



BOARD OF ADJUSTMENT AGENDA

August 17, 2023 at 1:30 PM

Commissioners Meeting Room - 401 Main Street, Suite 309, Walsenburg, CO 81089

Office: 719-738-3000 ex 200 | Fax: 719-738-3996

Join via Zoom: <https://us02web.zoom.us/j/82550511219> | Meeting ID: 825-5051-1219

1. PLEDGE OF ALLEGIANCE
2. ROLL CALL
3. READING OF MINUTES
 - a. Minutes
4. ACTION ITEMS
 - a. Land Use Application 23-09 Variance McMahon
5. NEW BUSINESS
6. OLD BUSINESS
7. UPCOMING MEETINGS
8. ADJOURNMENT



BOARD OF ADJUSTMENT MINUTES

April 20, 2023 at 1:30 PM

Commissioners Meeting Room - 401 Main Street, Suite 309, Walsenburg, CO 81089

Office: 719-738-3000 ex 200 | Fax: 719-738-3996

Join via Zoom:

<https://us02web.zoom.us/j/83429735658?pwd=S2ZlSENWk0ZHR3Y0RkxBOEp3c2xGdz09>

Meeting ID: 834-2973-5658 | **Passcode:** 915234

1. ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. READING OF MINUTES

a. Minutes from 8-12-2022

Motion was made to amend the agenda to allow voting for Chairperson of the BOA for 2023. Motion Made by Natalie Fisher and second by Frank Kirkpatrick, passed unanimously. Natalie Fisher nominated Beaver Edmondson for Chairperson and second by Robert Martin, passed unanimously.

4. ACTION ITEMS

a. 23-09 Variance McMahon

A motion was made by Natalie Fisher and second by Frank Kirkpatrick to table the decision and continue the public hearing, once a survey could be conducted and completed. Passed unanimously.

5. OLD BUSINESS

6. NEW BUSINESS

7. DISCUSSIONS

8. ADJOURNMENT

9. UPCOMING MEETINGS



BOARD OF ADJUSTMENT MINUTES

July 20, 2023 at 1:30 PM

Commissioners Meeting Room - 401 Main Street, Suite 309, Walsenburg, CO 81089

Office: 719-738-3000 ex 200 | Fax: 719-738-3996

Join via Zoom:

<https://us02web.zoom.us/j/83429735658?pwd=S2ZlSENWk0ZHR3Y0RkxBOEp3c2xGdz09>

Meeting ID: 834-2973-5658 | **Passcode:** 915234

1. ROLL CALL

Lewis Edmundson, Natalie Fisher, Robert Martin, Frank Kirkpatrick

2. PLEDGE OF ALLEGIANCE

3. READING OF MINUTES

Minutes from 4-20 not in packet.

4. ACTION ITEMS

a. 23-026 Variance - Barnett

John Hannah, an owner of adjacent parcel spoke during the public hearing. Stated that his family has owned the lots over 100 years and has no intent to build near the lot line. Hannah said he had no objection to applicant building with a 5-foot setback.

Motion by Martin to allow for a five-foot side setback and a 25-foot front setback. Seconded by Kirkpatrick. Unanimous approval.

5. DISCUSSIONS

6. ADJOURNMENT



Huerfano County Board of Adjustment Staff Report – Permit #23-09 Variance McMahon Meeting Type – Public Hearing - Continuation

Meeting Date: April 20, 2023
Continued on August 17, 2023

Continuance of a public hearing

Aprin 20 Board of Adjustment Decision:

On April 20th the Board of Adjustment decided unanimously to continue the Public Hearing once a survey by a professional surveyor was completed. The Applicant had already scheduled a professional surveyor for July 7th, 2023.

Request Summary

With this Application Theresa McMahon (the Applicant) requests the following:

A Variance from §13.03.02 in which the minimum lot area in the Agricultural Zone is 35 acres. A variance may be requested pursuant to §9.02 of the Land Use Code to allow the right to develop a non-conforming parcel. §1.16 (8) of the Land Use Code defines conditions by which lots are to be considered conforming or non-conforming. The parcel measures two (2) acres and is located near the intersection of 550 and 570, slightly over 5.5 miles southwest of Gardner (Parcel Number 26330).

The subject property is zoned Agriculture. Zoning standards for this district are set forth in LUR Section §1.03 and require a minimum lot size of 35 acres.

