



## Planning Commission Staff Report

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### Conditional Use October 13, 2015

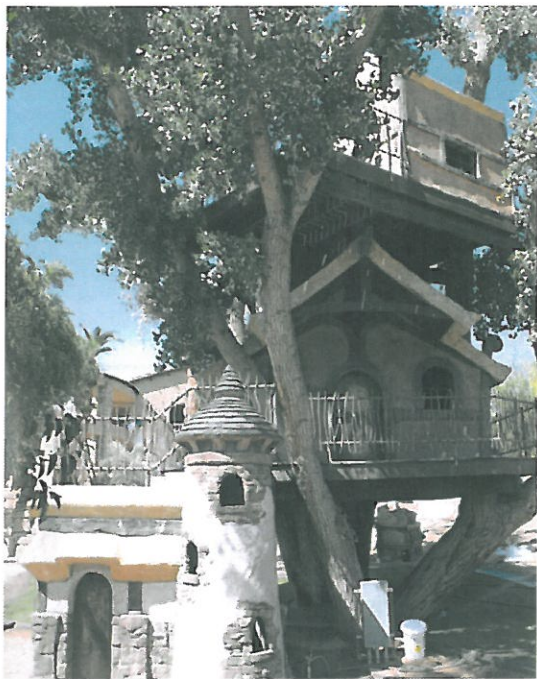
Applicant/Owner: Randy Paul  
Location: Approximately 200 South Stage Coach Drive in Brookside  
Zone: RE-40 (Residential Estate 40,000 square foot minimum lot size)

### Background:

Mr. Paul is an artist. He builds exhibits, playhouses, tree houses and fantasy type structures that you might see at a theme park, zoo or a themed hotel (*See photos below*). In the photos you will see a tree house structure that he built in a client's yard. Mr. Paul wanted to build several similar playhouse type structures on his property in the Brookside Summer Homes Subdivision in Brookside for his kids and grandkids. He owns Parcel BSH-37-NW; which is Lot 37 and Parcel BSH-38-NW; which is Lot 38. He has already built a play house that is fake rock that blends into the existing rocks on the property. Besides the rock structure he described that he would build a Rapunzel's tower and a Hobbit-hole. The Hobbit-hole would include a storage room for his equipment and supplies. After discussion and review in the August 12, 2014 Planning Commission Meeting a Conditional Use Permit was approved for Mr. Paul to construct several play structures for his family to enjoy (*See Attachment 1*). The approval was based on the following findings and conditions:

1. The proposal is in harmony with the character and intent of the RE-40 (Residential Estate 40,000 square foot minimum lot size) zone.
2. Similar projects that the applicant has built are located in high-end residential developments.
3. The conditional use was properly noticed.
4. That the structure be for private use only and not for commercial use.
5. That if the structures become neglected or in disrepair that they be removed.
6. All structures shall meet the lot line setback requirements for both properties.





Recently Staff has received a letter (*See Attachment 2*) and several phone calls complaining about Mr. Paul's property and what was approved as part of the conditional use permit. Several of the neighboring property owner's requested to share their concerns with the Planning Commission; which they were able to do during the "Call to The Public" portion of the September 8, 2015 Planning Commission Meeting (*See Attachment 3*). Washington County Code 10-18-10: REVOCATION: states, "A conditional use permit may be revoked upon failure to comply with the conditions imposed with the original approval of the permit and



the applicant shall be so notified of revocation by the county." It has been determined that the Conditional Use Permit shall be reviewed for compliance in a regularly scheduled Planning Commission Meeting.

## **Concerns:**

**Septic.** More often than not a playground or playhouse is constructed after the primary dwelling is constructed. During the initial review of the Conditional Use Permit application, it was determined that since there is not a dwelling or bathroom facility on site that a restroom, port-a-potty or alternate means for waste disposal approved by the Southwest Utah Public Health Department be required. The applicant received approval for a portable camping toilet chair with a bucket to collect the waste. The waste is emptied into the existing septic tank on Lot 37. The County and Health Department have received complaints about how the waste is handled. The method of waste disposal has not changed from what was approved by Southwest Utah Public Health Department and conditional use approval. The waste is collected in a bucket and emptied into the existing septic tank.

