

BEFORE THE BOARD OF BINGHAM COUNTY COMMISSIONERS

In regards to: The River Run Subdivision, Divisions 1-4

Application filed by: Kaleb & Lisa Phelps

REASON AND DECISION

REASONS

- A. The Board finds that the record is comprised of all:
- Staff Report, Exhibits and Minutes submitted at the Planning & Zoning Commission Public Hearing on July 14, 2021 with Reason & Decision;
 - Staff Report, Exhibits and Minutes submitted at the Board of County Commissioners Meeting on January 5, 2022 with Reason & Decision;
 - Staff Report, Exhibits and Minutes submitted with the Planning & Zoning Commission Public Hearing on the Board of County Commissioners Remand on March 9, 2022 with Reason & Decision; and
 - Staff Report, Exhibits and Minutes submitted before the Board from the Remand Public Hearing which the Board was presented on May 3, 2022.
- B. As to procedural items, the Board finds the following as it pertains to the Remand Meeting held on May 3, 2022. Said meeting followed the procedure set forth in Bingham County Code Section 10-3-7.
1. In accordance with Bingham County Code Section 10-3-6, Notice was provided as follows:
 - a. Sent to 30 Government Agencies on February 1, 2022 (PRZ-11).
 - b. Published in the Bingham News Chronicle on February 8, 2022 (PZR-9).
 - c. Sent to 16 property owners within 300' of River Run Estates, Division 1 and 23 property owners within 300' to River Run Estates, Divisions 2-4 on February 1, 2022 (PZR-10). Notice was also sent to Guy and DeAnne Tedesco who testified at prior Public Hearings who reside over the 300' boundary. The letter sent to Justin and Lanae Hale was returned undeliverable.
 - d. Site was posted on February 10, 2022 (PZR-12).
 2. Government Agencies provided the following comments:
 - a. (PZR-13) Sandy Gaydusek, City of Shelley, stated if EIRWWA's line is available and a road is ran to Hanson, the sewer line can be ran down that road. Also if the road is part of the Subdivision it would make the Subdivision within ¼ mile of the City and fall under the Impact Area Agreement standards.
 - b. (PZR-14) Barbara Marlatt, Bingham County Treasurers Office, stated taxes on all parcels will need to be paid in full for 2021. Further, if the plat is recorded after 4/15/2022 taxes on all parcels will need to be prepaid for 2022.
 - c. (PZR-15) 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 for establishing a public drinking water system for this development. Further, general recommendations for land development were included in the letter.

- d. (PZR-16) David Romrell, Bingham County Surveyor, who stated the cul-de-sac shown with a 70-foot radius to right of way with require 60 feet of asphalt instead of 40 feet as shown. Refer to figure 2 page 10 of Bingham County Road Standards Manual. Further, Bingham County Code 10-14-8(G)(2) requires street centerlines to have a minimum of 125-foot radius for curves on a local road.
 - e. (PZR-17) Dusty Whited, Bingham County Public Works, who stated he received a cost estimate based on cost per square foot, which came to a total of \$210,000.00. Further, the cul-de-sac should meet the Bingham County Road Standards Manual, page 10, figure 2, which requires 70' cul-de-sac layout, 70' right of way and 60' of asphalt. The radius for the curves needs to be 125' minimum to centerline. The grade of the road will need to meet AASHTO (American Association of State Highway and Transportation Officials) recommendations. This will be determined on construction drawings.
 - f. (PZR-18) Chief Deputy Jeff Gardner, Bingham County Sheriff's Office, had no issues.
3. Additionally, the following testimony was received at the Remand Public Hearing:
- T-27: Oath or Affirmation: Chris Street, 800 W Judicial.
 - T-27 A: River Run Master Plan with notes made by Chris Street on the presentation screen at the Planning & Zoning Commission Remand, March 9, 2022.
 - T-27 B: River Run Master Plan with notes made by Chris Street on the presentation screen at the Planning & Zoning Commission Remand, March 9, 2022.
 - T-27 C: River Run Master Plan with notes made by Chris Street on the presentation screen at the Planning & Zoning Commission Remand, March 9, 2022.
 - T-28: Oath or Affirmation: Brian Ricks, 372 W 150 N.
 - T-28 A- River Run Master Plan with notes made by Brian Ricks on the presentation screen at the Planning & Zoning Commission Remand, March 9, 2022.
 - T-29: Oath or Affirmation: Lisa Phelps, 1382 N 750 E, Shelley.
 - T-30: Oath or Affirmation: Eric Bolander, 1376 N 695 E, Shelley.
 - T-31: Oath or Affirmation: Lance Griffith, 687 E 1400 N.

