

Minutes of the Regular Meeting of the Lava Planning and Zoning Commission held Tuesday September 23, 2008, 6:30 p.m. at Lava City Hall, 115 West Elm Street, Lava Hot Springs, Idaho

Present: Dave Sanders - Chair Trish Avery - Secretary
Rita Anderson Clyde G. Nelson - Attorney
Nick Nelson R.B. Scott - Code Enforcement Officer
Curtis Waisath

Guests: Rob Anderson, Karen Mendenhall, Kathy Etcheverry, Henry Etcheverry, Kelly Stevens, Kathryn DeMott, Milan Zabka, Dale McFarland, Michael Seibert, David Grosso, Vicky Lyon, Cathy Sher, Doug Felsten, Steve Jones, Pam Slaughter, Marie Johnson.

Dave Sanders called the meeting to order at 6:30 p.m.

Minutes: Rita Anderson gave some typographical error corrections. A motion was made by Curtis Waisath and seconded by Nick Nelson to approve the minutes as corrected. All voted aye, unanimous.

Recommendation The commission discussed the alley vacate requested by Greg and Kelly
Alley vacate Stevens. Curtis Waisath said that it is passable by ATV and could be
Greg & Kelly made into an alley. Rita Anderson said that the property is at the corner
Stevens: of a street which is never going to be opened up due to the steep
topography. She doesn't foresee any traffic driving through this alley on
a regular basis.

Dave Sanders said that the topography of this alley would make it difficult to use. He questioned if the title to a vacated alley transfers or if it just changes the easement. Clyde Nelson clarified that the easements should remain for utilities and that the city may not want to allow a fence across the alley. The portion of the alley would be divided down the middle with one half going to each adjoining property owner.

A motion was made by Rita Anderson and seconded by Nick Nelson that Planning and Zoning recommend that the city council vacate a portion of alley between Booth and Fife, and 4th West and 5th West but that no fence be allowed to go across the alley. Rita Anderson, Nick Nelson and Dave Sanders voted aye, Curtis Waisath voted nay. The motion passed.

Public Hearing Dave Sanders opened the public hearing on an alley vacate request by
Alley Vacate Milan Zabka to vacate a portion of the alley between Fife and Merle, and
Request between 3rd West and 4th West.
Milan Zabka:

Dave turned the floor over to Milan Zabka to present his request.

Milan Zabka presented that he would like to propose to vacate the alley between 3rd West and 4th West and Fife Street and Merle Street which runs between his two (2) properties, with the exception the public, utilities and everybody will have access to the alley. Nothing will be built on the alley. The reason for this request is that he owns seven (7) lots on one side of the alley and six (6) lots on the other side of the alley and he would like to join the properties. He would like to build an equipment garage on the six (6) lots across the alley from his home and would like to be able to run permanent connections for water so that he

can water his trees without running a hose across the alley. He will maintain the alley and remove the snow.

Rob Anderson stated that he lives next to Milan Zabka and he likes the alley like it is. This is a usable, established alley. There is no physical reason to vacate this alley.

Clyde Nelson asked for clarification, Mr. Zabka is asking to vacate the alley only between lots 19-24 and 1-7. Mr. Zabka said that was correct.

Rob Anderson said that he didn't think it would be good to vacate only a portion of the alley.

Milan Zabka stated that he does not plan to change the use of the alley. The only reason for requesting that the alley be vacated is because in the past he was not able to have water going to those six (6) lots. He was also told that he can not build a garage on the six (6) lots until he builds a home on them. He does not plan to build a home, but would like to build a garage for his back hoe. If the lots are incorporated with his home lots, he could then build a garage and connect the water between the lots.

