

BOARD OF BINGHAM COUNTY COMMISSIONERS

AMENDED REASON & DECISION

In regards to: The Planning & Zoning Commission's recommendation to approve the Zoning Amendment from "A" Agriculture to "R/A" Residential/Agriculture for approximately 84.28 acres, located South of 1550 North, West of 800 East, and is East of the Woodville Townsite, in Shelley. The property is currently irrigated farm ground with intent for residential development. The Comprehensive Plan Map designation is Residential/Residential Agriculture.

The Applicant previously sought a Zoning Modification from "A" Agriculture to "R" Residential, in April 2021 however the Application was denied by the Board of County Commissioners on December 10, 2021. In review of Bingham County Code Section 10-15-7 (B)(2), the Application is for a Zoning Modification however it is requesting a modification to a zone that is different than what was previously applied for and denied. With concurrence from County Legal Counsel, this Application may be heard by the Board of County Commissioners.

Application filed by: RR Johnson Real Estate, LLC c/o Robert Johnson

Applicant's Representative: Chris Street, Professional Licensed Surveyor, HLE

Board of County Commissioners Public Hearing Date: October 17, 2022

The record provided to the Board is comprised of the following:

1. Exhibits to the Board Public Hearing Staff Report:
 - CC-1: Staff Report- Board of County Commissioners
 - CC-2: Proof of Publication- Bingham News Chronicle- Board of County Commissioners
 - CC-3: Shelley Government Agency Notice List & Notice of Mailing
 - CC-4: Property Owners Notice List & Notice of Mailing
 - CC-5: Notice of Posting- Addie Jo Harris- Planner
 - CC-6: Letter from Bret Herres, Acting Field Manager, United States Department of the Interior Bureau of Land Management
 - CC-7: Memorandum of Reviewing a second zoning amendment application after denial on the first, drafted by Paul Rogers, Legal Counsel for Bingham County
 - S-13B: Updated Property Owners & Parcel Sizes ½ mile proximity parcels by size map.

2. Exhibits to the Planning & Zoning Commission Staff Report:
 - S-1: Staff Report- Planning & Zoning Commission
 - A-1: Application for Zone Change
 - A-2: Johnson Rezone Narrative
 - A-3: Applicant's Site Plan
 - A-4: Special Warranty Deed

- S-2: Parcel Map
- S-3: Zoning Map
- S-4: Comprehensive Plan Map
- S-5: Flood Plain Map
- S-6: Aerial Map
- S-7: Subdivision Map
- S-8: Area of Impact Map
- S-9: School District Map
- S-10: Utilities Map
- S-11: Nitrate Priority Area Map
- S-12: Irrigation District Map
- S-13: ½ mile proximity parcels by size Map and List
- S-13A: Property Owners & Parcel Sizes ½ mile proximity parcels by size map
- S-14: Google Earth Imagery Map
- S-15: Notice of Posting: Addie Jo Harris
- S-16: Site Pictures
- S-17- Proof of Publication- Bingham News Chronicle- Planning & Zoning Commission Public Hearing Notice
- S-18: Shelley Government Agency Notice List & Notice of Mailing
- S-19: Property Owners List and Notice of Mailing- Planning & Zoning Commission
- S-20: Decision regarding the Planning & Zoning Commissions' recommendation and record regarding the Board of County Commissioners decision to remand the Applicant's, RR Johnson Real Estate, LLC (C/O Robert Johnson), Request to Modify Zoning Designation for Additional Fact Finding

3. All Information and Testimony presented prior to the Planning & Zoning Commission Public Hearing:

- T-1: Testimony from Jeff Gardner, Bingham County Sheriff
- T-2: Testimony from Gwen Inskip, Bingham County Surveyor
- T-3: Testimony from Randy Adams, Shelley Fire Chief
- T-4: Testimony from Dusty Whited, Bingham County Public Works Director
- T-5: Testimony from Allan Johnson, Department of Environmental Quality
- T-6: Testimony from City of Shelley
- T-7: Testimony from Michael Anderson, Woodville Water & Sewer District
- T-8: Testimony from Michael Anderson, Woodville Water & Sewer District
- T-9: Testimony from Gary Mecham

