



STAFF REPORT
CITY OF DOVER PLANNING & ZONING COMMISSION
KOVA LOTS, FILE #SUB20-21, KOVA ENTERPRISES, LLC

PREPARED BY: Lisa Adair & Clare Marley, AICP
Contract Planners, Ruen-Yeager & Associates
219 Pine Street
Sandpoint, ID 83864

PROJECT DESCRIPTION: The applicant is requesting preliminary plat approval to subdivide ±4.35 acres into 13 residential lots. The site is zoned Residential. The applicant is requesting an exception to standards to allow a 5-foot easement for a public pathway rather than dedication of a 5-foot strip of land to the City of Dover.

LOCATION: North of Railroad Avenue, South of Union Pacific Railroad right-of-way, West of Mill Road.
RP#: RPD00000309900, located in Sections 29 and 30, Township 57 North, Range 2 West, B.M.

APPLICANT: Name: Kova Enterprises, LLC
c/o Ken Kovalchuk
Address: 421 Lakeview Blvd.
Sandpoint ID, 83864

PROPERTY OWNER: Same as applicant

APPLICANT REPRESENTATIVE: Jeremy Grimm and Ryan Shea
Whiskey Rock Planning and Consulting
614 Creekside Lane
Sandpoint, ID 83864

DATE APPLICATION RECEIVED: July 6, 2021

HEARING DATE: Planning & Zoning Commission: November 4, 2021
City Council: Pending

LEGAL NOTICE PROVIDED: Newspaper notice for P&Z: October 15, 2021;

Notice mailed to political subdivisions, media, landowners within 300' of subject tract, school district, and airport October 14, 2021
Site Posted: October 20, 2021.

STAFF REPORT ATTACHMENTS:
(UNDER SEPARATE COVER)

Application, preliminary plat, engineering plans & narrative, request for exception, application exhibits, agency comments, public comments

PROJECT SUMMARY:

Kova Lots is a proposed 13-lot residential subdivision located in the Residential zoning district north of the Railroad Avenue right-of-way, south of the Union Pacific railroad right-of-way, and west of Mill Road. The parcel is known as Assessor's parcel #RPD00000309900A. Dover City Code (DCC) 11-3-1 requires all divisions of land into two or more lots be "platted" or subdivided in accord with the applicable zoning standards of Title 12 and subdivision standards of Title 11.

The applicant submitted this request for preliminary plat approval on July 6th, prior to the effective date of the new subdivision ordinance #172. Therefore, because applicants are entitled to the rules in effect at the time of application, this development is being considered under the terms of former Title 11 of Dover City Code.

The proposed subdivision consists of lots ranging in size from 12,002 square feet to 45,961 square feet, all complying with the Residential zoning district 12,000 square feet lot size minimum. The easterly 12 lots are each about 12,000 square feet, measuring about 75 feet deep by about 160 feet wide. The 13th lot on the westerly portion of the project is about one acre, and is about 75 feet deep on the eastern side, narrowing to about 36 feet on the west. The lots would be served by Dover city sewer and water. Access would be provided via Railroad Avenue, a paved public right-of-way, maintained by Independent Highway District.

Pursuant to the allowances in Title 11, Section 11-1-6, the applicant is seeking an "exception to conditions" or variation to subdivision standards to allow development of a pathway within an easement rather than dedication of additional land for public right-of-way. Railroad Avenue right-of-way is 50 feet wide at this location. The standard width is 60 feet. Ordinarily, with substandard rights-of-way, the city requires additional right-of-way to meet the minimum width from centerline of the right-of-way to the project property line, or 5-feet of additional land in this case. The landowner has included a narrative regarding the exception, explaining that he wishes to retain as much lot depth as possible for future residential development. City staff met with the landowner and representatives to review the exception and pending plat application. The city desires to see a pathway connected through this proposed development, which is a requirement of current street standards. Agency comment summaries regarding this exception are included in this report. In order to grant an exception, the decision makers must be able to show the exception: 1) Will provide equivalent or better protection for the city; 2) Will not be detrimental to public health, safety, or welfare or be injurious to other property; 3) Is unique to the property; 4) Would alleviate a hardship of physical surroundings, shape, or topography; 5) The change is not contrary to zoning, the comprehensive plan, or other ordinances. The decision makers may require conditions to secure the purposes of the subdivision regulations. (*Section 11-1-6 A 1-5, and Paragraph B*).