Karen Mendenhall stated that she and her husband were opposed to vacating the alley. They had looked into buying the alley behind their home for that very same reason and that they couldn't run the water across the alley. For that reason they chose to do something different. They are concerned because their natural gas line comes through that alley. The city is very good to tell people what they can and can't do ahead of time so that you know. People need to get their permits and get things inspected and do things the right way. They wanted a garage so they built it to the west of their home. Mr. Zabka has property to the west of his home that he could build his garage on. She is concerned about the city vacating some alleys and not vacating others, if the city is backing themselves into a corner. She understands that some of the alleys which have been vacated are not very usable.

Mike Seibert owns nine (9) lots northeast and south of Mr. Zabka's property. He stated that his only objection to vacating the alley use utility access. If the utility access was retained it would not effect him. He suggested that if the alley was vacated, there could be granted a public access and utility access at the same existing width. This would make it possible for Mr. Zabka to build his garage and connect to water.

Cathy Sher stated that she supported the comments made by Rob Anderson and Karen Mendenhall.

David Grosso said that he was concerned about why people are bringing up these issues about vacating this alley but did not have these same concerns on the last one that was granted. He stated the he could see no problem as long and you retain easement rights, as well as access for emergency vehicles and utilities equipment. To run water to increase the

value of the land, to build a garage to hide equipment would be a benefit more than a negative.

Vicky Lyon asked to clarification about why Mr. Zabka could not put a meter on these lots and then build a garage and leave the alley in it's currently status.

Milan Zabka explained that he can't because the six (6) lots behind do not have any utilities. Last year he and Mr. Etcheverry paid \$10,000 on engineering to bring the water and sewer up the street. By the time they got everything together the bill would be about \$150,000 to bring the water and sewer to these properties. He could not see the reason to do that for the garage and a home which Mr. Etcheverry planned to build.

Vicky Lyon said that she is serving on the Comprehensive Plan Committee. Trying to layout the infrastructure of the town it seems that we could run into a problem vacating alleys. If there is a way to keep the existing alleys in place and to bring the utilities to the other side. This would also increase the property values in that area. She would opt to re-look at keeping our existing alleys and spreading out the utilities.

Cathy Sher stated that with the alley vacate requested by Greg and Kelly Stevens, that alley is very steep with limited access at best. The location and topography might be an issue as to why one and not another.

Dave Sanders opened the discussion amongst the commission members.

Rita Anderson said that the alley that we are talking about is viable alley. There is easy access from both sides of the alley. We need to think about those that are living there now as well as those who may be living there in the future. There are vacant lots there that could be built on and will probably be built on someday. She stated that her thinking is that if we have viable alleys where it is on flat ground, it doesn't seem a responsible thing to vacate those alleys. There are some places where it is responsible, they've done it in the past, and we know the town has a lot of the hills. In these cases it was in the best interest of the city to vacate these alleys so that the city doesn't have to be responsible for this property. But, in this particular alley, there are utilities going through it and there is a possibility of more utilities going through it.

Milan Zabka asked to say one more thing. He stated that if the alley is vacated, he will leave the alley as it is for the utilities and the public to use, nothing would change. He wants to join the two properties so that he can build the garage and have water. No fence, no shed, no structure would be built on the alley, and nothing would change physically. The alley would remain the same for anyone to use that has a use for it.

Curtis Waisath said that if the alley is vacated, Mr. Zabka would become the property owner of the vacated alley.

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Milan Zabka said that there can be conditions and easements placed on the vacating of the alley. He will give the easement of the alley to everybody. He will have ownership and be able to build his garage.

Rita Anderson said that it might be a better option for Mr. Zabka to ask for a variance to build the garage rather than to vacate the alley.

Milan Zabka said that is what he wanted to resolve at this meeting if we can. The purpose for vacating the alley is join the properties so that he can have a sprinkler system between the properties and build a garage. He was advised by city officials that vacating the alley would be a way to solve this problem.

Dave Sanders asked if it was possible for the city to grant an easement for the waterline through the alley.