4. Testimony presented at the Planning & Zoning Commission Public Hearing:

- T-10: Oath or Affirmation- Chris Street
- T-11: Oath or Affirmation- Loa Murray
- T-12: Oath or Affirmation- Larry Murray

T-13: Oath or Affirmation- Jeff Morton

As to procedural items, the Board finds the following:

1. Meeting information and Testimony was as follows:
 - a. The Public Hearing was held pursuant to Bingham County Code Section 10-3-6(A)(11) where the Board held a Public Hearing, using the same notice and hearing procedures as the Commission, on the Application for an Amendment to the Zoning Designation.
2. The Board must determine if the Application for Zoning Amendment before them today is substantially the same or substantially different than that which was previously denied.
 - a. Chairman Manwaring and Commissioner Lewis reviewed the Memorandum submitted by County Attorney, Paul Rogers (Exhibit CC-7), and held deliberation. Commissioner Lewis stated there is a large difference between what is allowed in a Residential designation and a Residential/Agriculture designation, therefore she believes this is a substantially different Application. Chairman Manwaring concurred. Therefore, the Board determined that the Application currently before the Board is a substantially different Application than the one previously denied and the record reflected as such.
3. In accordance with Bingham County Code Section 10-3-6, Notice of the Boards Public Hearing was provided as follows:
 - b. Sent to 31 Government Agencies on September 16, 2022 (CC-3 List of Government Agencies and Notice)
 - c. Published in the Bingham News Chronicle on September 20, 2022 (CC-2: Affidavit of Publication)
 - d. Sent to 36 property owners within 300' of this property on September 16, 2022 (CC-4 Property Owners Mailing List and Notice)
 - e. Site was posted on September 22, 2022 (CC-5 Posting Affidavit)
4. Testimony received prior to the Boards Public Hearing was provided as follows:

(CC-6) A letter from Bret Herres, Acting Field Manager for United States Department of the Interior Bureau of Land Management, stating there was no comments directly related to the proposed Zone Change; however, they wish to bring to the County's attention a reservation on a portion of the private land. When tract 38 of section 17, T. 1 N., R 37 E., Boise Meridian, was patented on May 19, 1984 (patent #11-84-0049), a recreational easement was reserved to United States, managed by the Bureau of Land Management, as follows: *An easement over and across a 100-foot strip parallel to the ordinary high waterline of the right bank of the Snake River along with the southerly boundary of tract 38 for recreation use of*

the people of the United States generally, and for recreation facilities constructed by the authority of the United States in accordance with provisions of the Act of May 31, 1962.

The 100-foot easement encumbers the southern boundary of the 84.28 acres. Although the United States has not developed this strip for recreational use at this time, the right, reserved on behalf of the public, may at some point be developed. We hope the County keeps this in mind when considering the Zone Change and approved any type of development.

Currently, the BLM-managed lands in the area do not have any designated motorized routes. Cross-country motorized travel is prohibited, as is creation of trails, including through repeated use. The BLM is currently developing a Travel and Transportation Management Plan (TTMP) for this area. Through this TTMP effort, travel (motorized and non-motorized use) on BLM managed lands will be addressed.

5. Testimony received at the Board's Public Hearing included the following:

(CC-8) Chris Street- Professional Licensed Surveyor with HLE and the Applicants Representative, explained in the process of the Public Hearings and the Remand Hearing, the same suggestions were given from both the Planning & Zoning Commission and the Board of County Commissioners. The theme was if it were changed to a Residential/Agriculture Zone, all would be in favor. There were discussions on why the proposal was not given for a subdivision as well or a conceptual plan, wherein it is a very simple answer. The Applicant, Mr. Johnson, has spent a significant amount of funds on the first conceptual plans and did not feel as though without knowing what zoning designation would be approved, it was worth the time and funding to produce a subdivision plat. At the time the Application was submitted, there were questions about the sewer moratorium in place and there is a clearer view of what is occurring now. Mr. Johnson hopes that he will be able to work with the Woodville Water and Sewer District to come to a resolution on access to their community water system.

