

MADISON COUNTY ORDINANCE NO.: 454

AN ORDINANCE AMENDING THE MADISON COUNTY CODE, TO REQUIRE A SURVEY INSTRUMENT FOR ALL LAND ACTIONS AND CLARIFY ONE RESIDENCE PER SIXTEEN ACRES AS DENSITY IN AGRICULTURAL ZONES WITHIN MADISON COUNTY CONTAINED IN THE MADISON COUNTY UNIFIED DEVELOPMENT CODE, CHAPTER 115, ARTICLE II, SECTION 115-28, AND CHAPTER 117, ARTICLE III, SECTION 117-52; AND TO REPEAL ALL ORDINANCES AND RESOLUTIONS IN CONFLICT HERETO; AND PROVIDING AN EFFECTIVE DATE HEREFOR.

WHEREAS, the Madison County Planning and Zoning Commission held a public hearing on or about Wednesday November 10, 2021, at 6:30 p.m. at the Commissioner's room located in the Madison County Courthouse, Rexburg Idaho, to consider the proposed modification to the Madison County Unified Development Code to require a survey instrument for all land actions and to clarify one residence per sixteen acres as density in the agriculture zone within Madison County.

WHEREAS, on or about November 10, 2021 the Madison County Planning and Zoning Commission recommended to the Madison County Board of County Commissioners to approve the requested Unified Development Code modification.

WHEREAS, the Madison County Board of County Commissioners accepted and adopted the Madison County Planning and Zoning Commission's recommendations for the Unified Development Code Modification to adopt an ordinance to require a survey instrument for all land actions and clarify the agriculture zone density to one residence per sixteen acres on or about December 13, 2021, signing the Findings of Fact and Conclusions of Law thereon.

WHEREAS, Madison County has codified the Madison County Code in 2012 and have made changes from time to time; and,

WHEREAS, Madison County Code, Part II, Unified Development Code, provides procedures for subdivision approvals in Madison County per Chapter 115, Article II, section 115-27; and,

WHEREAS, per Madison County Code, only subdivisions require any kind of survey instrument, leaving administrative land division options to be completed only with legal descriptions. This leaves the Madison County Assessor's Office and GIS departments in a bind as they try and determine how parcels fit, and there is no assurance as to accuracy; and,

WHEREAS, Madison County's neighboring counties, namely Fremont, Jefferson and Teton, require a survey instruments to be submitted with every kind of land action, and that such surveys be accomplished by licensed surveyors or engineers, who adhere to State of Idaho standards; and,

WHEREAS, Madison County Code, Part II, Unified Development Code, provides for certain density requirements in Agricultural Zones, per Chapter 117, Article III, section 117-52(e);

and,

WHEREAS, Madison County has found that further clarification is needed as to the density requirement for Agricultural Zones, as exists in other zones, namely, the Transitional Agricultural Zone; and,

WHEREAS, the Board of County Commissioners finds it necessary to amend the Madison County Code previously implemented by Madison County, to specifically require a survey instrument by a certified land surveyor or engineer for all land actions; and,

WHEREAS, the Board of County Commissioners finds it necessary to amend the Madison County Code previously implemented by Madison County, to specifically state a density requirement in Agricultural Zones to be an average of one dwelling unit per sixteen acres; and,

WHEREAS, the Board of County Commissioners finds it necessary to now act in accordance herewith.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MADISON COUNTY, IDAHO:

1. That Madison County Code, Part II, Unified Development Code, Chapter 115, Article II, section 115-28, entitled "Application requirements []" be amended as follows:

Sec. 115-28. Application requirements.

The following are required for applications for any land action, including but not limited to all land divisions, administrative land splits, subdivisions, short plats, small scale developments, establishment or relocation of easements, right of ways, and the establishment or relocation of property boundaries:

...

(21) For every land action as stated herein, a survey instrument is required. All surveys and survey instruments will be drafted by an Idaho licensed surveyor or engineer, and the surveyor or engineer will adhere to all established Idaho state standards for accuracy.

2. That Madison County Code, Part II, Unified Development Code, Chapter 117, Article III, section 117-52, entitled "Agricultural (AG) Zone" is hereby amended as follows:

Sec. 117-52. Agricultural (AG) Zone.

