

CONDITION THAT THE GOATS ARE PROPERLY CONFINED, THE PROPERTY OWNERS ARE MINDFUL OF PEDESTRIANS USING THE PUBLIC TRAIL SYSTEM, AND THE PROPERTY IS MAINTAINED AS TO NOT CREATE A PUBLIC NUISANCE.

COMMISSIONER HEARNS SECONDED THE MOTION

MOTION PASSED 6-0

2. Application #: 2025-05
Application Name: Santa Ana Temporary Easement Vacation
Application Type: Easement Vacation
Applicant: Glen Howell
Location: 102 Santa Ana Drive
Zone: Planned Unit Development (PUD)
Description: This is a request to vacate a temporary easement on the east twelve (12) feet and south fifteen (15) feet of lot 1 of the Santa Ana Subdivision.

Mr. Henry Hemphill, City Planner, gave a PowerPoint presentation.

Slide 1 – Introduction

Slide 2 – Application Information

- Request to vacate a Temporary City of Fruita Easement.
 - East 12 feet and south 15 feet of Lot 1 of the Santa Ana Subdivision
- Easement granted after Plat in 2008
- Easement purpose:
 - Use by the general public for park and recreation purposes
 - Stormwater detention operation, maintenance and repair of stormwater detention facilities.

Slide 3 – Easement

Slide 4 – Aerial View

Mr. Hemphill showed the approximate location of the temporary easement. He mentioned that they could not find a record of the City utilizing the easement.

Slide 5 – Criteria

- For a Vacation of a Public Easement, Section 17.09.100 states, “*The City Council may approve the vacation of a public easement, after recommendation from the Planning Commission, upon finding that there is no longer a public interest in retaining said easement and no utility provider objects to the easement vacation.*”

Mr. Hemphill stated that they had sent this out for review to the Parks and Rec Director and the Public Works Director and there was no longer a need for the City of Fruita to retain the easement. He added that no utility provider objected to the vacation which included Ute Water, Excel Energy, Grand Valley Power, Grand Valley Irrigation Company, the drainage district, and there were no issues with releasing the easement.

Slide 6 – Utility Map

- Storm Drains
- Irrigation Lines
- Sewer Lines

Mr. Hemphill showed where the utilities were, such as irrigation and sewer lines, and that there were no utility lines that ran through the area. There was no conflict or issue with any utilities and the easement.

Slide 7 – Review Comments

- No reviewer or utility agency (Ute Water, Xcel Energy, GVP, GVIC, GVDD) expressed any concerns over this easement vacation.

Mr. Hemphill explained that vacating the easement that encumbered private property on Lot 1 would have no effect on any of the tracks that are associated with the HOA.

Slide 8 – Legal Notice

- Postcards – Feb 6, 2025
- Site Posting – Feb 7, 2025
- Newspaper – Feb 12, 2025
- City Hall – Feb 7, 2025

Slide 9 – Public Comments

- Staff have received written public comments and all are included.
 - Any comments received after the Planning Commission packet was published on Friday, March 7, 2025, have been included in the record.
- It appears there are concerns from the Santa Ana HOA regarding this vacation.

Mr. Hemphill said that they did receive an additional public comment that was received earlier today. He noted that it has been reviewed and given to the Planning Commission and has been included in the packet, given to the Planning Commission and will be included in the City Council packet.

Slide 10 – Staff Recommendation

- Because the application meets Section 17.09.100 of the Fruita Land Use Code for the pertaining to the vacation of a public easement, Staff recommends that the temporary City of Fruita easement located on Lot 1 of the Santa Ana Subdivision be vacated.

Slide 11 – Suggested Motion

- Mr. Chair, because the application meets Section 17.09.100 of the Fruita Land Use Code pertaining to the vacation of a public easement, I recommend approval of vacating the temporary City of Fruita easement located on Lot 1 of the Santa Ana Subdivision to the Fruita City Council.

Slide 12 – Public Hearing Schedule

- Planning Commission – March 11, 2025
- City Council – April 15, 2025

Mr. Hemphill concluded his presentation.

Commissioner Biddle thanked him and invited the petitioner to speak.