**Setbacks.** There have been complaints that the playhouse structures don't meet the setback requirements. Condition 6 of the Conditional Use Permit approval states, "All structures shall meet the lot line setback requirements for both properties." The Brookside Summer Home Subdivision is located in the RE-40 (Residential Estate 40,000 square foot minimum lot size) zone. The setbacks in the zone are 25' front and 10' side and rear (10-8D-5). The Brookside Summer Homes Subdivision was approved in the mid 1960's, long before Washington County's current subdivision ordinance(s). This subdivision does not meet Washington County's current ordinance(s) and would not be able to be approved as it was in the 1960's. The Brookside Summer Homes Subdivision is considered legal nonconforming or "grandfathered". Access to each lot in the subdivision is provided by a "perpetual use easement through, across and over all of the said lots for public utility and road purposes". Other than showing the access as a 20' Road on the plat, there is not a legal description or location dimensions of where the access is located; but instead it arbitrarily meanders across, over and through the lots in the subdivision (*See Attachment 4*). There are several lots; such as lots 1, 2, 3 and 4 that are not shown to have any access to the easement on the plat. As individual lots in this subdivision have developed, some property owners have moved the location of the access easement road to more convenient locates on their lot. The front yard setback is usually established by what lot line is adjacent too, or abutting a dedicated public right of way, or private street. The Brookside Summer Homes subdivision does not have a public right of way, or private road. If the access easement followed lot lines it would be easier, or at least less arbitrary to establish where the front yard setback should be measured from. With that being said, referring to the attached plat, which lot line should be the front yard lot line on Lot 12, Lot 13, Lot 47, Lot 51, Lot 30 and Lot 31? Should the lots have multiple front yard lot line setbacks? On the attached aerial (*See Attachment 5*) the pink colored lines are the lot lines. Notice the placement of the existing structures on each of the lots in this aerial. It is clear to see there are some challenging setback issues. The ambiguity and difficulty of arbitrarily determining front yard lot lines, along with the challenging topography and the fact that the Santa Clara River runs through the subdivision could render a number of the approved lots unbuildable. Again, The Brookside Summer Homes Subdivision is considered a legal nonconforming subdivision. Because of the complexities of this non-conforming subdivision with nonconforming lots the County treats all lot lines as interior lot lines. In 10-8D-6 Modifying Regulations: it states, "Accessory buildings located at least ten feet (10') away from the main building may have three foot (3') side or rear property setback on interior lot lines." By treating the play structures similar to an accessory building, they could be located as close as three feet (3') from any of the property lines. The playhouse structures meet the setback requirement(s).

**Building Permit.** There have been complaints that building permit(s) should be required for the playhouse structures. Title 9 of the Washington County Code is statutorily referred to as the *Building Code Ordinance of Washington County* states, "The most recent version adopted by the state of Utah of the following codes and the appendices and the state's amendment are incorporated by reference and adopted as the building codes of Washington County: international building code, international mechanical code, international fuel gas code, international residential code, international fire code, international energy conservation code, international plumbing code, national electrical code, HUD code, and the model manufactured home installation standard." As of the date of this staff report, The State of Utah has not

adopted the 2015 International Residential Code (IRC). The 2012 International Residential Code (IRC) is the currently adopted code. Under Section R105 PERMITS: R105.2 Work exempt from permit states, "Permits shall not be required for the following. Exemption from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. One story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 200 square feet...". Although the ceiling height of each level of the "Rapunzel tower" playhouse is not required to meet the seven foot ceiling height requirement for a "story" of habitable space; it may be determined that it is appropriate for Mr. Paul to get a building permit for the two level play structure.

The play structures are below the square footage requirement for a building permit. The play structures are below the maximum height requirement in the RE-40 (Residential Estates 40,000 square foot minimum lot size) zone. The play structures are in various stages of construction. Mr. Paul has submitted the specs for the custom windows and doors that will be installed in the "Rapunzel Tower" (*See Attachment #7*).

**Use.** A condition of the original approval was that the structures be for private use only and not for commercial use. Understanding that the structures have not been completed; there have not been any complaints about the structures being used commercially. The condition is being met.

## **Recommendation:**

Staff has reviewed the expressed concerns as well as the original conditions of approval. Staff finds Mr. Paul's project to be in compliance with the conditions and findings of the approved Conditional Use Permit. With that being said, Staff recommends that the Planning Commission take no action.