(e) *Area / density requirements.*

...

(3) There is no minimum lot area requirement, but overall development density

shall be an average of 1 dwelling unit per 16 acres.

(4) Deed restricted parcels resulting from administrative splits shall be restricted as a matter density integrity. If the zoning on the property is changed in the future, the deed restriction may be removed and land may be further divided in compliance with the zoning and subdivision code in place at the time of the proposed division.

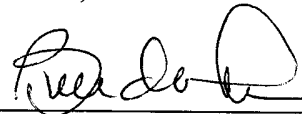
3. That this ordinance shall take effect and be in force from and after its passage and approval, and shall repeal and any other Resolution(s) or Ordinance(s) in conflict herewith.

ADOPTED by the Board of County Commissioners of Madison County this 13th day of December, 2021.

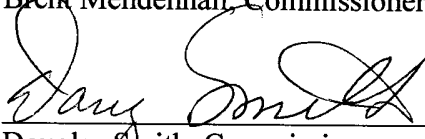
APPROVED:



Todd Smith, Chairman

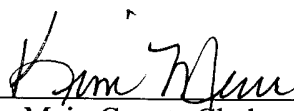


Brent Mendenhall, Commissioner



Douglas Smith, Commissioner

ATTEST:



Kim Muir, County Clerk

Paul Steel – 4425 N 5631 W – inclusion of 16-acre requirement. Grandparents were homesteaders. Leeching of septic systems. Keep land safe.

Shirley Steel - 4425 N 5631 W- in favor

David Blaser – 5777 W 5000 N – property split and being built on. Favor of the 16 acres. Under the impression it was in place. Not worried about selling the three acres because they were under the impression it was not buildable.

Cindy Blaser -5777 W 5000 N - protecting water. Too many wells being dug, and opportunity for septic problem.

Richard Blaser 6094 W 3000 N – in favor. Concerned with septic issues.

Kirstin Ruebush – 1893 W 5350 S – code should be specific and easy to understand. This was an error that needed to be fixed.

Krystal Hymas – 5866 W 4000 N – in favor. Easy understanding of protecting ag land. 117-52 “overall development density is 1 home/ 16 acres. Ask that part of the code be revised to show how the county is keeping track of deed restrictions.

Administrator Armstrong – why we need to require a survey.

Amanda Larese –

Krystal – administrative split, disturbing there is misunderstanding. Protect ag land and be consistent.

Shane Ruebush – 1893 W 5350 S Surveys: comfort in knowing where your property is before investing money. Find a surveyor is up to the land owner. One reason given to commissioners, force recording of land split, survey mechanism works. Ag definition – 2013 clarifying is good.

Kirsten Ruebush – survey – fascinating to have assessor’s office is here. Under requirement to record things. Important for the general welfare of the County. Possibly require survey for sale of property as well.

Twigs Wakeman 5951 W 4500 N - concerned about the water. Having property surveyed is wise.

Brook Larsen (no address provided for record)

Neutral (1) – written correspondence – see attached.

Opposed (2)

Joe Allen – 440 Shoshone Ave. 16 acre is not changing. Survey is the addition. Asking to table action. Questions about surveys – inspections are

not required in Idaho. Last 100 years, no surveys, a lot of civil disputes. What does close mean?

Amanda Larese – state statute requires a legal to close.

Shawn Boice – the term “close” means that the property’s legal description is accurate and closes a shape.

Allen continues with explaining that surveys can cause disputes. County roads are not defined. Table and more discussions are needed.

Dan Roberts – 2643 W 3200 S – risks – free society is a dangerous society. Preserve legacy. Outside of the purpose of planning and zoning (a-h). How does dictating what you can do to property preserve property rights. Protect god given rights not take them away. Legislate to lowest common denominator. Margin of error. How does this protect autonomous property rights? 1 in 16. Give as much leeway to owner as possible. Inherent risk to freedom. Protect pioneer stock. Be wise. Legislative body. Tread lightly.

With no further comment from the public, chair Oakey closes the public hearing at 8:07 – opens discussion within the board.

