDIVISION, PHASE 1

LOCATED IN THE N1/2 NE1/4, SECTION 21, T 15 S, R 95 W, SIXTH P.M.
FILE NO. MJ 09-004

DEDICATION

We, Moon Dance Development Company LLC, a Colorado Limited Liability Company and Phillip Serve, being the owners of the land described as follows:
Part of Parcels A and B of the Moon Dance Development Company LLC/Serve Boundary Agreement, according to the recorded plat thereof, located in the N1/2 NE1/4 of Section 21, T 15 S, R 95 W, Sixth Principal Meridian described as follows:
Beginning at a point on the North line of said Parcel A which is a point on the line common to Section 16 of said T 15 S, R 95 W and said Section 21 whence the Quarter Section Corner common to said Sections 16 and 21 bears N 89° 51' 37" W, 1064.79 feet; thence on the said North line of Parcel A the following two (2) courses: S 89° 51' 37" E, 85.78 feet to the Northwest corner of the County Road "G" right-of-way; and on the West line of the said "G" Road right-of-way S 00° 08' 23" W, 30.00 feet to the Southwest corner of the said "G" Road right-of-way; thence on the north line of said Parcels A and B which is the South line of the said "G" Road right-of-way S 89° 51' 37" E, 939.33 feet; thence on the arc of a circular curve to the right 46.69 feet, said curve having a radius of 240.00 feet and a long chord that bears S 84° 33' 12" W, 46.62 feet; thence N 89° 52' 23" W, 476.04 feet to the line common to said Parcels A and B; thence on the said line common to Parcels A and B the following two (2) courses: S 00° 08' 23" W, 33.77 feet; and on the arc of a tangent circular curve to the right 87.28 feet, said curve having radius of 130.00 feet and a long chord that bears S 19° 22' 28" W, 85.65 feet; thence S 06° 41' 39" E, 366.33 feet to the South line of said Parcel B; thence on the said South line of Parcel B the following two (2) courses: N 89° 53' 48" W, 249.71 feet to the East line of the NW1/4 NE1/4 of said Section 21; and on the said East line S 00° 05' 42" W, 300.25 feet to the said line common to Parcels A and B; thence on the said line common to Parcels A and B and the projection thereof the following six (6) courses: West, 30.81 feet; N 02° 42' 04" W, 356.89 feet; on the arc of a tangent circular curve to the right 11.89 feet, said curve having a radius of 70.00 feet and a long chord that bears N 02° 09' 57" E, 11.88 feet; N 07° 01' 59" E, 127.19 feet; on the arc of a tangent circular curve to the left 48.68 feet, said curve having a radius of 130.00 feet and a long chord that bears N 03° 44' 20" W, 48.59 feet; and N 14° 30' 39" W, 89.98 feet; thence S 75° 29' 21" W, 108.01 feet; thence on the arc of a tangent circular curve to the right 38.90 feet, said curve having a radius of 70.00 feet and a long chord that bears N 88° 35' 32" W, 38.40 feet; thence N 72° 40' 24" W, 137.46 feet; thence N 21° 00' 30" E, 181.11 feet to the point of beginning, containing 4.392 acres as described, in Delta County, Colorado, under the name of MOON DANCE MAJOR SUBDIVISION PHASE 1 MJ 09 - 004, have 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 do hereby dedicate and convey to the owners of lots within this subdivision and their invitees and licensees, but not to the public at large, the common access easements as shown hereon and hereby dedicate those portions of land labeled as easements for the installation and maintenance of public utilities as shown hereon and/or for those uses as shown.

IN WITNESS WHEREOF, Moon Dance Development Company LLC, a Colorado Limited Liability Company and Phillip Serve have subscribed their names this 16 day of Dec, A.D., 2012.

Moon Dance Development Company LLC, a Colorado Limited Liability Company.

By: James E. O'Neil, Jr. Managing Member

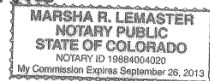
Phillip Serve Phillip Serve

State of Colorado
County of Delta, ss.

The foregoing instrument was acknowledged before me this 16 day of Dec, A.D., 2012 by James E. O'Neil, Jr. for Moon Dance Development Company LLC, a Colorado Limited Liability Company and Phillip Serve. My commission expires 9-26-13. My address is 1416 92nd Ave NW - 120, Delta, CO 81410.

Witness my hand and official seal.

Marsha R. Lemaster Notary Public



DELTA COUNTY SURVEYOR'S APPROVAL

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

Angela A. Whitmore County Surveyor 1/8/13 Date

DELTA COUNTY PLANNING DEPARTMENT APPROVAL

This plat of the above subdivision has been checked for compliance on this 8th day of January, 2013.

Bill Planning Department.

BOARD OF COUNTY COMMISSIONERS APPROVAL

The within plat of MOON DANCE MAJOR SUBDIVISION PHASE 1 MJ 09 - 004 is approved this 7th day of January A.D., 2013, 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.

By: Alan Eddins Chairperson Attest: Ann B. Eddins 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 12-31-11 upon all parcels of real estate described on this plat are paid in full. Dated this 10th day of DECEMBER A.D., 2012.

Cynthia L. Krueger, Deputy Treasurer of Delta County, Colorado

DELTA COUNTY CLERK AND RECORDER'S ACCEPTANCE

I hereby certify that this plat was filed for record in the office of the Clerk and Recorder of Delta County, Colorado.