Clyde Nelson said that the city could vacate the alley reserving a twenty (20) foot easement in exactly the same location. The application is only behind lots 1-7. The city could grant the alley vacation reserving an easement for all utilities, fire, police, ingress and egress and public access. The only reason for vacating the alley is join the lots so that he doesn't have set back problems and his accessory buildings are then part of his primary home and remove that problem. The only problem is the maintenance of the alley. His question is rather the city would have the right to maintain the easement, plow snow for example so that fire, police, utilities can get in.

Milan Zabka commented that in the last ten (10) years the snow has not been removed.

Clyde Nelson said that it could be a problem in the future. It may not be a problem but the city might lose a little control in the maintenance. We could possibly reserve the right for the city to go in with its maintenance equipment if it wanted to and maintain it. He could put an easement on the alley for the city, all utilities and the public.

Dave Sanders commented that it would not be much of a vacated alley. He wondered if it wouldn't be easiest to grant an easement for a waterline than to vacate the alley, if that would resolve the problem.

Milan Zabka said that he would be happy if the city would grant an easement for the waterline across the alley.

Rob Anderson stated that Mr. Zabka talked about wanting to put up a building on the other side of the alley. It was his understanding that you have to have living space in the garage if it is built on a vacant lot. He said that he is OK with the city granting an easement for the waterline and a variance for the garage to be built on his vacant lots, but he is not OK with vacating the alley.

Clyde Nelson said that Mr. Zabka problem is that a garage is an

accessory building and can only be located on lots with a primary residence.

It was discussed that there is a possibility for Mr. Zabka to build a garage to the west of his home which is a joined property.

Milan Zabka said that the lots facing Fife Street are the more valuable lots and it doesn't make any sense to build an equipment garage on these lots between two (2) beautiful houses. It would make more sense to build the garage on the vacant lots near the sheep pasture, away from the busy traffic, away from the paved street, away from the school.

Nick Nelson stated that there are certain standards that the city goes by. Besides saving Mr. Zabka money, he could not see any difference in building the garage in the front or the back. He didn't feel that hiding the garage behind the house will look any better than having it in the front. The Mendenhall's shop looks good beside their home.

Clyde Nelson asked what the side yard setbacks are. Trish Avery said that the set backs on an interior lot is 10 feet and a corner lot the set back is 20 feet. Mr. Nelson said that if the city were to vacate the alley the city could put conditions on it, could require that the same set backs be maintained even from the easement.

Rob Anderson said that he was concerned that the next owner may not honor the things which Mr. Zabka agreed to. What about adverse possession?

Clyde Nelson said that the conditions and easements would become a permanent agreement which would follow the property. You can't adverse possess the city, it will be a city easement. What he is saying is we will call it something other than an alley, the city gives up ownership but will reserve an easement over the top of the property. He stated that what this does for Mr. Zabka is gets him his water and allows him to keep the accessory buildings that are on the lots and he can build his garage. If you give him the easement for the water; you still have the problem of the buildings that are on the lots.

Vicky Lyon asked if the two (2) buildings that are currently on the property are not within code. The commission told her the buildings were not within code. She stated that if we vacate the alley, he is then within code, that is like rewarding for bad behavior.

Milan Zabka stated that he did not want to dig into the past. This is an old issue. He said that when he put up the accessory buildings he thought they were put up legally. Later he found out that they were illegal.

Kathy Etcheverry questioned why you would have to vacate an alley just to water tree across the alley; a hose can be pulled across the alley to water the trees.

Trish Avery explained that Mr. Zabka wants to have a permanent water line so that he doesn't have to pull the hose to water the trees.

R.B. Scott commented that he has been dealing with Mr. Zabka since 2006 when he became code enforcement officer for the city. At one point Mr. Zabka put in a cross connection for the water and sewer across the alley which was illegal. The city ordered him to take it out, which he did. Then he put another connection under the alley again which was another cross connection, and the city made him take it out. He has since put a hose across the alley and the city doesn't have a problem with that. The only problem that they have is that Mr. Zabka has a line running from the residence to the adjoining lots across the alley. The whole question is the alley is dividing the lots with his home on and the lots with the two (2) out buildings on. The city has sent him letters in regards to the out buildings because they aren't adjoining to the home property and they have to come out. If the city vacates that alley, then the out buildings do not need to be removed because they become one property.