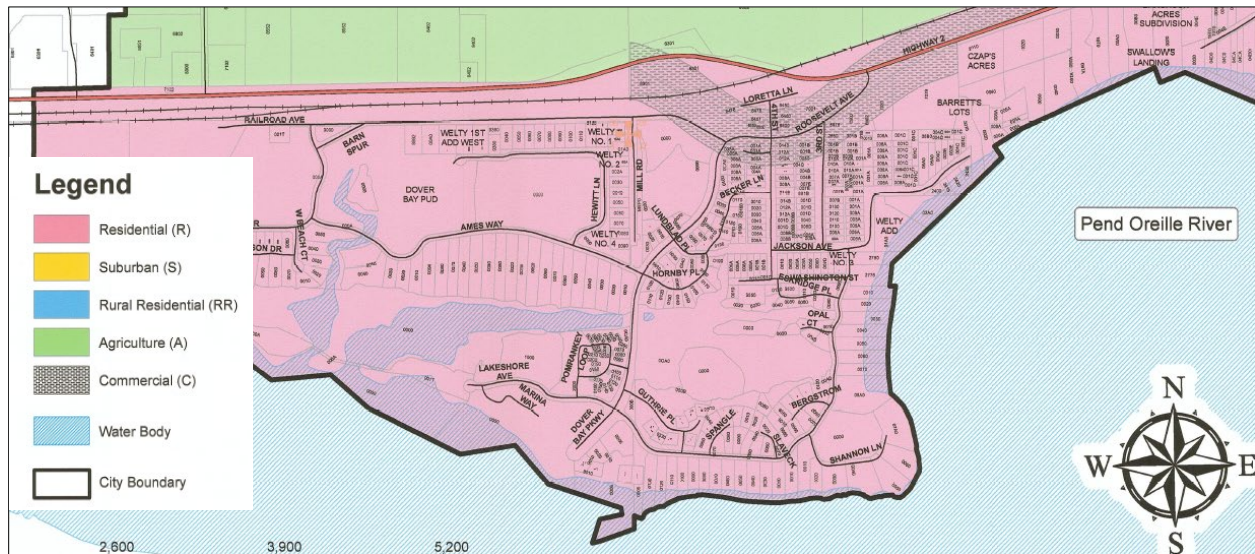
The original conveyance of this property from the Union Pacific Railroad to the applicant contained a post-sale covenant requiring a fence to be placed, to the satisfaction of the railroad, along the track boundary to prevent access and encroachment onto the railroad right-of-way. In addition, the use of the property was restricted by deed to industrial, office, or retail-oriented uses. Residential uses such as homes, lodging, motels, boarding or other home uses, day cares, or recreational uses were prohibited. UP granted the owner's request to relinquish the restriction on use of the property in a release and quit claim dated March 3, 2021, and recorded it at Instrument #978140, records of Bonner County. The document released the restriction on uses, but retained the fence covenant. Planning staff spoke briefly with UP representatives regarding the development and sent a request for comment and application packet. No response has been provided from the railroad.

The preliminary plat will be considered by the Planning and Zoning Commission, which will provide a recommendation to City Council. The Council will hear the application at a later date to be announced.

The Planning and Zoning Commission hearing was originally scheduled for October 7, 2021. Due to unforeseen health and family emergency situations, the meeting was cancelled and the hearing reset for November 4, 2021. The October 7, 2021 Planning and Zoning Commission meeting was cancelled in accord with the approved Dover Planning and Zoning Commission by-laws.



