

BEFORE THE BOARD OF BINGHAM COUNTY COMMISSIONERS

In regards to: The Planning & Zoning Commission's recommendation to approve the Butler Family Subdivision- 1-Lot Subdivision.

Application filed by: Butler Family Trust c/o Linda Butler

REASON & DECISION

A. The Board finds that the record is comprised of:

1. Exhibits to the Staff Report:

S-5: Planning & Zoning Commission Staff Report

A-1: Application for Subdivision Plat

A-2: Butler Family Subdivision Narrative- HLE

A-4: Warranty Deed

A-5: Custom Soil Resource Report- United Department of Agriculture Resources

A-6: Guarantee- First American Title Company

A-7: Well Construction Search- Idaho Department of Water Resources

A-8: Butler Family Subdivision- Flood Plain Map

A-9: Butler Family Subdivision- Parcel Map

A-10: Butler Family Subdivision- Zoning Map

A-11: Butler Family Subdivision- Comprehensive Plan Map

A-12: Butler Family Subdivision- Aerial Map

A-13: Butler Family Subdivision- Area of Impact Map

A-14: Butler Family Subdivision- Subdivisions Map

A-15: Butler Family Subdivision- School District Map

A-16: Butler Family Subdivision- Riverview Elementary School Map

A-17: Further photographs

A-18: Butler Family Subdivision- Utilities Map

S-2: Proof of Publication- Idaho state Journal

S-3: Shelley Government Agency Notice List- Notice of Mailing (Addie Jo Harris)

S-4: Property Owners Notice List- Notice of Mailing (Addie Jo Harris)

S-6: Notice of Posting (Addie Jo Harris)

2. Planning & Zoning Commission Meeting Minutes January 12, 2022 and Planning & Zoning Commission sign in sheet for January 12, 2022.

3. Planning & Zoning Commission Reason & Decision, dated January 24, 2022.

4. All Information and Testimony presented at the Commissions Public Hearing on January 12, 2022.

B. As to procedural items, the Board finds the following:

1. Requested Action: The Meeting was held pursuant to Bingham County Section 10-14-4(E) to consider the Planning & Zoning Commissions recommendation on the Application.

2. In accordance with Bingham County Code 10-3-6 Notice was provided as follows:
 - a. Sent to 31 Government Agencies on December 21, 2021 (S-3 List of Government Agencies and Notice)
 - b. Published in the Bingham News Chronicle on December 17, 2021 (S-2 Affidavit of Publication)
 - c. Sent to 11 property owners within 300' of this property on December 21, 2021. (S-4 Property Owners Mailing List and Notice)
 - d. Site was posted on December 17, 2021 (S-6 Property Posting)
3. Government Agencies provided the following comments:
 - (T-1) Barbara Marlatt, Bingham County Treasurers Office, stated the taxes will need to be paid in full for 2021 prior to the Treasurer signing the plat.
 - (T-2) Chief Deputy Jeff Gardner, Bingham County Sheriff's Office, had no issues.
 - (T-3) David Romrell, Bingham County Surveyor, stated to please add "Part of NW ¼ to the Title on both sheets. Please revise section numbers on section control and review CPF# on E ¼ corner. Please revise legal description to include portion of Roadway vacated with Instrument No. 683817 (Ord. 2017-04). Bingham County Code Section 10-6-7(B) requires 75 feet of frontage, 50 feet is shown. Deed vacated a portion of 1550 N to Butler Trust or add another signature line under owner's certification and another acknowledgment.
 - (T-4) Dusty Whited, Public Works, who had no comments.
 - (T-5) Allan Johnson, Department of Environmental Quality, who stated this site overlies the ground water capture zones for several nearby private wells and a list of public water systems as detailed in Mr. Johnson's letter. DEQ recommends consolidation of drinking water services wherever feasible. DEQ considers public drinking water systems generally more protective of human health and ground water resources than using individual private wells, and we recommend that the developer be required to investigate connecting to an existing public drinking water system or establishing a public drinking water system for this development. Further, general recommendations for land development were included in the letter.
 - (T-7) Sandy Gaydysek, City of Shelley, had no comments or concerns.
4. Public testimony received prior to the Public Hearing included (T-6) Lisa Wise, submitted an email in opposition.
5. Public Hearing testimony included (T-8) Chris Street- HLE, the Applicant's Representative. After Mr. Street responded to questions asked of the Commission, the Public Hearing was closed as there was not testimony in support, in neutral, or in opposition.
6. The Commission moved to recommend approval of the Application, without conditions.

CONCLUSIONS OF LAW

Based on the entire record, and the Staff Report, the Board finds:

- a. The Application met the requirements in Bingham County Code Section 10-4-2 (D) as the purpose of "R" Zone is to prevent overcrowding of the land while encouraging the development of areas which are best suited for residential purposes. The Board found this parcel is in the Woodville Townsite, is of appropriate size for an individual septic system and drain field when coupled with the connection for culinary water purposes to the Woodville Water and Sewer District System. Additionally, the Townsite of Woodville is zoned Residential and this parcel is completely surrounded by residentially zoned parcels. The Board found the proposal is very compatible with existing uses in the area and compatible with existing uses in the area and compatible with existing lot sizes in the area; and
- b. the Application met the requirements in Bingham County Ordinance Sections 10-6-6(B)(1) and 10-14-4(B) because the proposed lot will receive the connection to culinary water via Woodville Water and Sewer District, individual sanitary sewer, pressurized irrigation, and has frontage access to 1550 North via 50 feet of parcel access (i.e. flag lot); and Commissioner Bair added that he had reviewed all requirements of Bingham County Ordinance Section 10-14-4 and agreed with all comments made by Staff; and
- c. the Application met the requirements of Bingham County Code Section 10-14-4(A) because the Application was completed and included all items listed in Sections 10-14-4 (A) 1-23; and
- d. the Application included a request for Variance to the frontage of the lot pursuant to Bingham County Code Section 10-6-7(B) as the lot features only 50 feet of frontage instead of the required 75 feet. The Commission found of the 50 feet was an access easement, that access would be outright allowed and due to the shape of the lot, it was an impairment to legal access due to size and shape. The Variance Application was not before the Board for consideration but is incorporated herein as to the Planning & Zoning Commissions Decision; and
- e. the proposed Subdivision is considered to be consistent with the Bingham County Comprehensive Plan as the parcel is designated in the Comprehensive Plan Map as Residential/Residential Agricultural area; and
- f. the Application met the requirements of Idaho Code §67-6513 and Bingham County Code Section 10-3-6 because the Public Hearing was held for all property owners within 300 feet; published in the official newspaper a minimum of 15 days prior to the Hearing and notice was posted on the property a minimum of one week prior to the Hearing.

DECISION

Commissioner Bair moved to uphold the decision of the Planning and Zoning Commission to approve the 1-Lot Subdivision to be known as Butler Family Subdivision, on approximately .88 acres, zoned Residential and the Comprehensive Plan has this area zoned Residential/Agriculture. This parcel is located North of 726 E 1550 N, in Shelley, Idaho. Chairman Manwaring seconded. Both Commissioners voted in favor. The motion carried. Commissioner Lewis was absent.

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 17 day of June 2022.

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


Whitney Manwaring, Chairman


Mark Bair, Commissioner

Jessica Lewis, Commissioner