- Attachment 1: August 12, 2014 Staff Report and Minutes
- Attachment 2: Complaint Letter
- Attachment 3: September 8, 2015 Draft Planning Commission Minutes
- Attachment 4: Brookside Summer Homes Subdivision Plat
- Attachment 5: Aerials
- Attachment 6: Photos
- Attachment 7: Spec Sheet on Custom Windows and Doors For Rapunzel Tower

## **Attachment 1**



### **Planning Commission Staff Report**

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#### **Conditional Use August 12, 2014**

Applicant/Owner: Randy Paul  
Location: Approximately 200 South Stage Coach Drive in Brookside  
Zone: RE-40 (residential Estate 40,000 square foot minimum lot size)

#### **Description:**

Randy Paul, the owner of Parcel BSH-37-NW and Parcel BSH-38-NW; which are located in Brookside Summer Homes Subdivision has submitted conditional use application. Each parcel is approximately 2 acres in size. Mr. Paul is an artist. He builds playhouses, tree houses and fantasy type structures that you might see at Disney Land or a themed hotel. Please refer to attached photos of some of the work that he has done. In the photos you will see a tree house structure that he built for Jeremy Johnson. Mr. Paul plans to build a house on his property in the future; but at this time desires to build several play structures on his property for his kids and grandkids. He has already built a play house that is fake rock that blends into the existing rocks on the property. After review, it is Staff's opinion that the unique proposal be reviewed using County Code 10-8D-3: CONDITIONAL USES; which states, "Any use similar to the above and judged by the planning commission to be in harmony with the character and intent of this zone". The Planning Commission needs to determine if the proposed use is appropriate.

#### **Recommendation:**

Staff has reviewed the proposal and recommends that the Planning Commission approve the conditional use permit based on the following findings and conditions:

1. The proposal is in harmony with the character and intent of the RE-40 (Residential Estate 40,000 square foot minimum lot size) zone.
2. Similar projects that the applicant has built are located in high-end residential developments.
3. The conditional use was properly noticed.
4. That the structure be for private use only and not for commercial use.
5. That if the structures become neglected or in disrepair that they be removed.

Attachment 1: Area Map  
Attachment 2: Photos



- 4. The conditional use was properly noticed.**
  - 5. That the above mentioned deed restriction be recorded.**
- Commissioner Balen SECONDED. Chairman Wilson called for discussion on the motion. There being none, he called for a vote. The motion carried with all six (6) Commissioners voting in favor.**

**V. CONDITIONAL USE PERMIT.** Review of family recreation/retreat located on Parcels BSH-37-NW and BSH-38-NW in the Brookside Summer Homes Subdivision at approximately 200 South Stage Coach Drive in Brookside. Zoned RE-40 (Residential Estate 40,000 square foot minimum lot size); Applicant: Randy and Tammy Paul.

Mr. Messel stated Randy Paul, the owner of Parcels BSH-37-NW and BSH-38-NW, which are located in the Brookside Summer Homes Subdivision, has submitted a conditional use application. Each parcel is approximately 2 acres in size. Mr. Paul is an artist. He builds playhouses, tree-houses, and fantasy type structures that you might see at Disneyland or a themed hotel. Please refer to submitted photos of some of the work that he has done. In the photos, you will see a tree house structure that he built for Jeremy Johnson. Mr. Paul plans to build a house on his property in the future; however, at this time, he desires to build several play structures on the properties for his kids and grandkids entertainment. He has already built a play house that is fake rock and blends into the existing rocks on the property. After review, it is Staff's opinion that the unique proposal be reviewed using County Code 10-8D-3: **CONDITIONAL USES**, which states, "Any use similar to the above and judged by the Planning Commission to be in harmony with the character and intent of this zone". The Planning Commission needs to determine if the proposed use is appropriate.

**Recommendation:**

Staff has reviewed the proposal and recommends that the Planning Commission approve the conditional use permit based on the following findings and conditions:

1. The proposal is in harmony with the character and intent of the RE-40.0 (Residential Estate 40,000 square foot minimum lot size) zone.
2. Similar projects that the applicant has built are located in high-end residential developments.
3. The conditional use was properly noticed.
4. That the structure be for private use only and not for commercial use.
5. That if the structures become neglected or in disrepair that they be removed.