Kimberly A. Wright County Clerk

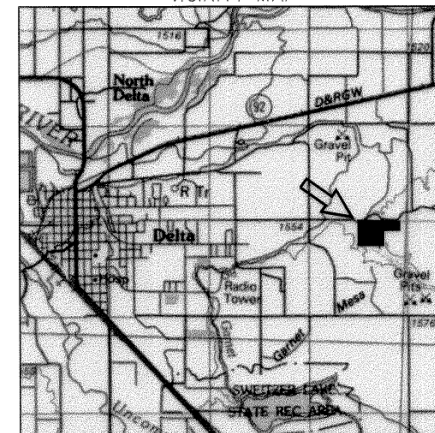
Plat Notes:

1. Outdoor lighting shall be hooded or shielded so that light is directed downward so as not to glare onto a neighboring property or dilute the night sky.
2. All development in Delta County is subject to the Delta County Right to Farm and Ranch Policy, adopted as Resolution 96-R-33 by the Board of Delta County Commissioners on December 23, 1996.
3. This property is located in an agricultural area. Normal agricultural activities will continue unabated in the surrounding areas and may not be a basis for a lawsuit, except in cases of proven gross negligence.
4. Colorado is an "open range" state. It is not the responsibility of a livestock owner to fence in livestock.
5. Certain covenants and other restrictions on the property in this Subdivision and other documents are being recorded in the Delta County Real Estate Records.
6. 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.
7. Lots within the subdivision have been approved for one, single family dwelling, including mobile homes if not otherwise restricted. Any further development on any lot will require the purchase of additional water taps and sewage disposal systems. Utilities must be constructed upon each lot. This restriction must be removed by formal action of the Board of Delta County Commissioners, prior to occupancy.
8. All new utilities must be placed underground on all parcels.
9. The minimum setbacks in this subdivision shall be 25 feet from front, side and rear lot lines and no less than 25 feet from the right-of-way of any public road.
10. The SCS soils report indicates that lots in this subdivision may have severe limitations for homes and septic systems on Lots 1 through 15 due to slopes, depth to bedrock, high shrink-swell potential, slow water movement, high water table, flood plain potential, saline soil, wetness, ponding, corrosivity, depth to soft bed rock, very slow permeability and depth to saturated zone. Engineered individual sewage disposal systems designed by a Professional Engineer registered in the State of Colorado may be required.
11. The mineral rights have been severed from the property. The owners of the mineral rights have the right to enter and remove the minerals from the property.
12. There is an active mining operation adjacent to this subdivision. There may be dust, noise, heavy truck traffic, etc associated with the operation during hours of production.
13. The undersigned owners, mortgagees and beneficiaries under deeds of trust, hereinafter known as dedicators, for themselves, their heirs, successors and assigns, covenant and agree with Delta County that no development, construction or improvements shall be permitted unless and until all required public improvements, as defined by the Subdivision Regulations of Delta County, are in place and accepted by Delta County or cash funds or other security satisfactory to the County for the improvements are provided to Delta County.

"G" Road Right-Of-Way Description

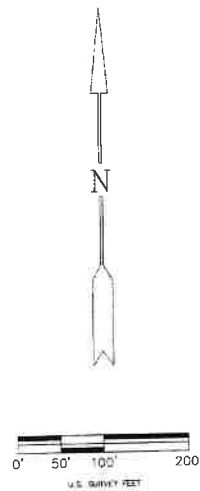
Part of Parcel A of the Moon Dance Development Company LLC/Serve Boundary Agreement, according to the recorded plat thereof, located in the N1/2 NE1/4 of Section 21, T 15 S, R 95 W, Sixth Principal Meridian described as follows:
Beginning at a point on the North line of said Parcel A which is a point on the line common to Section 16 of said T 15 S, R 95 W and said Section 21 whence the Quarter Section Corner common to said Sections 16 and 21 bears N 89° 51' 37" W, 1064.79 feet; thence on the said North line of Parcel A the following three(3) courses: S 89° 51' 37" E, 85.78 feet to the Northwest corner of the County Road "G" right-of-way; on the West line of the said "G" Road right-of-way S 00° 08' 23" W, 30.00 feet to the Southwest corner of the said "G" Road right-of-way; and on the South line of the said "G" Road right-of-way S 89° 51' 37" E, 102.98 feet to the TRUE POINT OF BEGINNING; thence on the North line of said Parcels A and B S 89° 51' 37" E 836.35 feet; thence on the arc of a circular curve to the right 46.69 feet, said curve having a radius of 240.00 feet and a long chord that bears S 84° 33' 12" W, 46.62 feet; thence N 89° 52' 23" W, 742.59 feet; thence on the arc of a tangent circular curve to the right 47.66 feet to the point of beginning, said curve having a radius of 240.00 feet and a long chord that bears N 84° 11' 03" W, 47.58 feet. The afore-described parcel contains 0.085 acres as described.
County of Delta,
State of Colorado.