Karen Mendenhall asked how many out buildings Mr. Zabka can put on the property if they become one property.

Clyde Nelson explained that the buildings have to be subservient as an accessory building to the primary building which is a residence but may become a Bed and Breakfast. If it were to become a B&B, the city would need to determine if the out buildings as part of the B&B.

Rob Anderson said that when anyone buys a property you should know what you are getting and shouldn't try to jerk the city around.

Kathryn DeMott stated that to tear those two (2) building down is of no benefit. Mr. Zabka has made great improvement to the properties he has purchase. Is there some kind of compromise to support things that look better in our community? There are a lot of trashy vacant lots in the community. She realizes that the rules are set for everyone; if Mr. Zabka goes away then you will need to have something in place for the next owner. But, to force Mr. Zabka to tear these buildings down and leave a vacant dirty lot makes no sense.

Dale McFarland said that what he had heard so far is that Mr. Zabka has built two (2) illegal buildings that he knew was illegal and now he comes asking for a variance to justify what he has done illegally. If you got rules then follow them.

Milan Zabka stated that it was not true. When he built the accessory buildings he put them up legally. At that time there were things that he was not informed about. That is why today, five (5) years later, you are saying that these buildings were put up illegally. Five (5) years ago when he came to this office; he was OK because the accessory buildings were under two hundred (200) square feet. This is why he does not want to bring this up at this time. He did not put up illegal buildings because that would be stupid to invest his time and money to put up illegal buildings.

Vicky Lyon said that a variance should be granted for the water and Mr. Zabka felt like he had went through the motion of putting up the accessory buildings legally so this is a mute point. Everyone feels that we don't want to vacate the alley. The buildings probably need to be "grandfathered" in and a variance granted for the water line.

Milan Zabka stated that he also wants to build a garage.

The commission discussed these options. It was stated by Clyde Nelson that the two (2) buildings and the garage are accessory and you can not build an accessory building on a lot without a home on it in town. If the alley is vacated Mr. Zabka will be able to building his garage. He said that he was not encouraging or discouraging the city to vacate the alley. He is just saying that vacating the alley will resolve the situation.

Vicky Lyon said that it wasn't fair to resolve an issue that there is so much controversy over. If we can just grant Mr. Zabka a variance for the water and then he would have to meet some standards to build a garage.

Dave Sanders said that his concern is that if the alley is vacated and title to the alley changed when it transfers to a new owner can the easement change at all.

Clyde Nelson stated the easement will be locked in permanently and transfers with ownership. Half the alley ownership would go to each adjoining property owner.

It was mentioned that Mr. Zabka owns six (6) lots on one side and seven (7) lots on the other side. Milan Zabka said that he would be fine with just vacating the alley between six (6) of the lots on each side (Lots 19-24 and 1-6).

Vicky Lyon said that we need to remember what the Comprehensive Plan Committee has to do. The committee has to look at an over all picture of what our city is going to be like in fifty (50) years and how this affects building and the lay out of the city. She strongly suggests that we do not touch the alleys. She understands there are some on the hill side that it may be good to vacate, it would be better to compromise and grant a variance for the water. It is a difficult situation when our kids are sitting here trying to plan and right in the middle you have this block. We need to protect what we have.

Milan Zabka stated who's to say how many years ago how this was going to effect any one. This used to be all one property. When he sells it, he will be selling it with the easement attached for the future owner. Doesn't see much problem.

Dale McFarland asked what the difference is between an easement and a variance. It was explained by Clyde Nelson and the commission

members that an easement is to allow the right of access across a property and a variance is to allow something to be placed where it is normally not allowed such as in a setback. When the property is conveyed an easement would be conveyed with the property. Clyde Nelson explained that this issue does not fit within the code requirements for granting a variance.