Commissioner Stucki asked if any restroom facilities were located on the property. Mr. Messel explained the septic tank has been installed. The Southwest Public Health Department has approved a port-a-pottie type chair that can be used and then disposed of into the septic system.

Commissioner Stucki stated it sounds like a pavilion. Mr. Mess concurred noting it could be considered as such, or as a playground type of use.

The commission and staff discussed the intended use of the property. Staff thought it would be appropriate to bring it to the commission for approval. Chairman Wilson asked about the materials being used. It was determinate to be cement/gunite and a skeleton rebar type of frame.

Randy Paul explained the type of material he uses on the structures. He wants to build a home on the property at some time in the future but right now, he and his family go camp on the property and have fun. He asked the commission to approve the conditional use permit request.



Chairman Wilson expressed his concern with the two lots in the future. The structures should meet the setbacks for each lot. If the use is approved, then the motion for approval should include the structures meeting the lot line setback requirements.

Commissioner Everett asked why this item was coming to the planning commission. Mr. Messel answered it was because staff wanted to make sure everything was addressed. Currently, there is nothing specified in the ordinances for this type of use and if we allowed these to be built and then complaints were made, staff would need to address the issue. We thought it better to do it upfront in the event problems arose.

Kurt Gardner stated the applicant wants to construct these "accessory buildings" however, there is no main dwelling for them to be accessory to.

Commissioner Stucki stated these are playhouses so why is it here. Mr. Gardner answered the applicant will be using the structure for storage.

Commissioner Jones asked what the square footage was for a building before a permit was needed. Mr. Gardner informed him it was 200 sq. ft. However, any building on a property is an "accessory" to a primary building. There is no primary located building on these two properties.

Mr. Gardner explained the requirements for a building permit. The commission and staff discussed the use and the reason why this item was brought to the commission. Mr. Messel stated this item was properly noticed and there has been no opposition to the request. If the commission is comfortable with the use, they could grant conditional use permit for this use.

Chairman Wilson called for a motion.

**MOTION:** Commissioner Balen **MOVED** to approve the conditional use permit for family recreation/retreat located on Parcels BSH-37-NW and BSH-38-NW in the Brookside Summer Homes Subdivision at approximately 200 South Stage Coach Drive in Brookside. Zoned RE-40 (Residential Estate 40,000 square foot minimum lot size); Applicant: Randy and Tammy Paul based on the following findings and conditions:

1. The proposal is in harmony with the character and intent of the RE-40 (Residential Estate 40,000 square foot minimum lot size) zone.
2. Similar projects that the applicant has built are located in high-end residential developments.
3. The conditional use was properly noticed.
4. That the structure be for private use only and not for commercial use.
5. That if the structures become neglected or in disrepair that they be removed.
6. All structures shall meet the lot line setback requirements for both properties.

Commissioner Jones **SECONDED**. Chairman Wilson called for discussion on the motion. He asked if commission wanted to include in the motion that the structures meet lot line setbacks. Commissioner Balen concurred and amended the motion to include the set back requirement. Commissioner Jones approved the amendment after which, Chairman Wilson called for a vote. The motion carried with all six (6) Commissioners voting in favor.

## Attachment 2

August 25, 2014

*SCOTT MESSEL  
DIRECTOR - PLANNING DEPT*

Re: Conditional Use Permit / Randy and Tammy Paul  
Brookside Summer Homes- Lots 38 & 37  
Approved on August 12, 2014

The residents of Brookside Summer Homes are seeking your help in halting any further construction and revoking the Conditional Use Permit based on the below items.

Mr. Paul has not conducted himself according to the conditions that the permit outlines and was granted under.

Item one is the lot line set back which was discussed and voted on as a condition to the use permit. The silo type structure is 8' from the property line on the ground level and less than 7' on the upper level from the property line. (Photos attached)

Item two is a very serious item and needs immediate attention. In the meetings minutes Commissioner Stucki questioned restroom facilities and as stated by Mr. Messel the Health Department approved the use of "porta-a-pottie type chair that can be used and then disposed of into the septic system." This is not happening. Please see the attached photos taken of Mr. Paul's restroom facility. This is just plain disgusting and promotes the spread of germs and diseases of all kinds including Hepatitis to residents of Brookside.

