

MINUTES

Regular Meeting
Powell County Board of Adjustment
Thursday, July 28, 2011
Deer Lodge Community Center

- Call to order at 1:10 p.m.
- Attendance
Members Present: Carlene Armstrong, Nancy Cline, Tom Gilbert, David Mannix, Shane Olsen. **Staff:** Brian Bender, Peggy Kerr and Lewis Smith. **Also Present:** Gordon Sorenson 549-9693, T.A. Rue 793-5050.
- Election of President and Vice President
Tom Gilbert made the motion and Shane Olsen seconded to elect David Mannix as board president, four votes for and one abstention. Nancy Cline made the motion to elect Tom Gilbert as board vice president, four votes for and one abstention.
Peggy Kerr will provide a CD of the Powell County Regulations to those who request it.
- Approval of the Agenda
Olsen made the motion and **Cline** seconded it for the Board to approve the agenda through a unanimous vote.
- Approval of the November 3, 2010 minutes
Olsen made the motion and **Gilbert** seconded it for the Board to approve the minutes as presented, through a unanimous vote.
- Public Hearing – Rue Variance

The presiding officer, **David Mannix**, opened the hearing at 1 p.m. and announced the purpose and subject of the hearing as follows: “We are here to hold a public hearing on the variance application from Thomas A. Rue. The purpose of this hearing is to receive public comment on the proposal.”

Mannix stated that proper notice of this hearing has been provided. “The hearing notice was published in the Silver State Post on July 20.”

The Board members were asked if they wished to declare a conflict of interest in this matter. There being none, all board members participated in the hearing.

The Planning Department presented its report (see attached). **Bender** stated the material up to the date of the report led staff to recommend approval of the Variance with three conditions. Staff received two letters of support.

The Board was given an opportunity to ask question for the purpose of clarifying the location and nature of the proposal.

Mannix - Was an additional lot was created. A: The 160-acre portion was aggregated into the Brumit parcel, so a lot was not created. Brumit could subdivide his ground because he now owns 320 acres.

Mannix – Could there be a restriction put on Brumit’s property. A: The transaction has taken place.

Bender – The Planning Board addressed the transaction as a boundary relocation. They determined it was not an attempt to evade subdivision law. They had a defined scope to look at. It was approved with the condition it had to go through a Variance.

Smith – It was the position of the Planning Department and County Attorney that with the parcel becoming 122 acres, without going through the formal process of a subdivision, it raised the question of Rue’s parcel becoming non-conforming. He could not further develop, so it was advantageous for him to get it taken care

of. By getting this variance completed, his parcel is in a conforming use were he to decide down the road to change the land use.

Olsen – Do you still have it for sale? A: Yes.

Mannix – What would the Variance give him?

Smith – He would be able to modify his house, or with a CUP, add an additional structure.

Bender – Staff would not recommend approval for any change in use.

Mannix – There are other homes on tracts in this area.

Bender – The Rue issue has been created after the adoption of the Zoning Regulations.

Olsen – He still could put up ag buildings.

Bender – The biggest benefit is if he wanted to take down the current house and replace it, he could with this Variance.

Mannix – He could not apply for a second residence.

Smith – Not without going through the Variance first and then applying for a CUP.

Mannix – If his house burned down, could he replace it?

Smith – Probably not because he not compliant with the regulations. By not getting a Variance, he has a lot of problems as to what he could have done to his property down the road.

Gilbert – He couldn't put on a porch.

Bender – Anything that would require the county to issue a permit for we would require. Commercial use would be affected.

Rue – I am selling. My understanding is the variance gets me back to the rights the 160-acre would have. He has no plans to do anything else on the property than what he's doing now. Who knows what the subsequent owner would want.

Sorenson – If this were granted, more sophisticated buyers may not look at the property unless it is a conforming property. That is our biggest risk. They might want to build a bigger house; his house is very small.

Mannix – Could they have applied for the Variance before entering into a deal with Brumit?

Sorenson – Brumit wanted to buy the pivot. He works and lives in South Africa. At the time we talked with the county, there was no BOA. That's the main reason the sale went ahead of the BOA.

Bender – We met with them May 4. We are trying to turn the clock back through a hearing procedure. The Planning Board determined it was not an attempt to evade subdivision with the condition they go before the BOA for a variance.

Mannix declared the public hearing open. He asked if there were any petitions or data to be presented to the Board. Two letters were submitted

Mannix next asked for statements from the public. No comments made.

Mannix declared the public hearing closed and called for a motion and discussion by the Board.

The Board read through the approval criteria from Chapter 9 of the Zoning & Development Regulations.

Bender – However a motion is made, you have to structure your motion to support or deny in reference to the five approval criteria. The Findings need to be expressed in your own words as part of the motion. The findings are the recipe used for the Board to make a decision. Support each decision with a reason why.

Smith – Each of the criteria is equal. None trumps the other.

COMMENTS:

a: Understands the circumstances of utilizing all the land for the center pivot. It's a special condition. The landowner is trying to maximize his resources on his property. The parties have gone to the effort to work with staff, planning board and the BOA. It would benefit the buyer to increase his ranch size and use water more efficiently. The proximity of the field will allow the property to maximize irrigation practices.

b: We still have the open space. Not destroying the intent of the 160 acres. And you are accommodating an agricultural activity. By granting the variance, the intent of the county plan is still being accommodated. If didn't, you would be holding this person to a higher standard.

c: The special conditions and circumstances result from the action, but no malintent.