VICINITY MAP

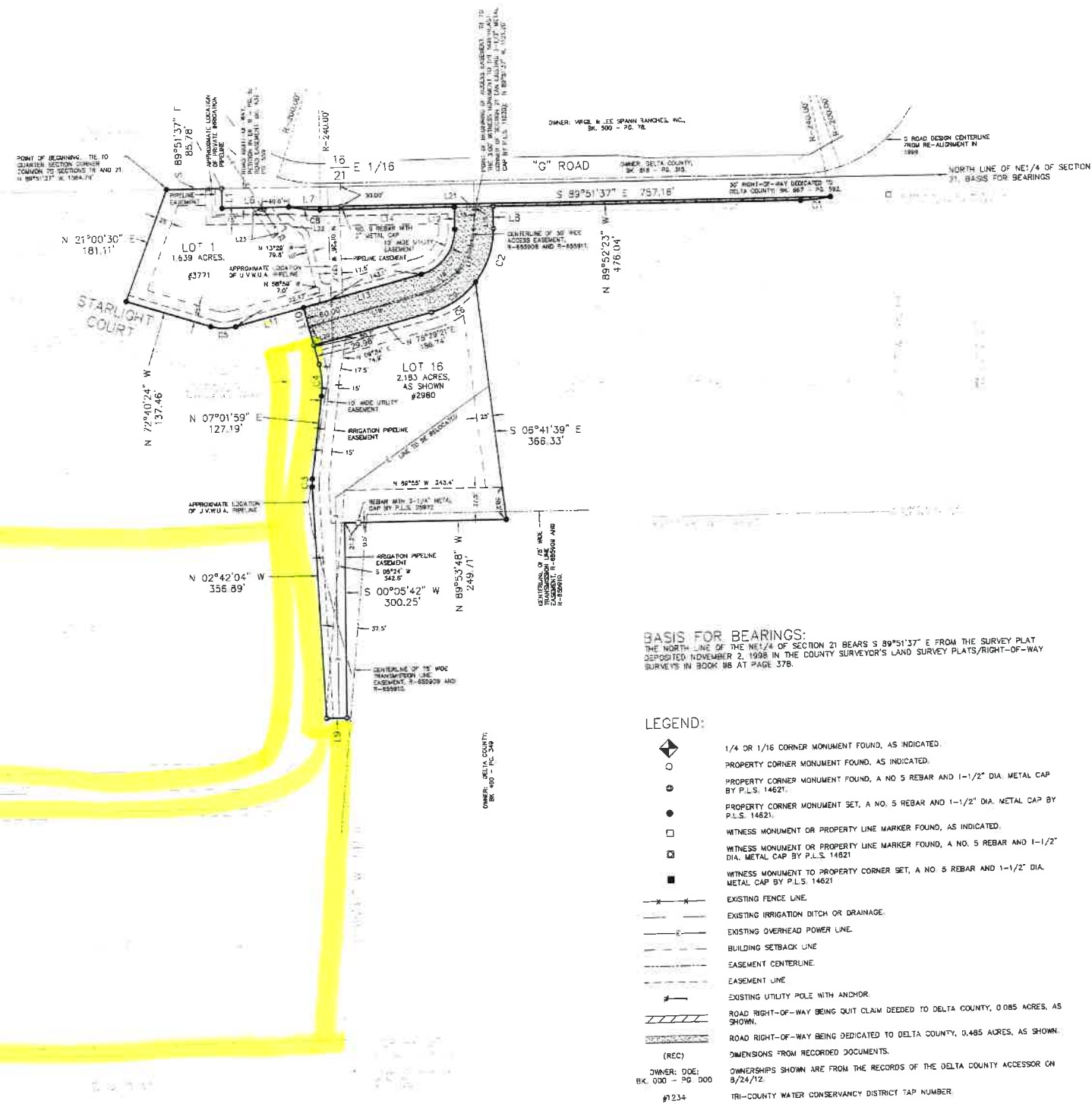


RECEPTION#: 663761, 01/08/2013 at 03:11:56 PM, 1 OF 2, R \$21.00 ANN EDDINS, DELTA COUNTY, CO CLERK AND RECORDER PLAT BK 0 PG 0

MOON DANCE MAJOR SUBDIVISION	Revised
PHASE 1	Scale
IN THE N1/2 NE1/4, SECTION 21,	Date
T 15 S, R 95 W, 6TH. P. M.	9/6/12
FILE NO. 09 - 004	Dm. By
MESSENGER & ASSOCIATES LLC	ujm
Austin, Co. 81410 (970) 836-3953	
Acct.	
No. 08 - 13.12	Sheet 1 of 2



WATER TAP NUMBER
FOR THE RESIDUAL OF
THE MOON DANCE
DEVELOPMENT CO. LLC
PROPERTY - #5332



BASIS FOR BEARINGS:
THE NORTH LINE OF THE NE 1/4 OF SECTION 21 BEARS S 89°51'37" E FROM THE SURVEY PLAT
DEPOSITED NOVEMBER 2, 1998 IN THE COUNTY SURVEYOR'S LAND SURVEY PLATS/RIGHT-OF-WAY
SURVEYS IN BOOK 88 AT PAGE 378.

LEGEND:

- 1/4 OR 1/16 CORNER MONUMENT FOUND, AS INDICATED.
- PROPERTY CORNER MONUMENT FOUND, AS INDICATED.
- PROPERTY CORNER MONUMENT FOUND, A NO. 5 REBAR AND 1-1/2" DIA. METAL CAP BY P.L.S. 14621.
- PROPERTY CORNER MONUMENT SET, A NO. 5 REBAR AND 1-1/2" DIA. METAL CAP BY P.L.S. 14621.
- WITNESS MONUMENT OR PROPERTY LINE MARKER FOUND, AS INDICATED.
- WITNESS MONUMENT OR PROPERTY LINE MARKER FOUND, A NO. 5 REBAR AND 1-1/2" DIA. METAL CAP BY P.L.S. 14621.
- WITNESS MONUMENT TO PROPERTY CORNER SET, A NO. 5 REBAR AND 1-1/2" DIA. METAL CAP BY P.L.S. 14621.
- EXISTING FENCE LINE.
- EXISTING IRRIGATION DITCH OR DRAINAGE.
- EXISTING OVERHEAD POWER LINE.
- BUILDING SETBACK LINE.
- EASEMENT CENTERLINE.
- EASEMENT LINE.
- EXISTING UTILITY POLE WITH ANCHOR.
- ROAD RIGHT-OF-WAY BEING QUIT CLAIM DECEDED TO DELTA COUNTY, 0.085 ACRES, AS SHOWN.
- ROAD RIGHT-OF-WAY BEING DEDICATED TO DELTA COUNTY, 0.485 ACRES, AS SHOWN.
- DIMENSIONS FROM RECORDED DOCUMENTS.
- OWNERSHIP SHOWN ARE FROM THE RECORDS OF THE DELTA COUNTY ACCESSOR ON 9/24/12.
- TRI-COUNTY WATER CONSERVANCY DISTRICT TAP NUMBER.

NOTE REGARDING RECORDED PLATS:
RIGHT-OF-WAY SURVEYS DEPOSITED IN BK. 88 AT PGS. 378 AND 379.
W/IN-RECORDED PLAT BY JTE ENGINEERING AND SURVEYING CO. DATED 9-21-81.
EXEMPTION PLAT - BK. 454 - PG. 1766.
EXEMPTION PLAT - BK. 454 - PG. 588.

RESEARCH REGARDING RECORDED ENCUMBRANCES IS TAKEN FROM A COMMITMENT FOR TITLE INSURANCE ISSUED BY THE FIRST AMERICAN HERITAGE TITLE COMPANY DATED NOVEMBER 11, 2008, NO. 936-H0222884-091-M.

TOTAL AREA OF SUBDIVISION PHASE 1 - 4.392 ACRES.
TOTAL NUMBER OF NEW LOTS - 2.
TOTAL AREA IN NEW LOTS - 3.822 ACRES.
TOTAL AREA IN NEW ROADS - 0.570 ACRES.

FUTURE DEVELOPMENT WILL BE BY PHASES AS FOLLOWS:
PHASE 2 - LOTS 2-6.
PHASE 3 - LOTS 7-15.
PHASE 4 - LOTS 17-19.