OFFICIAL ZONE DISTRICT MAP OF AREA



APPLICABLE CODES:

The following codes apply to this application:

- Title 11, Dover City Code, Subdivision Regulations, former code
- Title 12, Dover City Code, Zoning Regulations
- Idaho Code §67-6513, Subdivision Ordinance

PROPERTY DESCRIPTION:

- A. Site acreage and description: Unplatted parcel north of Railroad Avenue right-of-way, south of Union Pacific right-of-way, and west of Mill Road. Parcel is approximately 4.35 acres. See attached application for full legal description.
- B. Access: Railroad Avenue, a paved public right-of-way, 50 feet in width
- C. Services: Dover City sewer and water services, Independent Highway District road maintenance, Avista Utilities electrical service, Selkirk Fire District fire protection.
- D. Environmental features: The site does not border any bodies of water and is not within a flood hazard zone. Bonner County GIS shows no streams present on this site.
- E. Surrounding uses and densities:

COMPASS	COMP PLAN DESIGNATION	CURRENT ZONING	USES/DENSITIES
Site	Small-Scale Working Lands and Compact Suburban Residential	Residential	Vacant
North	Small-Scale Working Lands and Compact Suburban Residential	Residential	Union Pacific Railroad right-of-way
South	Compact Suburban Residential and Planned Community	Residential	Residential uses, 0.3 – 0.7 acre lots

East	Mixed Use	Residential	Union Pacific Railroad right-of-way, residential homesites
West	Small-Scale Working Lands	Residential	Union Pacific Railroad right-of-way, municipal facilities, fire station, PUD lands.

AGENCY COMMENTS:

The city issued a request for public agency review and comment on the proposed special use permit on July 21, 2021. The agencies contacted and their comments are as follows:

- Selkirk Fire District: Selkirk Fire and Rescue Chief Dale Hopkins responded in an email dated July 28, 2021, that the fire district has no concerns. He noted that the access is good and adequate fire hydrants are available.
- Panhandle Health District: Panhandle Health District responded in a letter received September 16, 2021, that if the application requires PHD to approve a sanitary lift on the parcels, the applicant must submit a completed PHD Land Development Application to PHD. Standard plat notes were included in the letter. Will serve letters are required.
- City of Dover Water and Sewer: City Engineer Brett Converse commented in an email dated August 6, 2021, regarding location of sewer and water facilities and requirements for city connections.
- Dover City Engineer: City Engineer Jay Hassell responded in an August 5, 2021, email with several draft conditions of approval. He confirmed in an email to planning staff September 14, 2021, that he is okay with the sidewalks/path being within an easement as long as it is clear in the plat that the homeowners are responsible for maintenance and snow removal on pathways and stormwater pipe crossings are addressed. After discussion with the developer and Independent Highway District Chair Mel Bailey, the following items were specifically noted by the city engineer:
 1. The developer will build the path as opposed to individual lot owners
 2. City standards for sidewalks is 5 feet
 3. Sidewalk may remain on private property inside an easement. The 5-foot frontage easement shall be for roadway, drainage, utility, sidewalk, and snow storage
 4. Maintenance of sidewalks (e.g., snow removal) will be the lot owners’ responsibility
 5. The developer will provide a master stormwater plan for the development and will provide the stormwater overflow pipes and inlets under the path for each lot. In the stormwater master plan, show that drainage must be directed toward Railroad Avenue and not the railroad right-of-way.
- Independent Highway District: Chairman Mel Bailey commented on the right-of-way, path, and easements in a series of emails. A list of specific comments was prepared with City Engineer Jay Hassell which are noted in the Dover City Engineer’s comments above. IHD requested a 60-foot right-of-way be obtained along the walkway easement, that the pathway be a minimum 6 feet wide if maintained by the city; the developer should construct the pathway, not individual lot owners, and if the right-of-way is limited to 50 feet, a snow storage easement needs to be on each lot and the plat should note that the snow may need to be stored on the path and along property frontage.
- Bonner County GIS: Bonner County GIS Director James Snyder responded in a September 22, 2021 email that he had no comment.
- Idaho Department of Environment Quality: Idaho DEQ Regional Administrator Dan McCracken responded with general comments regarding air quality, wastewater, drinking water, surface water, and solid/hazardous water and ground water contamination. A copy of these comments was provided to the decision makers under separate cover.

- A request for comment was also sent to Avista Utilities and the Union Pacific Railroad Co. Comments were not received from these agencies at the time of this report.

PUBLIC COMMENTS:

Two written public comments had been submitted to the record at the time of this staff report. They are provided with this report, and note: Concerns about traffic and congestion, future intended uses of the site, pathways, setbacks, environmental/hazardous concerns, utility easements and proximity to railroad.