Dave Sanders closed the public hearing.

Discussion followed. Clyde Nelson advised the commission that they do not have to make their recommendation at this time. The ordinance doesn't have a time requirement for an alley vacation, but there will be a time requirement for the commission to make recommendation to the city council on the conditional use permits which is 30 days. He said that the commission could proceed with the next public hearing if they would like.

Dave Sanders said that the commission would schedule their next meeting to be within the 30 day requirement.

Public Hearing
Conditional Use
Permit - M. Zabka:

The public hearing for a conditional use permit for a Bed and Breakfast at 311 West Fife St., applicant Milan Zabka was opened. Dave Sanders asked Mr. Zabka to present his request.

Milan Zabka stated that he was applying for a Bed and Breakfast because R.B. Scott, city code enforcement officer, had advised him that they would be friends if he would apply for a Bed and Breakfast. The city passed an ordinance two (2) years ago that there was no short term rental where his house is located. According to his knowledge he is allowed to have 12 monthly rentals, every one being 30 days. That is how he has been operating the past two (2) years. There has been confusion if he has friends or family staying over. He stated that he is renting on a thirty (30) day basis but sometimes the guest may only be there for 3 days. He said that he can have one guest on the 4th of July and another on the 24th of July because the thirty (30) day rental agreement does not have to be from the 1st to the 30th of each month.

Mr. Zabka said that as far as he was concerned he was operating his rental very legally. R.B. had told him that he was not going to check on him everyday because he felt that it was a personal harassment almost, because almost every weekend he would come to check on him. He has had someone taking pictures of the cars around his home over this because he is trying to run the place on a monthly basis. Yes, people stay there for three (3) days. Now we are going to run this place as a bed and breakfast. He said that he does not plan to run the operation every single day, this property is his home. He said that he is trying to cover basic expenses, one of the many expenses is of the raise of taxes for making the improvements to the property. This is why he decided that he needed to have some income from this property. I don't want to rent it everyday or every weekend, he just wants to recover some of his expense.

Mr. Zabka suggested there be a change in the tax law to encourage people to improve their property. If people were given a tax credit to improve our property; it would be good for the city. He said that he didn't have a problem paying his taxes, he just has to come up with creative ways to help pay for them. He is willing to share his home with guests to get an income.

Rob Anderson stated that he doesn't have a problem with conditional use permits, but we have three (3) zones in Lava, commercial, R2 and R3. R2 is very specific about protecting the residence of Lava. Mr. Zabka is in the R2 zone. He does not want to see more bed and breakfast going into the R2 zone and push farther into the residential zone.

Karen Mendenhall said that she was on the Planning and Zoning Commission when they went through the vacation rental ordinance. They thought that they had an ordinance that was fair to everyone. She feels that the residential needs to stay in the residential and the commercial needs to stay in the commercial. Apparently there is a rumor going around that she approved this and she never said anything of the sort. She would like that cleared up. She also questioned how Mr. Zabka can have three (3) bedrooms and 10 guests when one of the bedrooms has to be for the owner/manager. There are a lot of questions.

Milan Zabka said that he has a large bedroom that can handle 2 adults and 3 children, that's five (5) people.

Rita Anderson stated that the question is that on his plans it shows the owner/manager in either bedroom 1 or 2 and in the letter he stated there are three (3) bedrooms for a maximum of ten (10) guests. I don't think that it has been clearly designated which space is for the owner/manager because the ordinance requires that an owner/manager be living there at all times.

Karen Mendenhall also questioned if Mr. Zabka could put up more yurts and rent them. His letter also states that he wants to put parking on the west which indicate that he is planning to do so.