DEVELOPERS ARE:
MOON DANCE DEVELOPMENT COMPANY, LLC
1842 1550 ROAD, DELTA, CO. 81416.
(970) 874-9802.

PHILLIP SERVE
18794 "G" ROAD, DELTA, CO. 81416
(970) 974-5125.

RECEPTION# 863751, 01/09/2013 RE
03:11:56 PM 4 OF 5, R 521.00
ANAL EDDING DELTA COUNTY, CO
FILE NO. MJ 09 - 004
MESSENGER & ASSOCIATES, LLC
Austin, Co. 81410 (970) 835-3953

MOON DANCE MAJOR SUBDIVISION		Revised
PHASE 1		Scale
IN THE N 1/2 NE 1/4 SECTION 21.		1"=100'
T 15 S, R 95 W, SIXTH P. M.		Date
FILE NO. MJ 09 - 004		8/9/12
MESSENGER & ASSOCIATES, LLC		Drawn By
Austin, Co. 81410 (970) 835-3953		JTC
Acct.	No. 08 - 13.12	Sheet 2 of 2

NOTICE: According to Colorado law you must commence this legal action seven years after the date of the survey when there is a defect in the survey. In no event, may any legal action be commenced later than the date of the survey. The survey is not a warranty or guarantee of the accuracy of the survey. The survey is not a warranty or guarantee of the accuracy of the survey. The survey is not a warranty or guarantee of the accuracy of the survey.

NOTICE: No guarantee as to the accuracy of the information contained herein is either stated or implied. Unless the copy bears an original signature and seal of the registered Professional Land Surveyor, the survey is not a warranty or guarantee of the accuracy of the survey. The survey is not a warranty or guarantee of the accuracy of the survey. The survey is not a warranty or guarantee of the accuracy of the survey.

NOTICE: All lines, areas and distances shown herein are for graphical purposes only. They may not be relied upon to establish property boundaries.

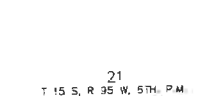
CERTIFICATE OF SURVEY
I, JESSIE J. MESSENGER, ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF HEREBY CERTIFY THAT THIS PLAT ACCURATELY REPRESENTS A SURVEY MADE BY ME OR PART OF THE N 1/2 NE 1/4 OF SECTION 21, T 15 S, R 95 W, SIXTH P. M., IN DELTA COUNTY, COLORADO, THAT SAID SURVEY IS IN ACCORDANCE WITH THE CURRENT "STANDARDS FOR LAND SURVEYS" OF THE STATE BOARD OF REGISTRATION, THAT THE SURVEY IS ACCURATE, REPRESENTED ON THIS PLAT, AND THAT THE SURVEY AND PLAT CONFORM TO ALL THE REQUIREMENTS OF THE COLORADO REVENUE STATUTES. THIS SURVEY IS NOT A WARRANTY OR GUARANTEE EXPRESSED OR IMPLIED.

Jessie J. Messenger
P.L.S. 14621
8/9/12

MEASURED			RECORD	
LINE	BEARING	DISTANCE		
L1	S 20°08'23" W	30.00'		
L2	N 88°15'28" E	53.13'	N 88°10'38" E	52.97'
L3	N 89°02'04" E	88.13'		88.84'
L4	S 89°51'17" E	88.18'		87.82'
L5	N 00°08'23" E	30.00'		
L6	S 89°51'17" E	102.98'		
L7	S 89°51'17" E	79.19'		
L8	S 00°08'23" W	33.77'		
L9	WEST	30.81'		
L10	N 14°30'38" W	89.88'		
L11	S 79°28'21" W	108.01'		
L12	S 00°08'23" W	33.78'		
L13	S 79°28'21" W	186.74'		
L14	S 89°52'23" E	206.55'		
L15	S 02°48' W	9.5'		
L16	S 09°24' W	55.0'		
L17	S 27°50' W	44.6'		
L18	S 58°27' W	45.0'		
L19	S 74°24' W	182.8'		
L20	S 68°02' W	14.9'		
L21	S 89°52'23" E	80.00'		
L22	N 49°07' W	28.1'		
L23	S 19°27' E	47.0'		
CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING
C1	246.00'	46.69'	46.52'	S 84°33'12" W
C2	30.00'	89.28'	85.55'	S 19°23'28" W
C3	70.00'	11.86'	11.86'	N 02°09'57" E
C4	130.00'	48.88'	48.59'	N 03°42'20" W
C5	70.00'	38.90'	38.40'	N 88°45'32" W
C6	130.00'	83.68'	82.24'	S 57°02'57" W
C7	70.00'	92.08'	85.58'	S 37°48'52" W
C8	240.00'	47.66'	47.58'	N 84°11'03" W
C9	130.00'	170.86'	158.91'	S 37°48'52" W

CONTROL DIAGRAM

RE-ESTABLISHED CORNER POSITION
FROM EXISTING MONUMENTS AND
PLATS DEPOSITED IN BK. 88 AT
PGS. 378 AND 379.



REBAR WITH 1-1/2" DIA. CAP
BY P.L.S. 11550 AS WITNESS
MONUMENT.

Case PLN22-159/O'Neal

1 message

'LES HAMILTON' via Planning <planning@deltacounty.com>

Mon, Dec 5, 2022 at 1:02 PM

Reply-To: LES HAMILTON [REDACTED]

To: planning@deltacounty.com, [REDACTED]

Subject: Case PLN22-159/O'Neal

This is Les and Melissa Hamilton at [REDACTED] [1825 Road](#), the above mentioned project borders our property. In light of the code regulations we would prefer it stay as one parcel. In the event that the board decides to grant the proposal we would very strongly ask you to place a stipulation on the request that no further divisions will be made on this property.

Thank you for your time and consideration in this matter.

Les and Melissa Hamilton
12/05/2022

Sent from my iPad



DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

STAFF REPORT

Board of Adjustment

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

Thursday, December 15, 2022 @ 5:30 p.m.

PLN22-162/Rice

Consider a variance to reduce the required lot size to allow one, 2-acre lot in the A20 zoning designation. The subject property is a 40-acre parcel located at 20520 and 20652 Brimstone Road, Cedaredge (Parcel ID: 319511400017).