STANDARDS REVIEW:

Zoning standards	Evidence of record, findings
<p>Title 12 Chapter 3 – Procedures and Administration</p>	<p>Notice has been provided at least 15 days prior to the public hearing in the official newspaper, to all political subdivisions within the city, the airport manager, and the school district. In addition, the city mailed notice to landowners within 300 feet of the subject property. An application was received and processed in accordance with the public hearing requirements of Dover City Code Title 12 Chapter 3. The site has been posted at least 7 days prior to the hearing.</p>
<p>Title 11, Chapter 3, Standards for Approval A. Water Supply: Definite provisions Water Supply: Definite provisions have been made for a water supply system that is adequate in terms of quantity and quality for the type of subdivision proposed. B. Sewer Treatment: Adequate provisions have been made for servicing or treatment of sewerage by a public sewage system or other treatment as approved by Panhandle health district and the city. C. Street Plan: Proposed streets are consistent with the transportation element of the comprehensive plan. D. Hazardous Soil Conditions: All areas of the proposed subdivision which involve soil or topographical conditions presenting hazards have been identified and that the proposed uses of these areas are compatible with such conditions. E. Zoning: The area proposed for subdivision is zoned for the proposed use and the use conforms to other requirements found in the city ordinances. F. Mitigation For Impacts: The developer has made adequate plans to ensure that the community will bear no more than its fair share of costs to provide services by furnishing land or providing other mitigation measures for off-site impacts to streets, parks and other public facilities within the community. It is the expectation that in most cases, off-site</p>	<p>City planning staff and engineers met with the applicant and representatives prior to the filing of the application and reviewed city water and sewer services. City engineering staff advised of the location of sewer and water connections. Water and sewer services are available to the site.</p> <p>Panhandle Health District requests an application be completed with the agency and will-serve letters be provided from the City of Dover for sewer and water utilities. Draft conditions of approval require the will-serve letters.</p> <p>Street plans are not contained in the Dover Comprehensive Plan. The project is subject to the city-adopted street standards. A pathway/sidewalk is required to be completed, pursuant to the adopted standards. The applicant is requesting a variation or exception to standards to allow the pathway to be within an easement rather than requiring the dedication of an additional 5 feet of land.</p> <p>The site is served by existing Railroad Avenue, a 50-foot-wide paved public right-of-way maintained by Independent Highway District.</p> <p>Independent Highway District requests a minimum 60-foot-wide right-of-way. If the right-of-way is limited to 50 feet, a snow storage easement needs to be on each lot and the plat needs to include a statement noting the snow may be stored on the</p>

Zoning standards	Evidence of record, findings
<p>improvements will be dealt with through the development agreement. (Section 11-3-11.)</p>	<p>path and along property frontage.</p> <p>City standards for sidewalks is 5 feet.</p> <p>No off-site improvements or dedications other than the easement are proposed.</p> <p>The sidewalk may remain on private property inside an easement. The 5-foot frontage easement shall be for roadway, drainage, utility, sidewalk, and snow storage, per the city engineer.</p> <p>The site is not on a slope and is not located within a mapped special flood hazard area. Mission silt loam is the predominant soil, and there are no mapped wetlands present, according to the application.</p> <p>The site is zoned Residential, requiring a 12,000 square foot minimum lot size. Each lot is 12,000 square feet or larger.</p> <p>Lots 1-12 are about 75 feet deep and 160 feet wide. Lot 13 tapers from 75 feet deep to 36 feet deep and contains about 1 acre.</p> <p>The standard setbacks for the Residential zone are 25 feet for front, flanking street, and rear yards and 10 feet for side yards.</p> <p>The city will require the developer to complete a pathway/sidewalk to city standards.</p> <p>The proposed development adjoins the Union Pacific Railroad right-of-way and tracks to the north.</p> <p>A deed covenant requires the applicant to complete a fence at the railroad boundaries, to the satisfaction of the Union Pacific Railroad.</p>
<p>Title 11, Section 11-1-6, Exceptions to Conditions</p> <ol style="list-style-type: none"> 1. The granting of the exception to conditions will provide an equivalent or better protection for the city. 2. The granting of the exception to conditions will not be detrimental to the public safety, health, or welfare or injurious to other property. 3. The conditions upon which the request is based are unique to the property for which the relief is sought and are not applicable generally 	<p>The city engineer does not object to the exception, provided the developer and not future lot owners build the pathway/sidewalk, maintenance and snow removal are the lot owners' responsibilities, and the 5-foot frontage easement shall be for roadway, drainage, utility, sidewalk, and snow storage.</p> <p>Independent Highway District prefers a 60-foot-wide right-of-way. If limited to 50-foot wide, a snow storage easement needs to be provided on each lot and plat notes recorded regarding use of the path</p>