Mr. Glen Howell, applicant, went up to speak. He didn't have a presentation but was there to answer questions. He stated that the water impoundment was no longer used. He mentioned the playground equipment on the east side and that it was added as part of the deal to get it approved as being a community resource. He spoke to the HOAs argument about tree trimming for the neighboring property.

Commissioner Biddle opened the meeting to public comment.

Mr. Arnold Mabee who lives at 846 San Gabriel Street went up to speak. He stated that he was part of the HOA since its inception. He stated that they never trimmed the trees until Mr. Howell requested it. He added that when they did bring in the specialty equipment for tree trimming it encroached on the easement and added that this was the only access to that common area and everything else is blocked off. He talked about the mailbox, handicap accessible area to the playground, if anything needs to be done to the main irrigation line, dirt, equipment, and stuff. As far as the east easement he didn't see any issues. The south easement was the concern.

Commissioner Biddle thanked him.

Mr. Casey Wilder, who lives at 803 San Gabriel Street, went up to speak. He is the current President of the HOA. He stated that he was involved with the tree trimming. He mentioned that Bruce would not allow them to climb his trees with stakes which they understood. He continued, the outriggers that they had to bring in access to the easement. He also brought up concerns about the irrigation. If this is blocked off, he will have a portion of their irrigation that they will not have access to. He had other concerns about bringing in backhoes and that they would have to have somebody hand dig the irrigation lines which would cost them a lot more. He mentioned some disagreements between the HOA and the applicant. He stated that the HOA board wanted to keep the easement because it will affect the homeowners.

Mr. John Sloan, who lives at 805 Kandle Court, went up to speak. He was against vacating the easement. He mentioned a letter from Arnold Mabee, and he supported all the reasons he put in the letter as a reason for keeping the easement.

Mr. Brian Sheley, who lives at 888 San Gabriel Street, spoke. He opposed the vacation of the easement.

Commissioner Biddle closed the public comment portion of the meeting and invited the petitioner up for rebuttal.

Mr. Howell talked about the landscapers and the issues he had with them. He also talked about his disagreements with the HOA.

Commissioner Hearn asked if he had a rebuttal for anything that was brought up in their comments.

Mr. Howell said that they don't need the area to access the trees.

Mr. Hemphill said that this was a land use hearing pertaining to an application to vacate an easement that's been dedicated to the City of Fruita for temporary purposes and as a point of clarity this easement currently encumbers Lot 1. It will not vacate or remove any portion of Tract A on the south side and there will still be a grass area, the HOA still has irrigation rights to their easements and their private irrigation area. He continued that the easement was dedicated to the City of Fruita for nonexclusive open space access, people that want to use the park can use it. It will still have stormwater detention purposes to operate, facilitate and maintain any stormwater areas. Through their files and reviewing the application and the timeframe in 2008 until now it didn't appear that the City of Fruita has ever utilized this easement for any reason that is necessary and was dedeed in the easement language.

Commissioner Biddle talked about the property line and wanted confirmation that what they decide will not touch any irrigation easement for the HOA and not going to prohibit walkers through the grassy area.

Mr. Hemphill confirmed this. He said that the easement that has been dedicated to the City of Fruita has nothing to do with Tract A of the Santa Ana Subdivision.

Commissioner Handley asked who was the legal title holder of this strip of land?

Mr. Hemphill responded that it was Lot 1 of the Santa Ana Subdivision.

Commissioner Handley repeated that this was in the legal description of Lot 1.

Commissioner Hearn wanted confirmation that the east easement and the south easement were both part of the same legal description.

Mr. Hemphill said it was.

Commissioner Hearn talked about the public comments and wanted clarity if legally the parts of the easement were separated or not.

Commissioner Mulder asked if the City of Fruita has not paid for any maintenance on this property.

Mr. Hemphill responded that it had not according to their records.

Commissioner Mulder asked if vacating this easement does not do away with the playground or picnic tables. He talked about having 12' on the East and 15' on the South.

Mr. Hemphill said that is what the easement described. He talked about the exhibit that the Commissioners had and that it described the area which was shown in black.

Commissioner Mulder asked if the deed took in the entire piece of property?