PROJECT INFORMATION:

Property Owner: Shane C. and Maren B. Rice
Applicant: Shane Rice
Site Address(s): 20520 and 20652 Brimstone Road, Cedaredge
Parcel ID/Acct: 319511400017/ R004328
Parcel Size: 40.0 Acres
Zoning: A20

Report prepared by: Angie Kemp, Planner I

RECOMMENDATION:

Staff recommends that the Board of Adjustments (BOA):

- a) Consider required variance criteria and findings as they apply to PLN22-162 (Rice);
- b) Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) to subdivide a 40-acre parcel into two (2) lots in the A20 zoning designation located south of Brimstone Road, Cedaredge (Parcel 319511400017/Rice):
 - a. Lot 1 (2.0 Acres +/-)
 - b. Lot 2 (38.0 Acres +/-)

- c) Authorize the Director to prepare a Resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

SUMMARY:

Mr. and Mrs. Rice, applicants, own a 40.0-acre parcel located at the southwest corner of Brimstone Road and Ward Creek Road. The applicants are seeking a 2-lot subdivision (Minor Plat) creating Lot 1, a 2-acre lot and Lot 2, a 38-acre lot.

As designed, Lot 1 is intended for residential development, Lot 2 contains an existing residence. Both lots would be considered buildable lots through this subdivision and need to meet standards of the Land Use Code such as proof of water, access, and utilities (*See Discussion, below*). There is an existing unpermitted access and there is no documentation of addressing assigned to a shed in this location. Septic was issued based on this address.

Zoning for this parcel is A20 with A35 zoning abutting to the south. The majority of development in the area consists of larger agricultural/residential parcels. The minimum acreage for subdividing this parcel is 20 acres per lot. As a 40-acre parcel, this property could be divided into two 20-acre lots that meet the zoning. Based on a rough measurement using GIS, Ward Creek divides the property with about 18 acres west of the creek and 22 acres east of the creek.

As proposed, Lot 1 does not meet the minimum acreage set forth in the LUC for the A20 zone. Therefore, a variance is required before this subdivision can be processed, as proposed.

Staff finds that splitting this parcel using Ward Creek as the boundary line is a better planning solution, and would be more in keeping with the zoning and development pattern for this area. However, that might still require a variance if it is determined (through a survey) that one lot is smaller than 20 acres. If the BoA approves a variance for the 2-acre lot, then the BoA might want to consider restricting any further subdivision (in perpetuity, unless rezoned) since they are getting the number of lots allowed by this zoning designation.

DISCUSSION:

Mr. and Mrs. Rice, owners of a 40.0-acre parcel are seeking a 2-lot subdivision (Minor Plat) to allow a family member to own 2 acres and build a residence in a location where OWTS/septic has already been sized for that future project. The subject property has frontage on Brimstone Road and Ward Creek Road (County roads, County maintained). Access is existing for both properties off of Brimstone Road:

Lot 1. Consists of two (2) acres located along the west property line. An address has been assigned (20520 Brimstone Road) for a “shed” (as labeled on the site plan). The owners have installed services preceding development, including OWTS (Permit No. 120-21) and domestic water (Coalby tap No. 561). There is

an existing driveway (Access Permit No.12785) off Brimstone Road. The proposed homesite is located within irrigated agricultural land west of Ward Creek.

Lot 2. Consists of 38 acres with an existing residence (20652 Brimstone Road) and auxiliary buildings east of Ward Creek. The access is existing but no permit has been found. This residence has individual domestic water (Well Permit No. 232345) and OWTs/septic (Permit No. 137-01). There is a small portion of irrigated land east of Ward Creek and other irrigated lands west of Ward Creek.

If variances are approved, County Engineering will assess Right-of-Way (RoW) dedication requirements that would be proportional to the request. Brimstone Road terminates about 0.5 miles west of the parcel which may affect those RoW requirements, since the road leads into private property.

The residential access driveway for the existing home (Lot 2) will need to be permitted, as no permit has been located for that driveway. The current address was assigned (placeholder) during a county-wide re-addressing in 2003 and there is no prior documentation. Staff has requested the owners provide any information that justifies this is a permanent address.

The proposed Lot 1 is on the other side of Ward Creek from where an existing residence is located on Lot 2. A natural split location would be Ward Creek. However, because they are only interested in creating 2-acres for Lot 1, the irrigated portion that remains with Lot 2 has no access on the west side of Ward Creek. If access is proposed to be shared for this purpose, then an easement for accessing that agricultural portion will need to be established prior to recording the subdivision. For a shared access, a maintenance agreement between Lots 1 and 2 will need to be submitted.

Ward Creek runs generally through the middle of the property. From the northern center, winding toward the southwest corner. The creek is tree-lined, and also contains a large number of rocky areas. Most of the eastern side of the creek continues as tree-covered, rocky, except for the section that has been cleared for the existing home and outbuildings (20652 Brimstone).

Proof of an adequate domestic water supply has been provided for both Lot 1 and Lot 2. There is a domestic well (Permit No. 232345) located near the home on Lot 2 and a Coalby Domestic Water Company, Inc. water tap (No.561) for Lot 1.

The homesite at 20520 Brimstone Road already has services and some development, the access and address were issued in 2021. Because the Land Use Code calls for avoiding or minimizing impact to irrigated ag land, the non-irrigated section of the property would have been a better option for development from a Planning perspective, west of Ward Creek, east of irrigated land. At this point in the development, the addition of a residence would be considered an impact to agricultural operations on that build

site, because the area surrounding the site is irrigated. The total impact would include the establishment of access to the irrigated portion across Ward Creek for Lot 2.

Generally A variance requires that the Final Plat shall be annotated such that no further subdivision of either lot created by this subsection is allowed. [Chapter 3, Section 1.A.3.d LUC]. The applicant has been made aware that we have been applying a timeline to the restriction. However, there could be an exception for a clustered subdivision or if the property is rezoned. The intent is that there are no further exceptions (e.g., variances).

