

**City of Stanley
Special Meeting
March 19, 2014**

The Council Meeting is called to order at 3:39 p.m. in the Stanley City Office.

IN ATTENDANCE FOR THE CITY:

Mayor Herb Mumford, Council President Botti by phone, Councilmember Hadzor, Councilmember Gadwa, Councilmember Sentz. City Clerk was not present, was at the Mountain West Conference.

DISCUSSION:

The Council reviewed the Findings of Fact and Conclusions of Law drafted by the city attorney. The council expressed their comments and questions on the draft. Once all the comments and questions were identified the council moved to Executive Session under IC 67-2345 (1) (f) to discuss with legal counsel by phone at 4:04 p.m. Roll call vote was called by Council President Botti, Mayor Mumford - here, Councilmember Hadzor - here, Councilmember Gadwa - here, Councilmember Sentz - here.

At the conclusion of the call at approximately 4:15 p.m., Councilmember Gadwa moved to go into regular session, Councilmember Hadzor seconds the motion, all approved. Motion passes.

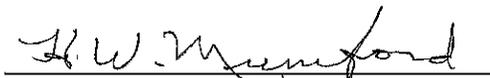
Motion made by Councilmember Gadwa to approve Findings of Fact as amended by our attorney based on all input with the Mayor having final approval of all changes, Council President Botti seconds the motion, all approved. Motion passes.

ADJOURNMENT:

The meeting is adjourned at 4:18 p.m.

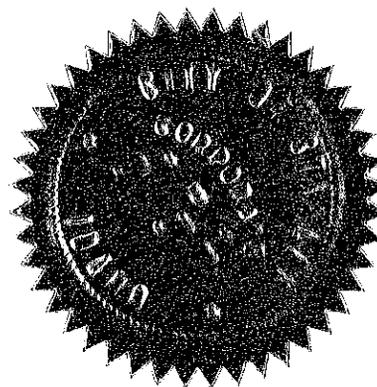
List of attachments:

- Findings of Fact and Conclusions of Law


 Herb Mumford, Mayor

ATTEST:

 City Clerk, Cari Tassano



APPROVED

BEFORE THE CITY COUNCIL OF THE CITY OF STANLEY, IDAHO

In the matter of:)	
)	
)	
BUILDING PERMIT 831,)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
Rebecca and Thomas Arnold,)	
)	
Applicants.)	
_____)	

This matter came before the City Council of the City of Stanley, Idaho, for consideration on February 13, at a duly noticed public meeting. Having reviewed the application and associated information, the City Council hereby issues the following findings of fact and conclusions of law. The application is denied.

I. FINDINGS OF FACT

A. Project Summary

This application is for the issuance of building permit #831 pertaining to Lot 5 of the Mountain View Subdivision¹. This is one of several building permits issued for development of this particular lot, which is subject to the approved preliminary and final plat of the Mountain View Subdivision; all on file at the City. In most respects this application mirrors the already issued and still valid Building Permit 789², which permits the applicant to proceed with excavation, grading and fill material and for the construction of an access road on Lot 5. This building permit is valid until May, 2014.

As depicted on the approved plat for the Mountain Cove Subdivision, Lot 5 has clearly been granted access on its north-west side via an access road depicted along the western edge of

¹ Attached. The preliminary plat for the Mountain View subdivision was approved at a meeting of the City Council on September 13, 2006. The final plat for the Mountain View subdivision was signed by the then-City Clerk on April 11, 2007.
² Attached. Building Permit 789 is essentially a reissuance of building permits 690 – 690-R2

Lot 6. This is further reiterated in prior building permit approvals (BP # 690, 690R-1³, 744, etc) wherein access and utilities are clearly depicted along this western edge.

The Applicant now requests a permit to construct an access road accessing the eastern edge of Lot 5 from the west end of Ace of Diamonds street. This is not depicted on the approved Mountain View Plat and an application to amend the plat has not been submitted. Further, there is a considerable change in elevation (Steep downslope) between Ace of Diamonds and Lot 5. The applicant contends that merely because she is permitted to build an access road on *her property*, she is entitled to place great quantities of fill material on the City's right of way changing the slope of Ace of Diamonds as an incidental right. Further, the Applicant submitted the application without any engineered plans pertaining to fill material applicable to public works road projects, slope stabilization, drainage, etc. thereby potentially jeopardizing the public health and safety.

Incidental to this Application is the fact that the Applicant has already begun construction placing great amounts of fill into the City Right of Way without prior approval.

B. Site Data

1. Location

The area to which this project applies is the Mountain View subdivision, approximately 4.88 acres located south of Highway 21 and east of Benner Street.

³ Permit 690 was approved, with conditions, at a public meeting of the City Council of the City of Stanley on November 8, 2006. Permit 690 was renewed, thus becoming designated as 690R-1 at a public meeting of the City Council on November 14, 2007. Building permit 690R-2 was approved on or about May 11, 2010. That permit sought the following work:

No structure; excavation, grading and fill material, construction of Mountain View Subdivision Utilities (underground); silt fencing and/or retaining walls ...; *construction of access roads; utilities, etc. to be installed per preliminary plat approval for Mountain View Subdivision.*

Emphasis added. Permit 789 was approved (and renewed as 789-R2 at the May 12, 2011) which encompassed the work sought to be accomplished in 690R-2. Building Permit 789-R2 is valid until May 12, 2014.