There was no testimony in favor offered.

There was no testimony in a neutral position offered.

Testimony in Opposition:

(CC-9) Gary Mecham, Woodville Water and Sewer District, stated he would like to reiterate the position of the Woodville Water and Sewer District and they are in opposition of this proposed Zoning Amendment. The location of the subject

property is adjacent to the river and the current water system. There are several assumptions on what they may be able to do with impacting on Woodville Water and Sewer. A number of assumptions related to how connection will be made to sewer and how it would be managed. He stated he is aware that the Applicant does not currently have a subdivision plan but these are significant issues that should be addressed. If approved, he feels many of the issues could be overshadowed. There are statements that Woodville Water and Sewer District did not want to work with the Applicant, which is not a correct statement and are more than willing to do so.

Mr. Mecham stated the Applicant had sent Woodville Water and Sewer District a letter asking how water would be managed, how they would accept managing water, which he does not believe the letter was included within the Staff Report. Mr. Mecham stated that the Applicant was extended an invite to attend a Board Meeting in order to come up with a plan but the Applicant did not attend nor was there a representative on behalf of the Applicant.

Chairman Manwaring asked Mr. Mecham when the meeting was scheduled and if it was after the initial denial of the Zoning Amendment Application to Residential, to which Mr. Mecham stated that was correct.

Mr. Mecham stated there were corrections that should be made within the testimony specifically, the availability of gas and cable utilities at 1550 N 750 E, which is not accurate. As far as the criteria, it states that there must be adequate utilities and services, as those things have not been defined.

Chairman Manwaring stated there are utilities available but that they may not be adequate. Mr. Mecham concurred and stated that adequate should be removed from the verbiage as the Woodville System is a very small system and is not set up to provide the capacity that the Applicant may be proposing.

Lastly, Mr. Mecham stated there are individuals that would be interested in purchasing the subject property to continue using it for Agriculture purposes.

(CC-10) Larry Murray, residing at 185 Opal Court, Apartment 5A, Shelley, Idaho, stated the subject property was in his family for 60 years. He stated that he would like to extend his appreciation to the Board for hearing his plea from the Planning & Zoning Commission Meeting, although he does not agree with the finding. The main issue he would like to address is that Mr. Street indicated there is support from the community if this proposed Zone Change to Residential/Agriculture is approved, wherein he is not aware of any citizens on favor of this Application. Most are not in as strong of opposition as they were previously with the Residential Application.

Applicant's Rebuttal:

(CC-9) Chris Street- Professional Licensed Surveyor with HLE and the Applicants Representative, stated he was not aware of any meeting held by Woodville Water and Sewer District, that the Applicant was invited to attend. He is aware that a representative from his office reached out several times to the Woodville Water and Sewer District and were told they did not have the capacity. Mr. Street referred to the minutes from the Remand Hearing before the Planning & Zoning Commission (Planning & Zoning Commission Exhibit PZR-19) and read testimony onto the record wherein Larry Murray stated, "during efforts in 2018 to transfer division rights to his property, Mr. Johnson had opposed reasonings and reasonings would devalue his parcel in which he had plans to develop a first-class subdivision similar to Meadow Estates. Mr. Murray believed that Mr. Johnson's original plan was to develop one-acre lots but has now changed his mind. Mr. Murray added that rezoning to Residential/Agriculture would be acceptable as it fits the surrounding area but would oppose a Residential zoning and expressed concerns with potential impacts, existing wells, traffic and infrastructure. Director Olsen reiterated the intent of the Remand Hearing was not to discuss services, access, hazards etc." Also in Mr. Murray's testimony, he stated that he would be in favor of Residential/Agriculture and now has changed his mind.

(Mr. Murray attempted to speak and Chairman Manwaring stated that protocol would be followed and testimony in opposition has been closed. Mr. Murray stated per Bingham County Code Section 1.6.4, there is no allowance for rebuttal from the submitter.) Chairman Manwaring asked Legal Counsel for thoughts and stated this protocol has been followed for several years. Chairman Manwaring stated he will allow the Applicant's Representative to complete his rebuttal statement after which, Mr. Murray will have a chance to voice his concern.