If the BoA approves a variance for the 2-acre lot, then staff feels that it would be appropriate to restrict any further subdivision (in perpetuity, unless rezoned) since they would be getting the number of lots allowed by this zoning designation.

PROCESS

Variances are presented at a public hearing to the Board of Adjustments (BoA) for either Approval, Approval with Conditions, or Denial considering the required criteria (4) and findings (3). Staff finds that the parcel could be subdivided if the BoA finds that it meets the required criteria and findings. Lot sizes of properties in the surrounding area vary broadly, most are for ag-residential uses. Therefore, the primary question is if the BoA finds that the hardship criteria/findings are met.

The LUC requires a unanimous vote of the BoA in order to pass. Once a decision has been made by the BoA, the process will either proceed with the Subdivision process if approved, or, if denied, the applicant will have 10 (calendar) days to appeal the BoA's decision to the Board of County Commissioners (BoCC). If the BoA finds that variance can be approved, then staff recommends three (3) conditions (listed below).

Pursuant the LUC, Minor Plat (2-lot subdivisions) are handled Administratively, which means that the Director of Community Development and Natural Resources makes a final decision. The Director cannot act on the Minor Plat until/unless the Variance is approved. The application checklist requested enough detail for the BoA to be able to make a fully informed decision on the variance. The Site Plan is attached (**Attachment**).

FINDINGS

The Land Use Code (LUC) includes four (4) criteria that must *all* be met for granting a variance to lot size. In addition, there are three (3) findings that must *all* be met to allow a variance of land use regulation. These criteria/findings are listed below with an initial assessment by staff:

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.*

The Land Use Code requires minimum setbacks (all structures, including septic) of 25 feet from the edge of ROW for all roads (public and private) and 15 feet from all interior property lines. In addition, a setback of 50 feet is required from the top of bank of Ward Creek. The existing structures all meet the setback requirements and there is adequate space to construct a residence on Lot 1 while complying with these requirements.

Access for Lot 2 shall be built to County standards and permitted as residential access. Access for Lot 1 is permitted.

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).*

Both lots conform to the minimum dimension standards for width Lot 1 is over 100 feet wide, Lot 2 is approximately 1,200ft wide at its narrowest point. Both Lot 1 and Lot 2 will meet the 30ft frontage, as designed. Lot 1 will have approximately 85 feet of frontage on Brimstone Road, while Lot 2 will have about 1,200 feet of frontage on Brimstone Road and 1,300 feet of frontage on Ward Creek Road.

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 Land Use Code calls for minimizing impact to irrigated ag lands. This property includes a portion of irrigated land, but homesites are already established, so impact would be minimal.

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

If variance(s) is/are approved, the LUC requires a plat note that restricts further subdivision (Condition No. 1).

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.

The question is if the BoA finds that holding to the strict regulations for A20 zoning “*would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the subject property.*” Staff finds that the possible physical constraints restricting use of this lot is the fact that Ward Creek cuts through the general “middle” of the 40 acres, dividing the two homesites naturally.

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

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. Splitting this lot as proposed and designed would could be considered consistent with the surrounding properties.

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

Zoning is applied broadly, but we recognize that it may not fit every situation. The variance process affords an avenue to request a smaller lot if required criteria/findings can be justified (e.g., physical constraint, hardship). Staff interprets that the exception for a variation to lot size is to create a single exception to address a unique situation.

Findings/Hardship

The ability to approve any variance depends largely on defining *unnecessary/undue* hardship. There is no simple formula for determining, what is enough. Hence, the BOA holds a quasi-judicial hearing and renders a decision based on evidence presented.

Hardship should be more than mere inconvenience or a preference for a more lenient standard. An applicant should demonstrate how their situation compares to others subject to the same restriction in the vicinity of their project. For example, 1) does strict compliance with the Code totally prevent improvement of the property in a manner which is reasonable, customary and consistent with other properties in the area; or (2) are there conditions peculiar to the property that cause practical difficulty in strict compliance with the ordinance, due to significant or unjustified expense in light of the scope of the project, destruction or demolition of attractive features of the property, or similar reasons?

An unnecessary hardship should be peculiar to the subject property, not general to the neighborhood or the applicant’s personal circumstances. A hardship should not result

from actions taken by the applicant or property owner (self-created). For example, the alleged practical difficulty was not created as a result of any action taken by the applicant or predecessors in interest of the property which was unlawful, or which could have been reasonably foreseen to create difficulty in complying with the ordinance for future improvements.

Another way of looking at variances is if granting it would create special privilege to this property that would not be granted to another property with similar conditions (size, shape) in the same zoning designation. Also, that because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of this Code is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.

Arguments that tend to be legally successful include the following:

1. That the particular physical surroundings, shape or topographical condition of the specific property involved would bring particular hardship upon the owner (not just a mere inconvenience), if the strict letter of the zoning regulation were to be carried out;
2. That the conditions upon which the petition for variance relates would not be applicable generally to other property within the same zoning district;
3. That the purpose of the variance is not based exclusively upon a desire to make more money out of the property;
4. That the alleged difficulty or particular hardship has not been created by any person presently having an interest in the property or by the applicant;
5. That the granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located;
6. That the proposed variance will not:
 - a. Impair an adequate supply of light and air to adjacent property;
 - b. Substantially increase the hazard from fire or other dangers to said property or adjacent property;
 - c. Otherwise impair the public health, safety, comfort, morals or general welfare of the inhabitants of the Town/City;
 - d. Diminish or impair property values within the neighborhood;
 - e. Unduly increase traffic congestion in the public streets and highways;
 - f. Create a nuisance; or
 - g. Result in an increase in public expenditures.
7. That the variance requested is the minimum variance that will make possible the reasonable use of the land, building or structure.

CONDITIONS

If the BOA finds that the variance can be approved per the required findings, the BOA could apply conditions to address issues as part of the subdivision review. Staff has

identified items that will be addressed as part of the subdivision, prior to accepting the Final Plat:

1. The Final Plat shall be annotated such that no further subdivision of either lot created by this subsection is allowed unless the property is rezoned.
2. The applicant shall submit an Irrigation Plan to Delta County Planning. The irrigation plan shall describe the ditch infrastructure, easements, and maintenance that will be required to provide for continued water flow and delivery to the lots in the subdivision, along with the allocation of maintenance and operational responsibilities. If existing irrigation infrastructure on the subject property is owned, controlled, or operated by a ditch company, or otherwise connected to ditch company infrastructure, then the irrigation plan shall be approved by the ditch company.
3. The owner shall prepare a shared access agreement and easement, for consideration by the Planning Director, to be recorded with the subdivision so that Lot 2 owners can access the other portion of their agricultural field utilizing Lot 1 access.