T-31A: River Run Master Plan Map with notes made by Lance Griffith on the presentation screen at the Planning & Zoning Commission Remand, March 9, 2022.

T-32: Oath or Affirmation: Coral GoodVoice, 580A North Hanson Ave.

T-32A: River Run Master Plan Map with notes made by Coral GoodVoice on the presentation screen at the Planning & Zoning Commission Remand, March 9, 2022.

C. The Board reviewed information received for additional fact finding as shown below:

1. *Basis for Eastern Idaho Regional Waste Water Authority (EIRWWA) providing a "will not serve" letter regarding the Subdivision Applications.*

a. Testimony was presented by Scott Barry, EIRWWA Manager, who submitted a letter (PZR-3) in response to the Remand request and provided that:

(1) EIRWWA uses a 300-foot measurement (sewer line to property line) to determine if a Will Serve Letter or a Non-Will Serve Letter will be issued. The 300-foot mark comes from two places:

A Bonneville County requires connection within 300 feet but not outside of 300-foot.

B. Idaho Public Health require sewer hookup within 300 feet. Idaho Public Health requires a definitive letter we Will Serve or we Will Not Serve based on the 300-foot measurement.

EIRWWA will only issue a Will Serve Letter to a subdivision if:

1. The Subdivision forms a District, or is administered by one of the following:

- a. City of Ammon
- b. City of Shelley
- c. Woodville Water and Sewer District
- d. Taylor Mountain Water and Sewer District

Upon receipt of the EIRWWA letter, Ken Keller with Southeastern Idaho Public Health (SIPH), clarified in his letter (PZR-16) that Southeastern Idaho Public health does not set or have a policy that addresses any specific distances from a sanitary sewer line to a property line that would require connection to the sewer. SIPH relies on each sewer entity throughout the 8 counties they serve to make the determination of what is reasonably accessible as far as connection to a sanitary sewer. Different sewer jurisdictions have different requirements and setbacks. Prior to SIPH issuing a septic permit near a sanitary sewer line, a letter from the sewer entity must be submitted to SIPH stating whether or not sewer is available to the property in question. If sewer is determined to be available, SIPH will

not issue a septic permit. If it is determined that sewer is not available to the property, SIPH will work with the Applicant to issue a septic installation permit if the lot is suitable for a septic system.

Further, Scott Hall, Attorney for EIRWWA, provided a supplemental response (PZR-4) stating EIRWWA's By-Laws do not address the Will-Serve or distance requirements for connection. It was the understanding of EIRWWA that both Bonneville and Bingham County had regulations requiring sewer connection if within 300 feet. Mr. Hall also provided the Minutes from 1/20/2022 EIRWWA Board Meeting when Will- Not Serve Letters were discussed (PZR-5).

2. *The cost of bringing the EIRWWA sanitary sewer line to Division 1 for connection.*
The Board reviewed Exhibit PZR-2 which is a letter from Luke Jolley, Professional Engineer with HLE, Inc. who stated to provide sewer line from the EIRWWA line to the 3 lots (approximately 1,200 feet of pipe at approximately \$100 per; linear foot) would estimate to be about \$120,000. In addition, for 3 service connections the cost would be \$4,000 and would require 2 manholes at \$5,000 each. The Applicants total for sewer connection for Division 1 residences would be approximately \$134,000. EIRWWA stated in its letter (PZR-3) the connection for each residence would be \$5,639 but would be subject to change depending on the fee rate when application is/may be made.
3. *The cost of connecting to 695 East (Currently a private easement) through 750 East Hanson via construction of a County Road.* The Applicant submitted Exhibit PZR-2, a letter from Luke Jolley- Professional Engineer with HLE, Inc. who stated the extension of 695 E from where it is currently proposed to terminate to serve Division 2, to Hanson Avenue, is approximately 2,025 feet and the cost would be approximately \$120 per linear foot for improvements, to a total of \$243,000. The creation of Parcel No. RP0470731 (Anderson Parcel) and Parcel No. RP0471909 (Vance Parcel) prevents the connection of the proposed 695 E. 750 E. Hanson in its current state.