Mr. Hemphill said it was all encumbered on Lot 1.

Commissioner Biddle talked about where Tract A was located, which was outside of the black shaded area that they were being shown.

Mr. Hemphill said that the dedication of Tract A on the plat would remain the same. He added that they could have the property owner do a survey and stake it out to verify their property lines so that the HOA would understand the property boundaries.

Commissioner Hearn asked if she were to walk on this easement, would that be trespassing or was that her using the city's property for public interest?

Mr. Hemphill responded that the way that the easement was described is that any member of the public can walk on the easement, as described, 12 feet on the East side.

Commissioner Biddle asked Mr. Wilder about access to the trees. He asked if the HOA was responsible for maintaining the trees.

Mr. Wilder responded that it was the branches that go over to their side. He added that what it didn't show was that the area was concaved. It was not like the whole area was clear to drive a vehicle in. He added that when they did the bid on the trees the last time, they found a piece of machinery that would fit within those boundaries. At the time they had the easement, and it did go over into that, because even the temporary sticks and stuff that he had up actually were broken by that piece of machinery. He verified that the trees were coming from the property south of Tract A and not on Santa Ana's property at all. Mr. Howell had concerns, and they agreed with him, they took the correct steps to get them taken care of, he was out there several times that day visiting with them, and they used the access.

Commissioner Farinacci asked if it was the position of the HOA that if the easement is not retained that they would not be able to continue maintenance on the trees?

Mr. Wilder said that this was their concern. He researched all kinds of equipment throughout the valley. This was a brand new piece of equipment that just come in, had 4 legs, and it lifted him up. Bruce was extremely happy, because he was not going to allow us on his property to stake his trees. He spent a lot of time researching the pricing, and picked this company not based off cheap, it was based off what would fit within that realm and do it safely.

Commissioner Hearn said that she was trying to balance public interest and the word temporary. What she thought she was hearing from the HOA was that they needed this forever for these trees, what she isn't hearing is some time span in which they acknowledge this is temporary and would at some point be vacated. She asked Mr. Wilder if the HOA had a plan for that.

Mr. Wilder responded not at this point. They could vacate the park and dissolve it. Their families use it and don't want it dissolved. The Staff presentation shows that there is a stem of irrigation on his property and the applicant will not let them on his property.

Commissioner Handley stated that they had a legal easement to the stem.

Commissioner Mulder talked about the retention area. He wanted to see the common area with the playground and picnic tables. He wanted to see the other side of the screen which was brought up for viewing. He asked if his new fence would encroach on the commons area?

Mr. Howell said it would not.

Mr. Wilder said that his only concern was irrigation and getting a backhoe there. He talked about the costs involved. He stated that he did not have a problem with Mr. Howell's temporary sticking. The HOA Board will resist on the fence and under their covenants he must have approval to put a fence up.

Commissioner Handley asked if they dissolved the easement, would the tree trimming be on the owner of Lot 1's responsibility to trim?

Mr. Wilder said no that there is a commons area in between there to give access to the public. He said it looked level, but it isn't.

Commissioner Farinacci asked if the Hoa has looked at doing any sort of maintenance or modifications to the trees, such that they wouldn't continue to grow over the area?

Mr. Wilder responded that this would be something we'd have to work with that homeowner with and he is very hesitant, and he didn't know what he would allow them to do. They have people from the trailer park that uses the park and there is a school bus stop there.

Commissioner Farinacci asked Staff if there was any obligation to the city of Fruita highlighted in the Land Use Code or somewhere else that would obligate the City of Fruita to allow for necessary maintenance of the trees from the adjacent property before relinquishing the easement?

Mr. Hemphill stated that the easement was dedicated to the City of Fruita on a temporary basis for stormwater maintenance and an open space to allow the public to use a 12-foot strip on the east side of the property. The easement doesn't describe any use for the HOA, particularly for Tract A maintenance. They do know, based on the discussions tonight, that the HOA has utilized a certain area within this easement, but the easement language doesn't specify that it's for the HOA. He spoke to tree maintenance between property owners and stated that the Code was silent on it, but those are shared areas and the homeowners adjacent to each one typically either one can trim the trees and take on the cost of it, or they can work together to figure out a solution. Getting rid of the easement does not affect the lot size of Tract A. He talked about the

requirements the City had for fence permits and that they could ask for a survey to verify property lines.