Property History

This parcel was first recorded in its current form in 1972.

In 1945, the parcel was part of a much larger parcel, including one-eighth of section 30. Ownership of this parcel by Cleo Marion Denton and Sherman J Denton is recorded as an Indenture under Reception No. 167694.

In 1948, all of section 30 is described in a warranty deed as part of a larger parcel, under the same name as the indenture in 1945.

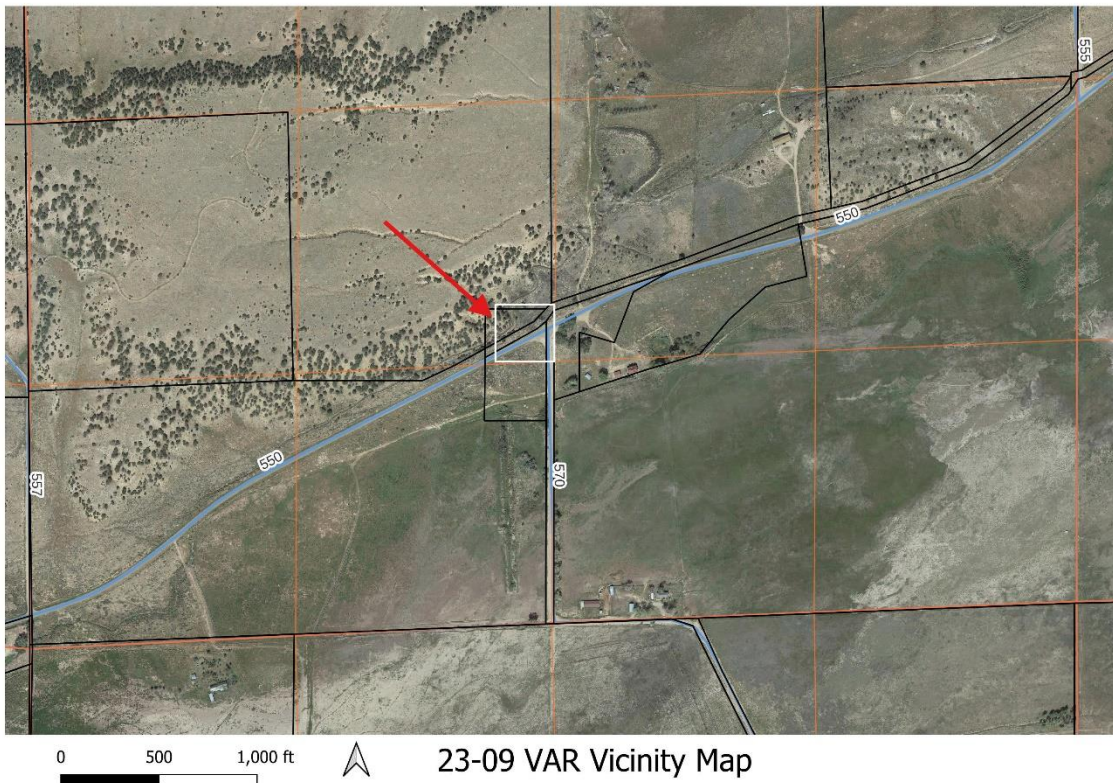
A search of book-page numbers listed in the legal description reveals that the legal description has not changed since the first record in October of 1972. Senate Bill 72-35, which required counties to pass regulations to require an approval process for the creation of parcels smaller than 35 acres was passed on May 5, 1972. Huerfano County adopted subdivision regulations on September 11, 1972. The deed for this property was notarized on October 5, 1972; it is, therefore, assumed that this represents a non-conforming lot.

These regulations were never properly recorded and only a fragment of a paper copy could be found. This fragment did not contain regulations specific to lot sizes, thus there is some uncertainty about whether a two-acre parcel would, in-fact, have been allowed when the parcel was created in October of 1972.

Creation of current parcel recorded in Book 331 Page 830 – September (no date on deed, notarized October 5), 1972 Quitclaim Deed, Cleo Marion Denton and Sherman J Denton sold the parcel in its current form to Alma R Kimbrel and John N Kimbrel.