We are asking that the Conditional Use Permit be revoked immediately, all work stopped and the silo type structure removed due to fact that Mr. Paul did not meet the lot line setback and the health issues.

Thank you,  
Brookside Summer Homes.  
Spokesperson: Jim Mendenhall  
Ph. 435-574-2419



Copies:  
Scott Messel  
Eric Clark  
Robert Beers  
Alan D. Gardner  
Victor Iverson  
Zachary Renstrom

Attachments: Meeting minutes and photos



### **Attachment 3**

#### **CALL TO THE PUBLIC.**

Jim Mendenhall addressed the Commission stating he is the spokesman for the residents of Brookside. He and the others are in attendance to address the issues regarding the property owned by Randy and Tammy Paul. He handed out a packet of pictures to the commissioners and referenced each picture reporting one shows the structure within 6 feet of the property line, which does not meet the setbacks for this property. Last year, a conditional use permit was approved and issued to the Paul's for playhouse type structures. The buildings exceed the 200 sq. ft. requirement and no building permits have been taken out on the structures. Recently a resident was required to get a building permit for an additional building on their property and we believe this should be addressed for the Paul's property also. The next issue was talked about at length in the meetings and that was the lot line setbacks. The photo shows the structures do not meet the lot line setbacks to the adjacent property. The castle type structure is approximately 6 feet from the lot line. There is a safety issue regarding the large rocks. The rocks were excavated out and then a slurry of concrete poured over them and then the structure was hollowed out underneath. If there is too much water or a tremor the structure could fall over and block the road. The county allowed "chair type port-a-potties" to be used and dumped into the existing septic system on the property. There is no access to the septic system and the raw sewage waste is being stored in a bucket and not dumped into the septic system. We are asking the commission to take immediate action on the concerns of the residents of Brookside and revoke the conditional use permit, and that all work be stopped, and we respectfully request the structures be removed.

Chairman Wilson stated we are not able to take action on this as it is not an agenda item. He asked if there were additional comments.

Michael Kirkpatrick stated he owns the property next to the Paul's where the structure is encroaching into the setback. The structure is within 6 feet 6 inches of the property line adjacent to his property. He strongly objects to the structures and the setback issue. He is also concerned with the structure falling over and blocking the road way. It is the only road into and out of the area. He requested the Conditional Use Permit be revoked and the structures removed.

Kathy Tanasz a resident of Brookside provided a handout to the commission of an e-mail sent August 11, 2014 objecting to the conditional use permit being granted when it was first reviewed. Also an e-mail correspondence with concerns of the buildings not being what was presented during the meeting. She stated she had called and asked this item be put on the agenda and does not understand why it was not officially on the agenda. She said when she called to see why this was not on the agenda she was advised the item would be a "Call to The Public" and not a review.

Mr. Messel answered as far as reviewing the conditional use, staff was in the process reviewing it when Mrs. Tanasz called and asked that it be put on the planning commission agenda. It was determined that because there would be multiple people wanting to come in and address the concerns, it was best to do it this way. Then, if the planning commission wanted to review the conditional use, it would then be scheduled and the applicant would be invited to the meeting.

Mrs. Tanasz responded she was aware of the way meetings work. She wanted to get the process started and the revocation voted on, which is why she asked for it to be put on the agenda for action.

Chairman Wilson stated it could be placed on the next meeting's agenda. Mrs. Tanasz was receptive of that.

Commissioner Stucki asked why would we vote on an agenda item of which she is not a property owner. Mr. Messel responded as we were looking at the item and trying to review it, he talked to several residents who are here today and from whom he received letters from about their concerns. It was

decided this would be an appropriate way for them to come in and express those concerns. Then it could be up to the planning commission to decide if they wanted to bring the applicant in to further review and decide on how to proceed with the conditional use permit.

Chairman Wilson stated where this is a conditional use permit issued and there are violations then the commission can request the conditional use permit be brought back for a review and either revoked or establish guidelines and or conditions.

The commission and staff discussed the process and how to proceed with the request from the neighbors. Chairman Wilson stated the commission would not be answering any questions regarding the conditional use permit revocation but would listen to the concerns.