Arlene Anderson – how can you protect a property right if you cannot establish property boundary? Legal descriptions have legal protection. Additional expense, but principle is good principle to establish clear boundaries to protect property. Alexander Hamilton - no government should have power of property. Title, use, control and disposal = property rights. Primary concern ought to be with water and sewage. Impact on water is what should drive growth. Particular ordinance could cause problems for farmer. Forcing the hand. Principle behind property rights.

Kort Black – addresses Assessor’s office – what happens when the pins in different places – GIS project slowly updates the accuracy.

Arlene Anderson – how to have confidence with accuracy in surveys?

Administrator Armstrong – surveying equipment has become more accurate in recent years.

Arlene Anderson – new equipment is more accurate. Modern technology to establish property lines originated with older surveys.

Troy Thurgood – slam dunk? Subjective science. If we don’t know our corners for certain. Why would we require a property owner to have a survey? Bad data in and bad data out. No way to get good data. Assumptions are being challenged.

Kort – important thing to remember is this is a tool we can use to be more accurate over time. Useful tool in helping us to correct discrepancies moving forward.

Troy Thurgood – anyone can hire a surveyor they want. Do surveyors have to use certain tools?

Shawn Boice – Surveyors most likely use best equipment possible as they are considered professionals in their field.

Arlene Anderson – asks legal counsel what ‘standards of accuracy’ is defined as. Legal counsel responds that Idaho code notes that surveys are to be completed by engineers or surveyors. This would indicate some type of training or certification to be obtained to become licensed in the field.

After some discussion, commission member Clint Hansen proposes a motion to recommend approval of first proposed ordinance amending the Madison county code to require a survey instrument for all land action and to clarify on residence per sixteen acres as density in agriculture zones within Madison County, with the amendment of section 117-52(4) to “as a matter of density integrity.”

Troy Thurgood – noted a question from the public that address the issue of adjoining acreage. Point of clarification?

Arlene Anderson– notes current wording includes “adjoining” already.

Commission member Kort Black Second Motion. A roll call vote was taken. Arlene Anderson voted in opposition to the motion, with the remaining present commission members voting in favor of the motion. **Motion Passed.**

Exhibit B
Written Correspondence



10116 W. Overland Rd., Boise, ID 83709
1-800-621-7553 or 208-342-3585
www.idahorealtors.com

Dear Commissioners:

As you probably are aware the Idaho Association of REALTORS® (IR) is an association of over 13,000 individuals across the State of Idaho working in the real estate industry. Real estate licensees are engaged participants in their communities and strive to protect the private property rights that form the economic backbone of this country. REALTORS® work with local, state and national governments to ensure the proper balance between protecting private rights and establishing regulatory foundations to protect those rights. I correspond, not only on behalf of our local members in Madison County but for those across Idaho.

IR has recently been made aware of the proposed ordinance that Madison County is contemplating which would amend Madison County Code, Part II, Chapter 115, Article II, Section 115-28, which pertains to the requirements placed upon private landowners seeking to split or divide their land. The proposed ordinance seeks to add a requirement that a landowner obtain a formal survey from a licensed surveyor or engineer for every land application submitted to the County. The current code only imposes this obligation on those seeking to develop subdivisions.

IR would like the opportunity to participate in the process of considering if this course of action is the appropriate solution to Madison's County's needs. We believe that further discussions are warranted to ensure all the pertinent parties, landowners, citizens, builders, government agencies and private industry, are all fully informed on the difficulties Madison County is facing and the solution being proposed. Collaborated efforts have a tendency to create more practical solutions and should be encouraged when possible.

However, as we understand it there will be a public hearing with the Planning and Zoning Commission for consideration of the draft ordinance today, November 10, 2021 at 6:30PM. At this time, the background of the problem which this amendment seeks to rectify is not entirely clear. IR and our local members in Madison County would like to have the opportunity to hear more information on the difficulty and participate in crafting a reasonable solution. This is not something that can be done in a short time frame and thus IR requests the Commission take action on amending this proposed ordinance.

A handwritten signature in black ink, appearing to read 'Max Pond', is written over a light blue horizontal line.

Max Pond, IR Government Affairs Director
mpond@idahorealtors.com
208-230-6703