Site Map/Vicinity Map

Section 30, Township 26, Range 70



Based on the legal description of this parcel, it is a rectangular-shaped parcel with north-south sides measuring 290.2 ft and east-west sides measuring 300.2 ft., implying that a portion of this parcel is on the south side of 550, and its appearance is not as it is depicted on the Assessor's map above. The parcel outlined in white approximates the legal description. It is possible that both 550 and 570 intersect this parcel, making the area of the parcel outside the right-of-way less than the two acres described in the legal description, which does not mention the County roads.

The nearest dwellings to this property are to the southeast – one at approximately 450 ft from the intersection of 550 and 570, the other approximately 1400 ft. from the intersection. To the southwest, there is another residence approximately 2,400 ft from the intersection. To the northeast, there is another dwelling approximately 1200 ft. away.

Code References

The following Code Sections are applicable to this application and may be referenced by the Huerfano County Board of Adjustment in their evaluation of the request:

§ 1.03.02

Agricultural District

This district is created for the purpose of protecting the productive agricultural lands of Huerfano County and preserving the visual and cultural values, historical and archeological features and critical wildlife habitat associated with the scenic vistas, natural topography and agricultural lifestyles in rural, unincorporated areas of Huerfano County.

Minimum lot area: 35 acres

§ 1.16 (8) Use of Conforming and Non-Conforming Lots.

01. Lots and parcels of record that were non-conforming prior to the day of adoption of this zoning regulation may be built upon or used provided that: a) the setback, floor area and bulk requirements and other provisions for the zoning district within which the lot is located are adhered to, b) the lot was not created by private conveyance or in violation of the County subdivision regulations and c) approval in the form of a variance is granted by the Board of Adjustment.

02. Lots and parcels of record that were conforming prior to the day of adoption of this zoning regulation are hereby declared to be conforming and shall henceforth continue to be legal conforming lots and parcels of record.

03. No lot which was conforming in size on the day of adoption of this zoning regulation may be subdivided according to the subdivision procedures contained herein in such a manner that it would become non-conforming nor cause any structure or use to become nonconforming.

§ 9.02.02 Powers and Duties of the Board

The Board of Adjustment shall have the following powers and duties, which shall be exercised in accordance with the laws of the State of Colorado and the provisions of these regulations and in harmony with the public interest and the most appropriate uses of the land:

...

2. To provide applicants with an opportunity to apply for variances from zoning setback requirements and other circumstances for which a variance may be deemed appropriate.

...

4. Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property existing at the time of enactment of these regulations, or by reason of exceptional topographic conditions or other extraordinary or exceptional physical characteristics or conditions of such piece of property not created by the applicant subsequent to the adoption of these regulations or previously adopted County zoning regulations, the strict application of any zoning regulation or provision therein would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, then the Board of Adjustment shall have the authority, upon an appeal relating to said property, to authorize a variance from such strict and literal application so as to relieve such difficulties or hardship. Such relief shall be granted, however, without substantial detriment to the public good and without altering or impairing the intent and purpose of the zoning regulations and other provisions contained within State or County regulations. The Board shall not, however, have the power to grant variances from the uses prohibited or allowed conditionally by special review for the zoning district involved.

Referral Comments

No Issues/questions from the Las Animas/Huerfano County Health Department or the Spanish Peaks Regional Health Center.

Staff Recommendation: A survey of the property has been conducted. Staff finds that the granting of this variance would have a minimal impact on neighbors or the character of the neighborhood. The creation of this parcel so close to the date at which it may have become non-conforming and the lack of certainty as to lot size

restrictions in place in October of 1972 should be taken into consideration in deciding this case. The strict application of the zoning rules would make this parcel unbuildable, and it is, therefore, within the purview of the Board of Adjustment to consider granting a variance to the minimum lot size requirements.