Kathy Etcheverry said that she thinks this bed and breakfast thing is getting out of control if we don't put a stop as to where we are going to have them. There are people that are buying up every vacant house. We are not going to have neighborhoods, we are going to have a town of empty houses. It is nice to know who is coming and going. There is someone in her neighborhood that is doing the same as Mr. Zabka until he is stopped they are going to continue. She said that we are opening a real bad situation. She asked if we really need all these places for nightly renters. She also stated that everyone's taxes are grim. What if everyone started having people coming into our homes and renting out a room. She likes the security of knowing who is around.

Vicky Lyon said that in a residential area the neighbors look out for each other. When you do not know who is coming and going it is hard to do that.

Dale McFarland stated that it is zoned residential that is why he built there because he didn't want a Bed and Breakfast next door. If you allow one then every one of the houses that are up for sale will become a bed and breakfast. Once you open the door to bed and breakfasts you can't shut it.

Michael Seibert said that he owns property across the street from Mr. Zabka and plans to build a home there when he retires. He does not have a problem with a bed and breakfast if there are conditions in place that if there are any problems that could not be solved the permit would be rescinded. The issue with the bed and breakfast is probably in the definition of commercial/transient lodging is typically less than thirty (30) days and after thirty (30) days it becomes rental property.

Mrs. Seibert said that one of the reasons they decided to keep those lots all these years, things didn't look that great in the area when they bought it, is because Mr. Zabka built. Everything that he does is beautiful. They are hoping to do the same. She is impressed with his work.

David Grosso stated that from his limited experience in town it seems that there is an overage of people that do not have a place to stay during the summer months. It seems that there is a lot of business to the community that is being lost. It seems that it would be nice to have more bed and breakfasts or more commercial zoning.

Vicky Lyon said that she agrees with what Mr. Grosso said that we do need more commercial zoning. Through a questionnaire which the comprehensive plan committee is circulating, we are hearing that the people want us to protect the residential areas. People are afraid of their property values going down if we infringe too much more with the bed and breakfasts and vacation rentals into the residential areas. We need to watch how that can lower our property values. We do need more housing, but not sure if an overnight rental and multifamily housing is the answer. If you bought in a commercial zone you know, but what about the people that thought they were buying in residential area and then we make a variance. We need to lay out for the future how things are going to be.

Cathy Sher said that she agreed that Mr. Zabka's workmanship is beautiful. However, she asked the Planning and Zoning commission to preserve the R2 zoning so that we can invite more families into comfortable neighborhoods. This is an issue that is coming out in our comprehensive plan work. Buying in an R2 zone you rely on the city to uphold those restrictions. She asked the P&Z commission to consider the residential needs; the need for quite, safe residential neighborhoods.

Vicky Lyon said that there was a weekend this summer that one family of 150 that had every vacation home rented and up into the neighborhoods rented. They were milling around, the police were here, and the elderly people were awakened with all the noise it was almost out of control. That is one of the reasons that we need to be strict in containing the vacation rentals into the commercial zone.

Kathryn DeMott stated that she was aware of the history of the ordinance change and has tried to look at the position of all of the people here. She recognizes the residents wanting to protect their residences. Being involved in other community projects it feels like Lava is having a real sense of what our identity is. We don't have enough residences to support a school system, our livelihood comes from tourism. We get over run in the summer with tourists, we don't have enough places for everyone to stay and then we turned the vacation homes to only being in the commercial zone where we still have residences there. She has heard comments that now all we have on Main Street is vacation rentals. She understands the concern that if we allow this to happen in the residential zone that everyone will do it, she said that she doesn't believe that everyone wants to run a bed and breakfast. We have several homes that are vacant that haven't sold, people aren't moving to Lava to raise their families. We are trying to decide if we are going to raise families here or how to do business here. She said that she has had people ask her why the city would try to shut down the vacation rental business when tourism is our business. She hopes that the commission will consider that the nature of Lava is a tourist community. Now we have the vacation homes clustered in one area and the residents there aren't happy with that either. She doesn't know if that was the best answer.

Vicky Lyon stated that there was no doubt that tourism is what keeps our city going. We have ten (10) weeks that everyone cringes and smiles and tries to be kind. But the reality is that tourism is what keeps our community going all year. But we also have to protect our infrastructure.