Mr. Street continued his rebuttal by referring to Planning & Zoning Commission Exhibit PZR-20, testimony by Ross Brinker during the Planning & Zoning Commission Remand Hearing, wherein he stated he is in opposition of Residential Zoning but would be in support of a Residential/Agriculture zoning as it would not allow ¼-acre lots. Mr. Street stated this was reiterated in several other testimonies presented during the hearing.

Mr. Murray thanked Chairman Manwaring and stated he would like to point out the way it was stated within the Commission Minutes was not an accurate statement of what he testified. He clarified that he would not be in as much of opposition with a Residential/Agriculture zoning designation as he would with a Residential zoning designation.

REASON

Public testimony was closed and the Board moved into deliberation:

Bingham County Code Section 10-4-2(C) which states that the purpose of the “R/A” Zone is to permit the establishment of low-density single-family dwellings with lot sizes sufficient for individual sewer and water facilities that have:

1. Suitability of parcel for agricultural purposes.

The Board found no concerns. Commissioner Lewis stated that with Residential/Agriculture zoning, the land would continue to be used for both Residential and Agriculture purposes, having at least one-acre in size will allow continued farming or property owners can have a garden. Chairman Manwaring concurred.

2. Proximity to existing areas of similar population density.

The Board found no concerns. Chairman Manwaring stated there are several areas surrounding the subject property that are similar and a Residential/Agriculture zoning designation would fit. Commissioner Lewis added there were questions regarding the presented Property Owners & Parcel Sizes ½-mile proximity parcels by size map in testimony and the Planning & Development Division has updated the map and provided it for this Hearing.

3. Lot size compatible with existing lot sizes in the immediate area.

The Board found no concerns.

4. Compatible with the existing uses in the immediate area.

The Board found no concerns. Commissioner Lewis stated there are subdivisions located around the subject property and all are zoned Residential/Agriculture or Residential.

5. Protection from incompatible uses.

The Board found no concerns.

6. Accessibility to adequate utilities

The Board found no concerns. Chairman Manwaring stated “adequate utilities” is a word that is used in the Residential/Agriculture zoning requirements. To him, there are utilities, whether they are adequate or not. Commissioner Lewis added there were discussions with the USDA and DEQ in the past, wherein there is a water system there and when there is a subdivision application, expansion to allow access to the community water system could be looked into further.

7. Adequate service by roadways.

The Board found no concerns. Chairman Manwaring stated there are roadways and County roads. If a subdivision application is submitted, the classification of roadway could be changed and a speed study could be conducted. Commissioner Lewis concurred and added that the Public Works Director stated there is adequate roadways.

DECISION

Commissioner Lewis moved to uphold the decision made by the Planning & Zoning Commission to approve the Zone Change of 84.28 acres from “A” Agriculture to “R/A” Residential/Agriculture, located at 1550 North West of 800 East, and East of the Woodville Townsite in Shelley, Idaho. This is based upon the information provided today, the record, testimony and the Reason & Decision of the Planning & Zoning Commission. Chairman Manwaring seconded. Both Commissioners voted in favor. Commissioner Bair was not present to vote. The motion carried.

Request for Reconsideration/Judicial Review: Upon denial or approval of a zone change, with adverse conditions, pursuant to Idaho Code Section 67-6535(2)(b), the Applicant or affected person seeking Judicial Review of compliance with the provisions of this section must first seek reconsideration of the final decision within fourteen (14) days. Such written request must identify specific deficiencies in the decision for which reconsideration is sought.

Regulatory Takings: Additionally, the Applicant may request a regulatory takings analysis as per Idaho Code Section 67-8003. An affected person aggrieved by a final decision concerning matters identified in Section 67-6521(1)(a), Idaho Code may within twenty-eight (28) days after all remedies have been exhausted under local ordinance, seek Judicial Review as provided by Chapter 52, Title 67, Idaho Code.

Dates this 7 day of November 2022.

**Board of Bingham County Commissioners
Bingham County, Idaho**


Whitney Manwaring, Chairman


Mark Bair, Commissioner


Jessica Lewis, Commissioner