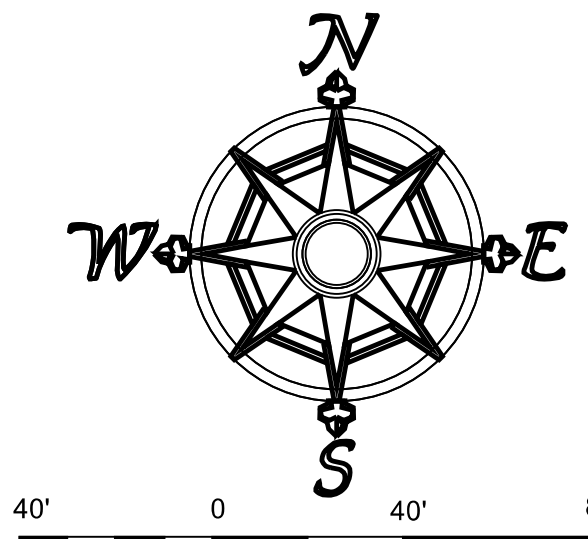
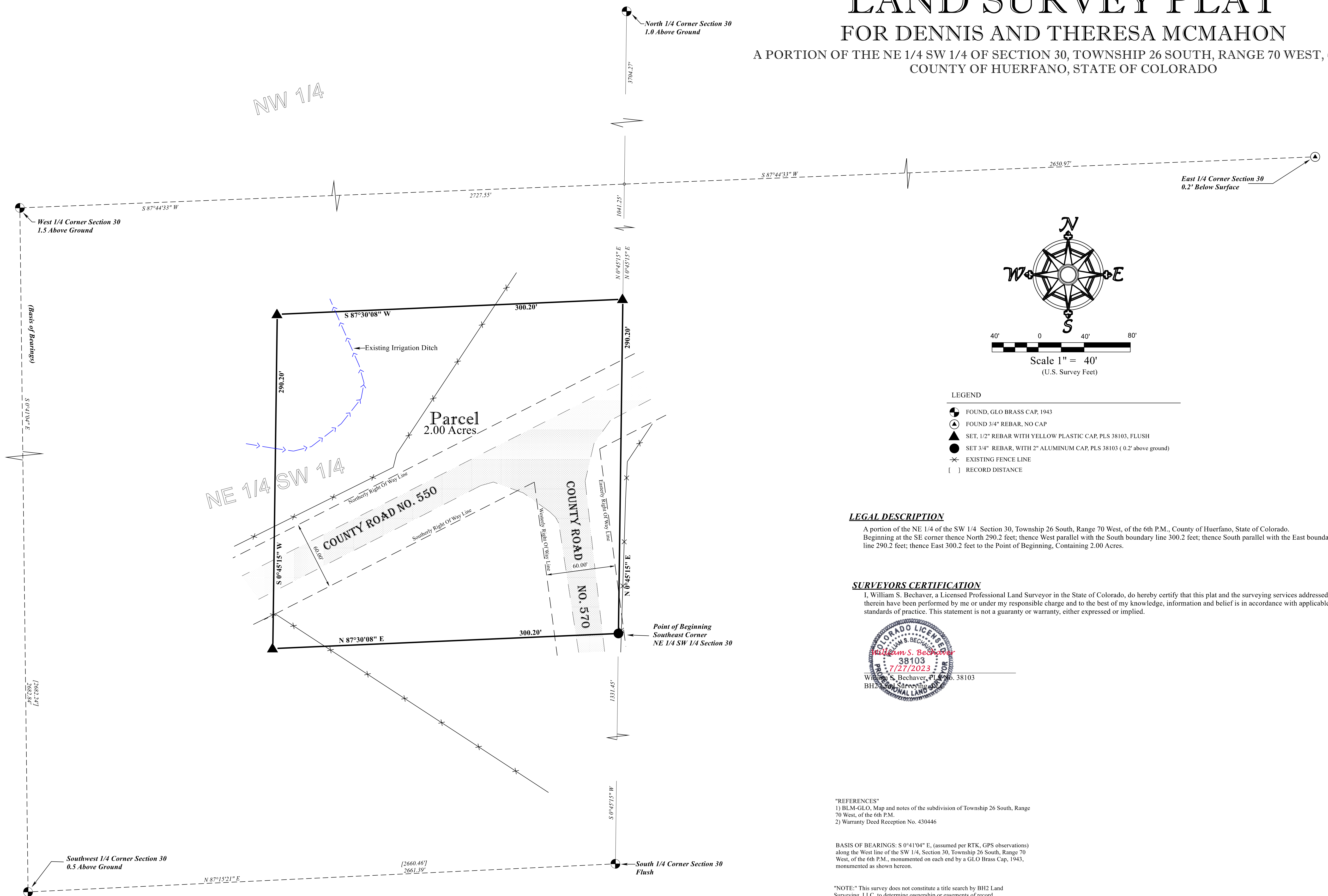
Board of Adjustment should examine the survey to ensure that required setbacks would not make the proposed project infeasible.