Zoning standards	Evidence of record, findings
<p>to other property.</p> <p>4. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular and unnecessary hardship to the owner or the public would result if the strict application of these regulations is applied.</p> <p>5. The change sought will not be contrary to the city zoning ordinance, comprehensive plan or other ordinances.</p>	<p>and lot frontage for snow storage.</p> <p>The subject strip of land is about 75 feet deep at the deepest portion.</p> <p>The setbacks for the Residential zoning district are 25 feet for the front and rear yards.</p> <p>The adopted street standards of the City of Dover permit new developments to propose alternative pedestrian facilities. The city engineer will review for consistency with surrounding facilities (Dover Resolution #143).</p>
<p>Title 12- Standards for Zoning District. Residential Minimum site area 12,000 square feet (12-6-4, DCC)</p>	<p>Proposed lot sizes are between 12,002 square feet and 45,961 square feet.</p>

STAFF ANALYSIS:

The proposed subdivision meets the minimum lot size requirements for the Residential zone. Access is provided via Railroad Avenue, a paved public right-of-way. Public water and sewer services through the City of Dover are proposed to serve the site. Installation of stormwater features are required to mitigate development of future home sites. These services and standards meet the minimum requirements of Dover City Code Title 9 Chapter 4 Stormwater Management Regulations. The applicant is seeking an exception to the standard dedication of 5 feet of additional land to bring the current public right-of-way to a standard width from centerline. Rather than dedicate the land in fee, the applicant proposes to dedicate a 5-foot-wide public easement for a pedestrian path. Engineering and planning staff believe the public easement could serve the same purpose as an outright dedication, provided certain conditions are met to ensure continued maintenance of the pathway and the plat notes the need for snow storage along the lot frontages. These matters can be fully addressed in the required development agreement. The proposed lots are shallow, with a maximum of ±75 feet of depth. With the current city setbacks in the Residential zone, the building envelope is at a maximum 25 feet at the deepest. The City permits eave and other above-grade projections of up to three feet into required yards. Although the railroad requires fencing be placed between the subject property and the railroad boundaries, the City should also include this requirement in development conditions.

DRAFT MOTIONS FOR GOVERNING BOARD:

MOTION TO RECOMMEND APPROVAL: I move to recommend approval of the preliminary plat of Kova Lots, File #SUB20-21, finding that it is in accord with the general and specific standards of the City of Dover, based upon the evidence of record and testimony received. I further move to adopt the findings and standards, reasoned statements, and conditions of approval (as written or as amend as follows...) The actions to be taken to obtain approval are to complete the conditions of approval as adopted.

MOTION TO CONTINUE: I move to continue this file SUB20-21 to [date, time and place] to allow for additional time for [public comment, additional information, revisions etc.].

MOTION TO RECOMMEND DENIAL: I move to recommend denial of the preliminary plat, Kova Lots, File #SUB20-21, finding that it is not in accord with the general and specific standards of the City of Dover, I further move to adopt the findings and standards (as written or amended) and the following reasoned statements: [READ STATEMENTS, SPECIFYING WHICH FINDINGS SUPPORT APPROVAL OF THE FILE AND WHICH FINDINGS SUPPORT DENIAL.] The actions that could be taken to obtain approval are to:

1. Submit a new application that meets the standards of the City of Dover; or
2. Pursue such remedies as provided for in Title 67, Chapter 65, Idaho Code.