Kathryn DeMott commented that we can get bad residents as well, but the visitors are going to leave. We can teach the visitors how to respect our community. I think that when there are problems it is about enforcement; R.B. Scott is doing a good job. I think that there are times that we may have to throw people out. We need to find a way to all live here. We need nice places for people to stay. The nicer the places are to stay, the nicer the people will be that stay there.

R.B. Scott stated the Milan Zabka and he go back a long way. It is true that he has checked on him. He has a file on Mr. Zabka with letters, pictures, etc. The whole issue is the thirty (30) day rentals in the ordinance. The ordinance says that any home can be rented for a period not less than thirty (30) days. So the issue with Mr. Zabka is that his home is in the residential area. There have been problems with others as well. The city just gave Donna Godwin a conditional use permit with certain conditions attached. So he suggested that Mr. Zabka go to the city and request a conditional use permit for a bed and breakfast. He thought

that if the bed and breakfast was granted that the city could have some control because of the conditions placed on it. Without a conditional use permit the property owners can have a thirty (30) day rental agreement, and the renters can stay for three (3) days or a week, then the property owner is going to void the contract and rent it to someone else. Either something needs to be changed in the ordinance or it is going to continue to be a big mess. Mrs. Godwin has a bed and breakfast in the residential zone, but if she violates her conditional use permit, the city can shut her down. If we grant Mr. Zabka a conditional use permit and he violates the conditions of the permit, the city can shut him down.

Rita Anderson said that R. B. Scott had stated that if Mr. Zabka violates the permit, he would be shut down, but he has been violating the ordinance since it was passed.

R.B. Scott said that he has met with the county prosecutor and with Mr. Nelson and no one wants to look at it. Mr. Zabka is in violation of the ordinance of the city of Lava, but is he in violation as a criminal citation. Something has to be changed in the ordinance. Can we give Mrs. Godwin a Conditional Use Permit and not give anyone else one? It is hard to enforce things on one and not another.

Clyde Nelson said that the ordinance does not allow yurts as part of a vacation rental. If he were to use the yurt, would you close him down?

Milan Zabka said that the yurt is not part of the business; it is used only for personal use.

Kathryn DeMott said that the vacation rental business has a bad rap in this town. We have other businesses that exist in our residential zone; a daycare, and a dentist office. And we don't target them like we do the vacation rental business. She doesn't understand why there is such a harsh attitude against the vacation rental business when our community thrives on tourism.

Nick Nelson said that the businesses Ms. DeMott mentioned are run from 8 a.m. to 5 p.m. and not on the weekends. They are the same people there everyday. One thing that bothers him with his daycare is Mrs. Godwin's B&B across the street. They have 6 little kids at the daycare and who knows if there is a sex offender across the street checking those little kids out. As a parent, that bothers him, as a person to have someone staying for the weekend across the street, that is fine. There are certain things that are a concern.

Kathryn DeMott said that we can dig up problems with any of the businesses. She is interested in us coming together as a community and finding an attitude that we can peacefully all live with. We need to find solutions.

Rob Anderson said that he is tired of the dogs, the noise, the four wheelers, and the motorcycles in a residential area. That is not where

they belong, not by my house.

Dave Sanders closed the public hearing.

Clyde Nelson discussed with the commission a few items in the ordinance that they might want to review pertaining to the conditional use permit. The commission should not allow any more comments from the audience. Consider any conditional that the commission might want to put on this permit if it is allowed. He stated that his recommendation on the vacation rental ordinance was don't allow them in residential zones.

Rita Anderson stated that the problem is that we didn't allow them and Mr. Zabka is doing it anyway.

Trish Avery corrected that bed and breakfasts are allowed in the ordinance as a conditional use. That is where the problem is, we did allow that to be an acceptable conditional use.

Rita Anderson said that if a bed and breakfast was ran like if it is suppose to be, but this one is not.