Commission Action Options:

1. **Approval** without any special conditions.
2. **Conditional** Approval with a description of the special conditions.
3. **Denial**, indicating for the record the reason(s) for such action.
4. **Continuation** until a future date to gather more information or obtain clarification or for any other relevant cause.

LAND SURVEY PLAT FOR DENNIS AND THERESA MCMAHON

A PORTION OF THE NE 1/4 SW 1/4 OF SECTION 30, TOWNSHIP 26 SOUTH, RANGE 70 WEST, 6th P.M.
COUNTY OF HUERFANO, STATE OF COLORADO



Scale 1" = 40'
(U.S. Survey Feet)

- LEGEND**
- FOUND, GLO BRASS CAP, 1943
 - ⊙ FOUND 3/4" REBAR, NO CAP
 - ▲ SET, 1/2" REBAR WITH YELLOW PLASTIC CAP, PLS 38103, FLUSH
 - SET 3/4" REBAR, WITH 2" ALUMINUM CAP, PLS 38103 (0.2' above ground)
 - ✕ EXISTING FENCE LINE
 - [] RECORD DISTANCE

LEGAL DESCRIPTION

A portion of the NE 1/4 of the SW 1/4 Section 30, Township 26 South, Range 70 West, of the 6th P.M., County of Huerfano, State of Colorado. Beginning at the SE corner thence North 290.2 feet; thence West parallel with the South boundary line 300.2 feet; thence South parallel with the East boundary line 290.2 feet; thence East 300.2 feet to the Point of Beginning, Containing 2.00 Acres.

SURVEYORS CERTIFICATION

I, William S. Bechaver, a Licensed Professional Land Surveyor in the State of Colorado, do hereby certify that this plat and the surveying services addressed therein have been performed by me or under my responsible charge and to the best of my knowledge, information and belief is in accordance with applicable standards of practice. This statement is not a guaranty or warranty, either expressed or implied.



- REFERENCES**
- 1) BLM-GLO, Map and notes of the subdivision of Township 26 South, Range 70 West, of the 6th P.M.
 - 2) Warranty Deed Reception No. 430446

BASIS OF BEARINGS. S 0°41'04" E, (assumed per RTK, GPS observations) along the West line of the SW 1/4, Section 30, Township 26 South, Range 70 West, of the 6th P.M., monumented on each end by a GLO Brass Cap, 1943, monumented as shown hereon.

"NOTE:" This survey does not constitute a title search by BH2 Land Surveying, LLC, to determine ownership or easements of record.

"NOTE" Client did not request a search for recorded Rights-of-Way and Easements.

"NOTICE:" According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such a defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of certification shown hereon.

BH² LAND SURVEYING, LLC
 P.O. Box 20399, Colorado City, CO 81019
 Phone: 719-676-2072
 Email: bh2@ghvalley.net

Scale 1" = 40'	Date: 7-27-2023	Drawn By: WSB
Sheet 1/1	Job No. 2023-078	

**WHEN RECORDED MAIL ALL
DOCUMENTS INCLUDING TAXES TO**

**Dennis McMahon and Theresa McMahon
PO Bx 4386
Dillon Co.80435**

SPECIAL WARRANTY DEED

For good and valuable consideration of Ten Dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, I or we, Mile High REI Group, LLC , a Colorado Limited Liability Corporation, (GRANTOR), does hereby convey to Dennis McMahon and Theresa McMahon (GRANTEES), the following described real property situated in the county of Huerfano, state of Colorado:

Parcel ID

26330

Recorder: Legal Description

SEC 30-TWP 26-RNG 70 PT OF NE4SW4 DES AS BEGINNING AT SE
COR TH N 290.2 FT TH W PARALLEL WITH THE S BNDRY LINE 300.2 FT
TH S PARALLEL WITH THE E BNDRY LINE 290.2 FT TH E 300.2 FT TO
POB 2A 331-830 380260 385263

SUBJECT TO: Existing taxes, assessments, covenants, conditions, restrictions, rights of way and easements of record. And the GRANTOR binds itself and its successors to warrant the title against its acts and none other, subject to the matters above set forth.