OTHER AGENCY INVOLVEMENT

The Development Application form and fees were submitted on October 4, 2022. A letter and checklist were sent to the applicant on October 17, 2022.

The variance process itself does not generally involve other agencies. However, a public notice was sent to neighboring property owners, interested parties, and posted on the subject property. No comments have been received as of December 8, 2022. When/If a subdivision is processed, it will be referred to adjacent property owners and agencies for a 21-day comment period which could affect the subdivision.

Attached material list, in order as attached:

- Variance Application Materials
- Site Plan

This piece of acreage sits on a knoll that is at approximately a 25 degree grade. Due to the nature of this hill it makes it virtually impossible to grow hay or to use for grazing. This piece has not produced anything substantial in recent history except weeds. Decree water is available to the adjacent pasture, however with continued decreases in allocated/decreed water it is better use of the water (when it's available) to use it on the lower area. Additionally, there are no irrigation ditches that could direct water onto this piece, as it sits above the nearest irrigation ditch. Essentially this piece of our property isn't of much use other than storage or a house site.

This site is on a county road, that is essentially one way in and out. Brimstone Rd. west of Ward Creek is not a heavily trafficked road. There is already an existing, and county approved driveway/access on this piece of property. The larger piece of the property where a house would be built is ~200' from the Brimstone Rd. As such, where it would sit would not create a detriment to the public. Brimstone Rd. currently has multiple properties that are less than 20 acres, as does up and down Ward Creek Rd.

- WATER TAP
EXISTING
- ELECTRICITY
EXISTING
- SEPTIC
EXISTING
- SHED
EXISTING
- DRIVEWAY
25'

2 HIGH PARK RD

BRIMSTONE RD

WAY

25'
TODD
WATER DITCH
TAP

POWER

20520 BRIMSTONE RD

SHED
HOUSE

SEPTIC
FENCE

20652 BRIMSTONE RD

KEELE
RD

RICE SHANE C
Parcel ID: 319611400017
Tax Acct: R004328
Tax Acres: 40

← 1300.27' →

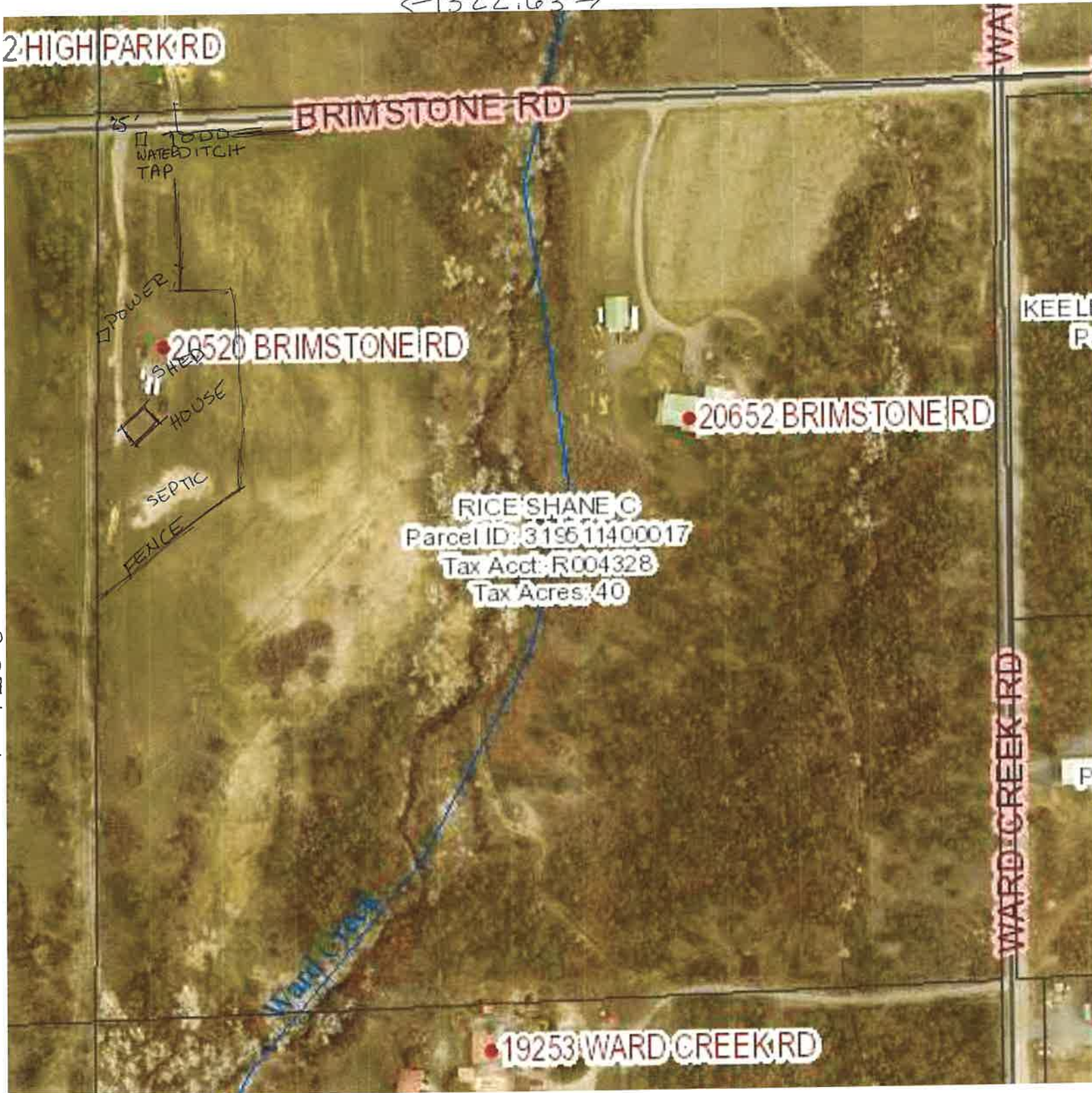
WARD CREEK RD

19253 WARD CREEK RD

← 1330.35' →



← 1268.00' →



HIGH
PARK
RD

19522 HIGH PARK RD

20527 BRIMSTONE RD

←375'→

BRIMSTONE RD

20436 BRIMSTONE RD

EXISTING GRAVEL DR

←1268.00'→

←25'→

PROPOSED
ACCESS

←369'→

50X50'