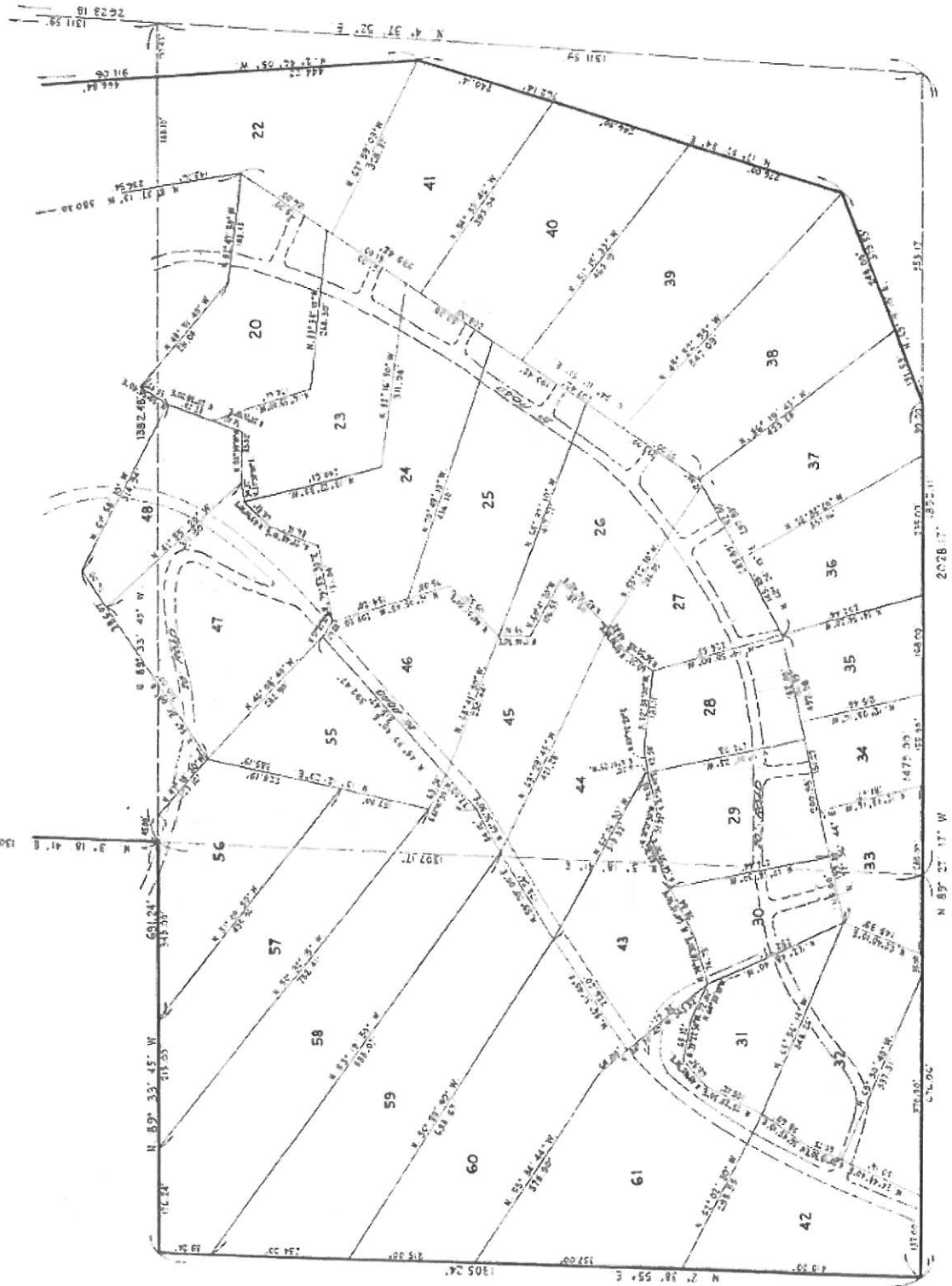
Mrs. Tanasz stated one of the facts if finding of approval was that the proposed use was in harmony and intent of the area. Brookside Summer Homes is a residential area and these structures are not in harmony with the area. These are residential lots not a park or playground. The area is not a Disneyland type area or themed hotel. Mr. Paul's structures are not appropriate to the residential zoning of the area. She spoke further on the structures and the violations that she believed were associated with them, which include fire protection. She asked that the conditional use permit be reviewed, revoked, and the structures removed.