Commissioner Mulder asked if the property owner owned by dedication the lot where the easement is, if he fenced the easement but gated both ends would that satisfy the legality of the easement?

Mr. Hemphill showed where the property line is and will continue to be there.

Commissioner Biddle stated that there will be a walkway even when a fence is put up.

Mr. Hemphill confirmed that there is 20' and will not affect the boundary lines between the properties.

Commissioner Hearn asked how regularly they saw members of the public using your land for public interest?

Mr. Howell said that with the people using the bus stop, about 20% of the people cut across his lawn and go up past his house within 5 feet of the property.

Commissioner Hearn said that there was some public interest currently.

Mr. Howell said that the public walks on HOA property.

Mr. Hemphill reminded the Planning Commission to make a findings of fact and a recommendation to the City Council looking at the criteria, no utility provider has mentioned that there's a conflict or an issue vacating this and that the only public interest is with the City of Fruita with regards to a temporary, nonexclusive pedestrian easement over the 12 feet, and stormwater detention, repair maintenance and operation on the south side of Lot 1.

Mr. Wilder said that they didn't dispute the property line, they paid to have it surveyed. He talked about where the irrigation line was.

COMMISSIONER HEARN'S MOVED BECAUSE THE APPLICATION MEETS SECTION 17.09.100 OF THE FRUITA LAND USE CODE PERTAINING TO THE VACATION OF A PUBLIC EASEMENT I RECOMMEND APPROVAL OF VACATING THE TEMPORARY CITY OF FRUITA EASEMENT LOCATE ON LOT ONE OF THE SANTA ANA SUBDIVISION TO THE FRUITA CITY COUNCIL.

COMMISSIONER MCGUIRE SECONDED THE MOTION

Commissioner Hearn stated that there was only one sentence of the criteria that is about utilities and public interest. The portion to hike is topography challenged, but she can walk around the house to get to the park, and she didn't think there was a lot of public interest that can't be accessed in some other way and they got to speak to the HOA President and they don't have plans to phase this out and it has always been temporary. At some point they must make good on the word temporary and vacate it.

Commission Biddle stated that Mr. Hemphill made it clear the easement was for the City of Fruita.

MOTION PASSED 6-0

3. Application #: 2025-03
Application Name: 1130 & 1138 18 ½ Road Rezone
Application Type: Rezone
Applicant: IndiBuild LLC
Location: 1130 & 1138 18 ½ Road
Current Zone: Planned Unit Development (PUD)
Requested Zone: Community Residential (CR)
Description: This is a request for approval for a rezone approximately 14 Acres from Planned Unit Development (PUD) to Community Residential (CR).

Commissioner Biddle introduced the application. Commissioner Handley requested a 5-minute break. Commissioner Handley left the meeting.

Mr. Dan Caris, Planning & Development Director, gave a PowerPoint presentation.

Slide 1 – Introduction

Slide 2 – Application Information

- This is a request to rezone 2 properties from Planned Unit Development (PUD) to Community Residential (CR).
- Known as the Burenheide PUD and originally zoned in 2002.
- Approximately 14 total acres.
- North of Brandon Estates and south of Monument Ridge Elementary School.

Slide 3 – Zoning Map

Mr. Caris showed the subject property on a zoning map. He stated that this was originally a PUD and was called the Burenheide PUD and this is the existing zoning. He gave history on the parcels. He stated that this was a request to rezone the properties from Plan Unit Development, which is its current zoning classification to Community Residential. This was established by ordinance in 2002, The PUD was the density was about one acre to half acre sites. This is a request to activate its future land use in our Comprehensive Plan of CR.

Slide 4 – Aerial View

Slide 5 – Land Use Code

SECTION 17.09.070 AMENDMENT TO OFFICIAL ZONING MAP (REZONING)

- A. *Applicability and Procedures.* *The City Council may amend the number, shape, or boundaries of any zone, removing any property from one zone and adding it to another zone, only after recommendation of the Planning Commission. An amendment to the*