REASONED STATEMENTS:

The staff report and subsequent evidence of record and received at the hearing provide the basis for the findings and reasoned decision. Based upon the findings, the Dover Planning & Zoning Commission concludes the preliminary plat **IS IN ACCORD/IS NOT IN ACCORD** with the following standards:

- A. Water Supply: Definite provisions have been made for a water supply system that is adequate in terms of quantity and quality for the type of subdivision proposed.
- B. Sewer Treatment: Adequate provisions have been made for servicing or treatment of sewerage by a public sewage system or other treatment as approved by Panhandle health district and the city.
- C. Street Plan: Proposed streets are consistent with the transportation element of the comprehensive plan.
- D. Hazardous Soil Conditions: All areas of the proposed subdivision which involve soil or topographical conditions presenting hazards have been identified and that the proposed uses of these areas are compatible with such conditions.
- E. Zoning: The area proposed for subdivision is zoned for the proposed use and the use conforms to other requirements found in the city ordinances.
- F. Mitigation For Impacts: The developer has made adequate plans to ensure that the community will bear no more than its fair share of costs to provide services by furnishing land or providing other mitigation measures for off-site impacts to streets, parks and other public facilities within the community. It is the expectation that in most cases, off-site improvements will be dealt with through the development agreement. (Section 11-3-11, DCC)

CONDITIONS OF APPROVAL:

1. The final plat shall be in substantial compliance with the approved preliminary plat and shall be filed in accord with the provisions of Title 11, Dover City Code.
2. An exception to the City of Dover zoning and street standards, pursuant to Section 11-1-6 of Dover City Code, is hereby granted to allow the developer to dedicate a 5-foot strip of land as a public easement for the placement of the required pedestrian pathway, upon the following conditions:
 - a. The developer shall install the pathway in accord with city standards, prior to final plat;

- b. The easement shall be dedicated to the public on the plat for roadway, drainage, utility, sidewalk/pathway, and snow storage and depicted on the face of the plat;
 - c. The plat shall note the purpose of the easement and the requirements of lot owners to maintain these pathways, free and clear of debris and snow;
 - d. The plat shall note that snow storage areas will be needed along the lot frontages and pathway.
3. Preliminary plat approval is valid for one year from the date of the written decision. If the final plat is not recorded within one year of the written decision, the preliminary plat approval shall be void. Any time prior to the one-year expiration, the landowner may apply for a one-year extension, which shall require the approval of the City Council. The landowner may seek additional extensions for "good cause" if actual work has commenced and is continuing on subdivision improvements. The request for additional extensions shall be submitted prior to the expiration dates and shall also require approval of the City Council.
3. Prior to construction, a final stormwater plan shall be submitted to the City. The approved stormwater management plan shall be implemented and maintained for the site.
4. Prior to start of construction of any subdivision improvements or recordation of the plat, the landowner shall enter into a development agreement with the City of Dover, pursuant to DCC 11-1-7 and Chapter 4 of Title 11. The agreement shall address at a minimum:
 - a. Installation of utilities;
 - b. A master stormwater plan for the development addressing stormwater overflow pipes and inlets under the path for each lot, direction of flow, and implementation of the stormwater plan;
 - c. Coordination with other affected agencies;
 - d. Applicable surety and maintenance guarantees;
 - e. Inspection schedules;
 - f. Dedications and maintenance of pathway/utility easements;
 - g. Lot owner responsibilities for maintenance of paths, snow removal, snow storage, and stormwater pipe crossings;
 - h. Fencing requirements between the north property line and railroad right-of-way;
 - i. Timetables for completion.
5. Prior to the installation of subdivision improvements, a complete set of construction plans shall be filed with the City of Dover in compliance with Chapter 6, Title 11, DCC and in accord with the approved preliminary plat. All applicable sewer and water plans shall also be filed with the Idaho Department of Environmental Quality prior to construction.
6. No construction shall commence until written approval is given by the city engineer. Final construction plans for all subdivision improvements shall be provided to the city engineer and administrator for review and approval. The plans shall be in substantial compliance with the approved preliminary plat.

7. The landowner shall obtain a will-serve and capacity letter from the City of Dover for sewer and water services.
8. Any minor changes to the plat involving adjustments to utility locations, minor lot line adjustments, or other changes resulting in non-substantial changes to the plat that do not affect conditions of approval shall require the written approval of the city engineer and administrator. Major adjustments affecting conditions of approval or increases in density shall require approval of the City Council through the public hearing process.