Allen Lundgren a nearby resident and neighbor to the project stated his concerns were that the tower and the other structures create an attractive nuisance. There are no safety devices in place and the raw sewage is a hazard. It creates a significant hazard as well as a liability. He cited Section 11-8-3 of the Washington County Codes regarding enforcement. He stated a prima facie case has been established and the appropriate orders should be entered and the offending structures be removed.

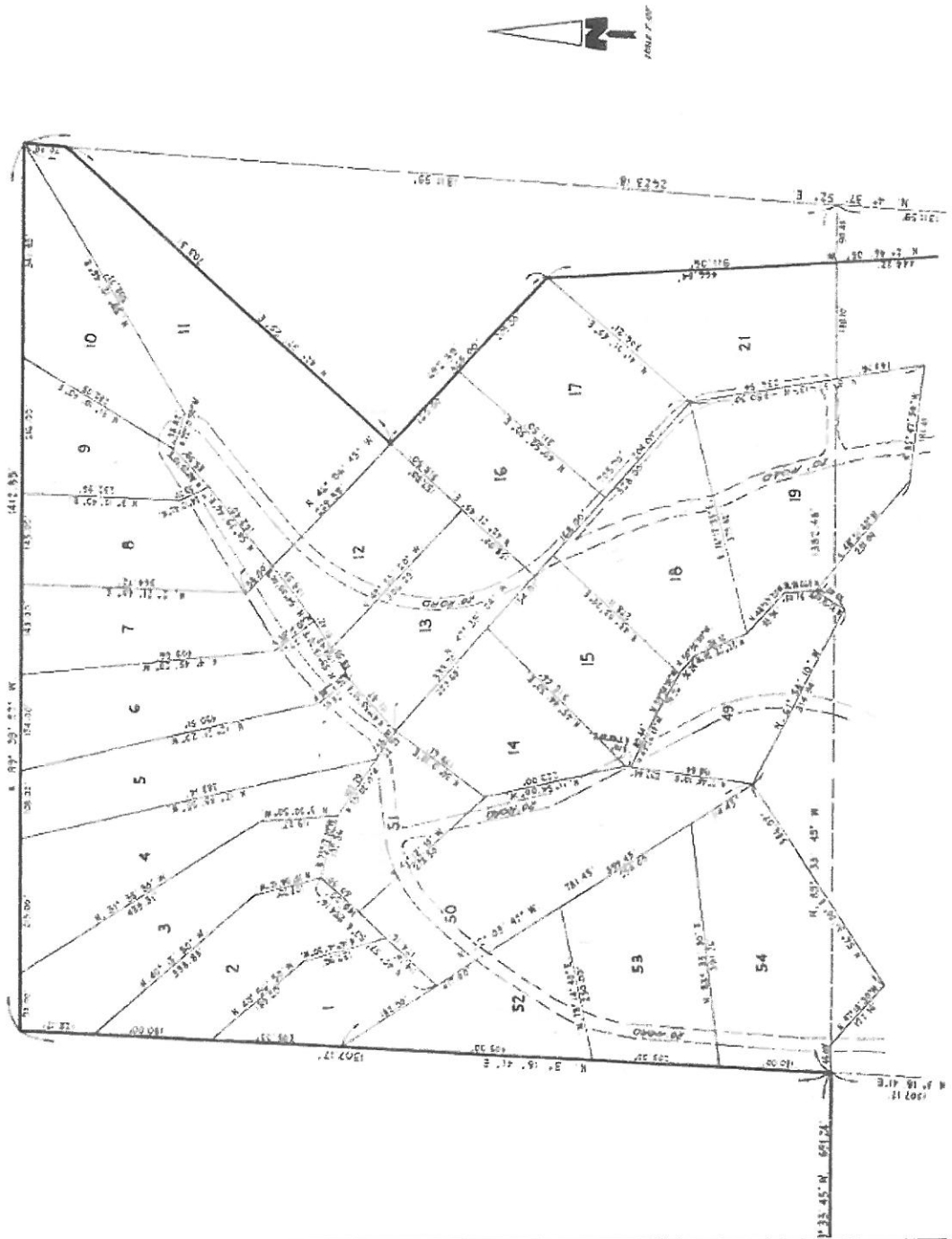




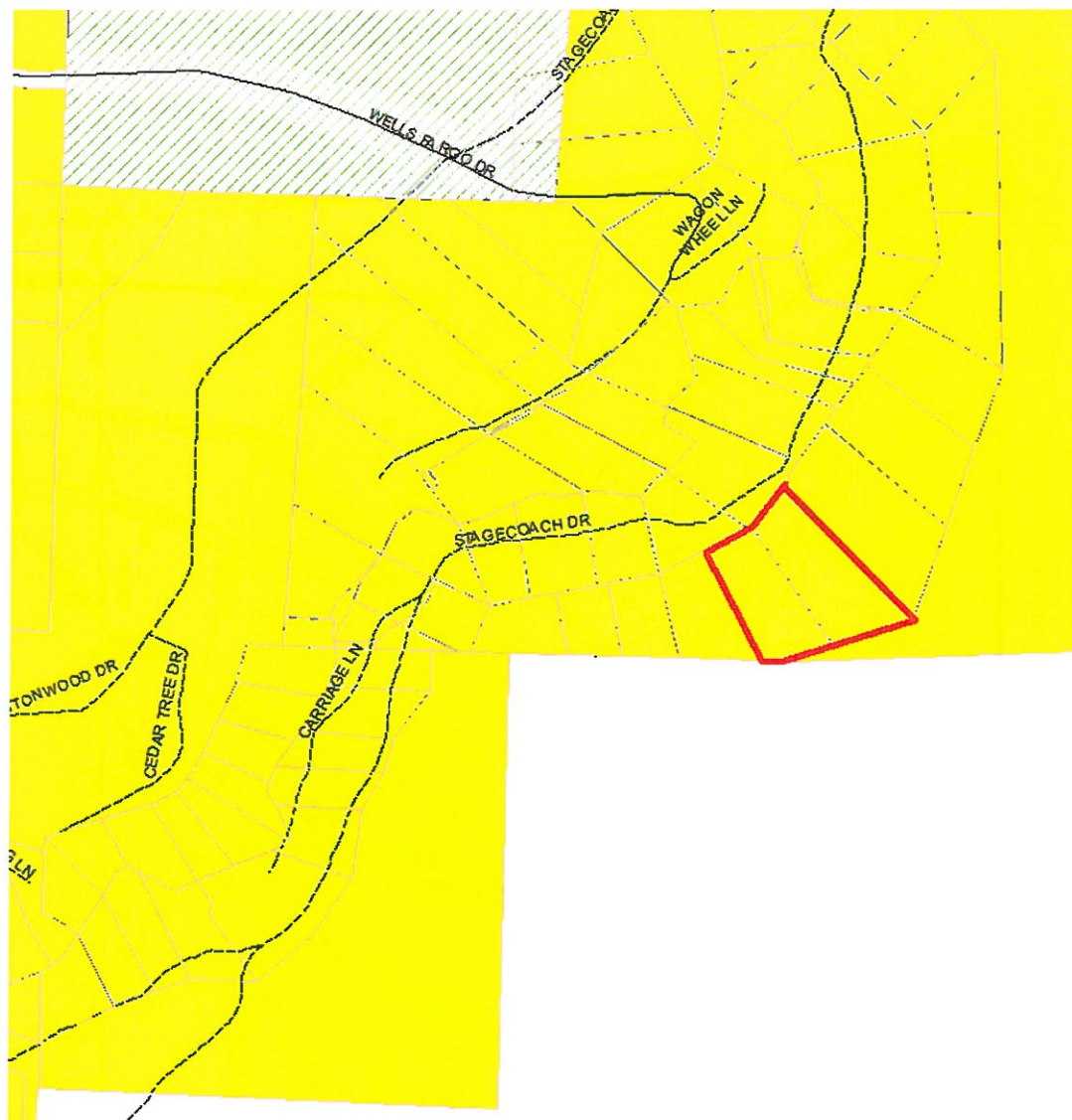
# BROOKSIDE SUMMER HOMES



# BROOKSIDE SUMMER HOMES



**Attachment 5**









**Attachment 6**