2. Current use (including zoning)

The land is a platted subdivision consisting of seven lots located within the Commercial and Residential A Districts. No homes or structures of any kind currently exist on the property. Some road construction along with grading, excavation, fill work, underground utilities, and retaining walls has been started, but is as yet uncompleted. Silt fencing has also been placed along the creek to keep construction spoils and other materials out of wetland areas.

3. Public uses

There are no public uses on this property.

4. Public services

The area is served by the Sawtooth Valley Rural Fire District, Stanley-area volunteer E.M.S., the Salmon River Clinic, and the Stanley Sewer Association.

5. Special features

The subdivision is partially impacted by a FEMA "A" flood zone. The subdivision is characterized by slopes that may exceed 15 per cent and this particular slope from Ace of Diamonds is quite steep in nature although the Applicant has not provided this information.

F. Responses from Affected Jurisdictions and/or Agencies

None.

G. Information and Testimony Submitted by the Public

None.

H. Additional Information Submitted by the Applicant

In response to the City's enforcement efforts to require the Applicant to remove the fill material placed on the City's right of way, the Applicant submitted numerous emails and correspondence essentially claiming she had the right to place the access road wherever she

wished to do so and could modify adjacent properties including the City's as needed as an incidental right in order to complete the access road with proper grades etc.

Specifically, the Applicant did not provide any information demonstrating that should she be permitted to build an access road connecting to Ace of Diamonds, necessitating modifying the City's right of way; that said construction would be accomplished pursuant to established public works standards for municipal roads. All of these emails, correspondence, etc. are on file with the City.

I. Relevant Standards

1. Constitutional and statutory standards

The authority to issue building permits of the type here is grounded in the City's constitutional and statutory powers to protect the health, safety, and welfare of its inhabitants. *See, e.g.*, Idaho Const. art. XII, § 2; I.C. § 50-301. It should be note that the issuance or denial of a building permit does not constitute an application for a subdivision, variance, special use permit and other such similar application authorized pursuant to the Idaho Local Land Use Planning Act, I.C. §§ 67-6501 *et seq.* (hereinafter "LLUPA")

2. Local standards

Stanley Municipal Code (hereinafter "SMC") 15.04 governs the process for the issuance of a building permit which provides that "[n]o ... lot [shall] be excavated for ... roads... nor shall fill be placed on any lot, nor shall any lot be cleared, or fenced unless a building permit therefor has been issued by the city council." SMC 15.04.01. Further the Code requires that "Permittee shall follow good engineering practices relating to fill compaction for structural support and for preventing collapse and/or erosion of fill not used for structural support." *Id.* The application additionally must include such development and construction drawings and

technical support material “in sufficient detail to allow a technical or engineering review to determine whether the proposed development complies with all zoning requirements”. In all other respects, building permits must comply with all relevant SMC provisions. In general, the City considers the following titles of the SMC relevant to this application: Titles 16 (subdivision) and 17 (zoning).

II. CONCLUSIONS OF LAW

The City has jurisdiction over this matter pursuant to its authority under the constitutional, statutory, and ordinance provisions cited above. This proceeding complies with all state open meeting and other notice provisions. The information and fee required have been supplied and are deemed adequate to allow the City to render a decision on the application. All notices required by statute and SMC have complied with state law.

This decision is based on the information and testimony compiled during the application process for permit numbers 690, 690R-1, 690R-2, 789, 831 and the Mountain View subdivision. It is also based on the statutes, constitutional provisions, and ordinances discussed herein. The interpretation and application of a city’s ordinance is within the City’s reasoned discretion.

The Applicant is seeking a building permit not to construct an access road upon its own property, but rather to seek permission to render improvements on adjacent property; the City’s right of way. The installation of an access road at this location to access Lot 5 is inconsistent with the approved Mountain View Subdivision Plat and prior approved building permits. Applicant asserts that because she has already installed such improvements prior thereto demonstrates the City’s acquiescence even approval of her actions. This is not the case and in

fact the Applicant is in violation of the law (SMC 15.04.010) jeopardizing the public health and safety.

The difference in elevation between that portion of Lot 5 and Ace of Diamonds Road is considerable. That eastern portion of Lot 5 is in a ravine; historical drainage for the entire region. In contravention of SMC 15.04.020, the Applicant submitted its application bereft of any information pertaining to the slope itself, hillside stabilization, drainage, the fill material and construction consistent with public works road standards, nor any other information for the Council to allow a technical or engineering review to determine whether the proposed improvements comply with the Stanley Municipal Code, the Mountain View Plat, and other requirements. In the absence of such information, the City has no way to determine if the work already performed and sought to be performed ensures the protection of the public health and safety of its citizenry.

III. DECISION

The application for building permit #831 is hereby denied.

* * *

Approved this _____ day of March 2014.

CITY OF STANLEY, IDAHO

Hon. Herb Mumford
Mayor

Attest: _____
Cari Tassano
City Clerk

Date: _____