Signature Page to Follow

Dated: 6/27/23

Signature: 

David G. VanSteenkiste (Managing Partner)
Mile High REI Group LLC
500 Westover Dr #12291
Sanford, NC 27330

Acknowledgment of Individual

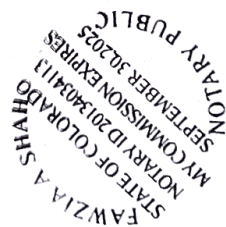
STATE OF Colorado
COUNTY OF Boulder

The foregoing instrument was acknowledged before me this 27th June 2023 (date), by David G. VanSteenkiste (Managing Partner) Mile High REI Group LLC, who is personally known to me or who has produced Colorado Driver License (type of identification) as identification.



Notary Public

Printed Name: Fawzia A-Shah



My Commission Expires: Sep 30th 2025

Commission # 20134034113

Huerfano County Land Use Department
401 Main Street, Suite 340, Attn: Land Use
Walsenburg, Colorado 81089
719-738-1220 ext. 103



GENERAL LAND USE APPLICATION

Application File No.: 23-09
Date Received: 2/27/23
Received by: [Signature]
Fees due: 75.00 Date Paid: 3/15/23

1. ACTION(S) REQUESTED:

- Conditional Use Permit
 - Conditional Use Permit / Marijuana
 - Conditional Use Permit/ Oil, Gas or Uranium Exploration and/or Development
 - Rezoning
 - Variance
 - Subdivision Exemption
 - Plat Amendment
 - Lot Consolidation
 - Plat Correction
 - Right-of-Way or Easement Vacation
 - Other Actions (specify): _____
- Sign Permit
 - Temporary Use Permit
 - H.B. 1041 Text Amendment
 - H.B. 1041 Development Permit
 - H.B. 1041 Flood Plain Exemption
- PUD and Subdivisions:
- Sketch Plan
 - Preliminary Plan
 - Final Plat / Subdivision Improvement Agreement
 - Appeal of Denied Application

2. APPLICANT AND OWNER INFORMATION:

Applicant Name: Theresa McMahon
 Applicant's Mailing Address: P.O. Bx 4386 Dillon Colorado 80435
 Applicant's Telephone: 936-253-4065 Email: sweetgirl.4468@gmail.com
 Name of Land Owner: Mile High Rural Land
 Land Owner's Mailing Address: 500 West Over Dr. #12291 Sanford, NC
 Land Owner's Telephone: 866-707-3478 Email: Hello@milehighruraland.com 27330

3. PERMIT DETAILS:

Detailed project description/Scope of Work: Would like to develop property for a single residence, maybe a cabin or manufacter home, and a rent to own utility building.

Parcel Area: 2 Acres; Zoning District(s): Agriculturer

Parcel/Schedule Number(s): 26330

Parcel Address (optional): _____

Current/Proposed Land use (see §1.05 of the Land Use Code): VACANT / single residence

GENERAL LAND USE APPLICATION

If project is in an HOA, HOA name: NONE

If a Variance Request, please state the reason for the Variance(s): Property is zoned agricultural, would like to develop residence

Is all or a portion of the subject land located in a 100-year flood plain area (see FEMA floodplain map), or are there areas with slopes in excess of twenty percent (20%)? YES NO NOT SURE

If YES, describe existing conditions: _____

Value of proposed project: undetermined - not sure

Will the proposed project require any State or Federal permits? YES NO

If YES, please list all permits or approvals required: _____

Additional pertinent information: We have purchased property and are making monthly payments, need to develop.

If a H.B. 1041 permit is required, for what matters of local concern and state interest? _____

4. CERTIFICATION BY THE APPLICANT:

I hereby certify that this Application is made with full knowledge of the design standards, all fees, procedures, public hearing and meeting requirements contained in the Huerfano County Land Use Regulations. Furthermore, I understand that all conditional use permits are non-transferrable, unless specifically approved by the Huerfano County Board of County Commissioners. The Board of County Commissioners may impose permit transfer fees as it deems appropriate. All documents submitted may be subject to internet publishing.

Signature of Applicant: Theresa McMahon Date: 2-27-2023
Printed name: Theresa McMahon

5. ACTION (by the authorized permitting authority):

- Final Approval
- Conditional Approval
- Denial

Name _____ Signature _____

Title _____ Date _____

Comments _____