Clyde Nelson said that it is difficult to define in an ordinance what an acceptable rental is.

The commission discussed the bed and breakfast conditional use permit and alley vacate request further.

It was stated that the city of Lava has ordinances and the citizens of Lava have been very strong in public meetings that they do not want nightly rentals in the residential zones. Rita Anderson said that she thought that it would be irresponsible to grant the bed and breakfast after all the hearings and writing the vacation rental ordinance.

Dave Sanders questioned the possibility of a class action suit because we have granted Mrs. Godwin a bed and breakfast. Rita Anderson said that Mrs. Godwin had previously had a business license for a vacation rental.

The commission discussed the possibilities regarding the waterline. There was also discussion regarding possible changes to the vacation rental ordinance to better clarify allowable uses in the residential zones.

The commission expressed concern with the past history with this individual and how much credibility he has to do what he says he will do. R.B. Scott stated that if Mr. Zabka's permit was issued and then he violated any of the conditions, the permit would be pulled no questions asked. This would put the burden of proof on Mr. Zabka to prove that he will follow the rules.

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Rita Anderson said that she felt that a conditional use and a variance is a privilege and not a right. Just because it is granted to one it doesn't mean that if the situation is different for another that it has to be granted.

Nick Nelson expressed concerns about this bed and breakfast being so close to the school.

Dave Sanders said that you have to treat all of the public the same if the situation is similar.

The occupancy of the bed and breakfast was discussed. The Bannock County Building Inspector will place occupancy on the building based on what the inspector feels is reasonable.

R.B. Scott told the commission that the vacation rental ordinance needs to be amended. Trish Avery said that the commission could amend the ordinance, but this issue is before the commission now and it will need to be addressed based on the ordinances that are in place now.

Rita Anderson asked the commission if they were ready to make a recommendation on the alley vacate request. She said she didn't feel that there was any benefit to waiting a few weeks to make their recommendation. Curtis Waisath said that he was ready to make a recommendation.

Motion
Alley Vacate
Request:

A motion was made by Curtis Waisath and seconded by Nick Nelson to recommend that the city council deny the alley vacate request. Curtis Waisath, Nick Nelson and Rita Anderson voted aye, David Sanders voted nay. The motion passed.

Nick Nelson stated that there can be problems with a bad neighbor whether they are owners or guests of a bed and breakfast.

Dave Sanders expressed concerns in regards to property rights.

Motion
Conditional
Use Permit:

A motion was made by Curtis Waisath to recommend that the city council deny the application for a bed and breakfast for Milan Zabka due to the fact that I do not feel that we can trust him for what his word is and it is in a R2 zone.

Dave Sanders stated that people have a constitutional right to use their property. As long as there are conditions and stipulation placed on it and he is required to follow a certain mode of behavior. As long as he makes it so that it is not a problem with his neighbors, with a privacy fence, etc. The ownership of property allows us certain rights, we can recommend that the city puts on it certain conditions and restrictions.

Curtis Waisath said that all we do is make a recommendation and the city council has the right to override the commission's recommendation.

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The motion was seconded by Rita Anderson. Curtis Waisath, Rita Anderson and Nick Nelson voted aye, Dave Sanders voted nay. The motion passed.

Comprehensive
Plan Update:

Rita Anderson reported that at the last comprehensive plan committee meeting the committee put together a questionnaire which they would like to have all those living in the Lava area to complete. There will be a community meeting on October 22, 2008, 7 p.m. at the Community Building.

Other Business:

No other business.

Scheduled
Next Meeting:

A motion was made by Rita Anderson and seconded by Nick Nelson to hold the next meeting on October 21, 2008 at 6:30. All voted aye. unanimous.

Adjournment:

A motion was made by Rita Anderson and seconded by Nick Nelson to adjourn. All voted aye, unanimous. The meeting adjourned at 8:40 p.m.

Trish Avery – secretary

Dave Sanders - Chair