PROPOSED

TANK
PROPOSED
FIELD

←525'→
TO CREEK

←1322.63'→

WARD CREEK

←1330.35'→

73730
SHED
TANK

TANK
FIELD

20652

WELL

PROPANE

←1380.27'→

WARD CREEK





STAFF REPORT

Delta County Board of Adjustment

**Delta County Administrative Building
560 Dodge Street, Delta, CO 81416**

Wednesday, December 15, 2022 @ 5:30 p.m.

2022 Land Use Code Update

**Work Session to consider Board of County
Commissioner change to the certified 2022 Land
Use Code Update relating to Lot Size Variances.**

RECOMMENDATION:

Staff recommends that the Board of Adjustment consider Lot Size Variance criteria as part of the 2022 Land Use Code Update, and provide a recommendation to the Planning Commission.

Report prepared by: Carl P. Holm, AICP, Planning Director

SUMMARY:

On December 7, 2022 the Board of County Commissioners (BoCC) held a public hearing to consider the certified copy of the Land Use Code. The BoCC generally supports the work presented by the Planning Commission, with one exception. There is a desire to retain the lot size variance. The BoCC requested having the PC report on one item (lot size variance) for their February 7, 2023 meeting, which exceeds the 30-day requirement in State Statute.

Generally, the BoCC recognizes that the lot size variance should be an exception rather than the rule, and that adding residential zoning designations adds to the tool box. However, the number of variances in the past year (50) indicates that the zoning map needs work, and until that happens, they want to keep the option for processing lot size variances. They also recognize that a number of variances could be denied, and that other options (clustered subdivision, rezone) should be considered before a lot size variance.



That said, revising the criteria for a lot size variance could help better define acceptable exceptions to provide more certainty, which was an issue expressed by the local surveyors. The PC would like BoA recommendations on developing criteria for lot size variances as presented in the Discussion below.

The PC Chair requested one member of the Board of Adjustment to attend the December 14th PC Work Session so they could consult the body that considers lot size variances. Staff will set the next PC meeting (January 11th) as a public hearing on the LUC. Staff will develop draft language to consider at that public hearing with the PC. The PC could either finalize a report to the BoCC or continue the public hearing prior to the February 7th timeline.

DISCUSSION:

There are two aspects to the lot size variance change:

- a. Delete the highlighted language (below) from the 2022 certified LUC [Chapter 1, Section 6(C)(3)(a)(2)(a)] – Board of Adjustment:

3. Powers and Duties.

- a. *Powers.* The Board of Adjustment shall have all authority conferred upon it by this Code and C.R.S. § 30-28-101, *et seq.*, including the following functions:
 - 1) Appeal of Administrative Determination or Decision.
 - 2) Special Exception (Variance) to:
 - a) Development Standards in this Code; **however, there shall be no variance to lot size.**
 - b) Development Standards in the DELTA COUNTY ROADWAY DESIGN AND CONSTRUCTION STANDARDS.

- b. Add language establishing criteria for variations to lot size. The following excerpt was deleted from the 2021 LUC [Chapter 3, Section 1(A)(3)]:

3. **Variations to Lot Size.** The County may approve the creation of new lots that do not conform to the requirements of Table 3.a, *Lot Dimensions*, provided that:
 - a. The subdivision conforms to all other requirements of this Code;
 - b. The new lots have at least the minimum dimensions set out in the standards for the UGA zoning district;
 - c. 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; and
 - d. The final plat is annotated such that no further subdivision of either lot created by this subsection is allowed.

Table 3.a has minimum standards of 7,500 sf lot size, 75 ft lot width, and 30 ft lot frontage for the UGA zone. It should be noted that the UGA zone changes to an



overlay so, at a minimum, reference to a zoning designation in subsection 3.b needs to be amended. For example, referencing RES-2.5 would change the minimum lot size to 2.5 acre. This would restrict subdividing a 4-acre lot in the A5 zone.

Subsection 3.d is worded to restrict further subdivision in perpetuity. Through implementation, it was determined that perpetuity was not the intent. Therefore, this has been implemented as a 10-year restriction. This could be worded as a plat note that: *"There shall be no further subdivision of either lot for 10 years, unless the lot is rezoned."* Another option could be to restrict an additional lot size variance (versus further subdivision).

Another issue that came up since adopting the LUC (January 2021), is where a remainder parcel has enough acreage to meet the state subdivision exemption – where *all* parcels exceed 35 acres. Staff recommends adding criteria for this situation. This could include adding language to the plat note, such as: *"There shall be no further subdivision of either lot for 10 years, unless the lot is rezoned. This restriction shall not apply to division of lands that qualify as exempt from subdivision regulations per State Statue."*

Subsection 3.d *"either lot"* implies that a lot size variance is limited to a 2-lot subdivision. Staff recommends clarifying that a variance applies to a 2-lot subdivision. It is not intended as a path around zoning. For example, we have received applications to reduce the lot size for multiple lots to facilitate a larger (3+ lots) subdivision.

We have received applications where both resulting lots are smaller than the zoning requires. For example, a request to subdivide a 15-acre parcel in the A20 zone. Staff would like to discuss possible criteria that the lot size variance be limited to one lot, meaning the other lot must meet the minimum lot size per zoning. For example, a parcel/lot in the A20 zone would need to have more than 20 acres where one lot is less than 20 acres but meets the minimum lot size noted above, and the other lot is at least 20 acres. This would significantly limit cases where a variance could meet the criteria.

There was a suggestion to map each variance that is approved (e.g., changing the color on the zoning map). This would allow us to visually see concentration areas that could suggest a rezoning may be warranted.