Staff commented that both the Vance's and the Anderson's have expressed their opposition for a County road on their property. The Board of County Commissioners heard the Applicants request for a Variance to allow for the easement at 750 E. Hanson to be used for four parcels although it didn't meet the current Bingham County Road Standards. At the time, the Applicant's provided information that the construction of a County Road would be too financially cumbersome. The Board moved forward with the approval of the private easement. With consultation between Planning Director Olsen and Chief Civil Deputy, John Dewey, it has been determined the only mechanism to require a road be built from 695 E to 750 E Hanson would be by the County exercising Eminent Domain as the Applicants have sold two parcels (the Vance parcel and the Anderson parcel) which contain property necessary to obtain Right-of-Way to establish a County road.

4. *Clarification from Fire Chief Randy Adams pertaining to the temporary turnaround for Division 3 and overall Preliminary Plat approval pertaining to access.* From the record, on 1-25-2022, Fire Chief Randy Adams submitted a River Run Master Plan as well as two Records of Survey, all with his signature in the upper right hand corner, providing for his approval of the proposed turnarounds and Master Plan Development. It was noted, the date of the Chief's approval is after the Board of County Commissioners meeting as Chief Adams had not reviewed and approved the proposed plats as presented to the Board of County Commissioners, as represented by the Applicant. The addition of access to the West of the Gillmore Parcel was added after the Fire Chief's approval for the January 5th meeting. Nonetheless, the record reflects the Fire Chief's approval of the proposed Plat.

CONCLUSIONS OF LAW

The Board of County Commissioners reviewed the additional fact-finding and the testimony and evidence presented at prior meetings as set forth herein and the Board found:

1. the Application met the requirements in Bingham County Code Chapter 10-4-2(C) as the purpose of "R/A" zone is to permit the establishment of low density single-family dwellings with lot sizes sufficient for individual sewer and water facilities. The Application contains lot sizes, in all Divisions, that are compatible with the area and for the R/A zoning District; and
2. the Application met the requirements in Bingham County Ordinance Chapter 10-6-6(B)(1) and 10-14-4(B) because proposed lots meet the 1 acre minimum to have individual wells and septic systems and drain fields. Additionally, the size of the proposed Division 1 Lot 3 may be of concern in the event the Idaho Department of Public Health determines it is not sufficient in size given the substantial amount of "common area" included in the lot description; and
3. the cost of bringing the EIRWWA sanitary sewer line to Division 1 for connection was estimated at \$134,000. The Eastern Idaho Regional Waste Water Authority (EIRWWA) provided an updated "will-not-serve" letter for the Subdivision Applications as the Subdivision is located more than 300' from the existing EIRWWA line and EIRWWA will not allow connection to their line without the subdivision forming a District or becoming part of one of the Districts they listed in their comments. The Board determined there are not Districts nearby for connection and discussed the possibility of connecting to the City of Shelley's sewer line; and
4. the Application met the requirements of Bingham County Code 10-14-4 (A) because the Application was completed and included all items listed in 10-14-4 (A) 1-23; The Planning & Zoning Commission conditioned recommendation of approval for Division 1 on that a plan be provided by the Applicant ensuring that the cul-de-sac's be kept separate and not allow through traffic. The Board found an email from Kaleb Phelps, dated November 17, 2021, was entered into the record wherein the Applicants state they agree to install an

emergency barricade to block vehicles from crossing the emergency access located in the common area near River Run Estates Division 1. Additionally, the same emergency gate/access is required from the Hanson Road easement terminating at the end of the Vance Parcel (RP0471909 or 730 E 1375 N, Shelley). Emergency vehicles, however, may break through these barricades and cross the emergency access, which is to be maintained 365/days per year. Additionally, the Board verified with Planning Staff that the development and construction of all access easements would be validated prior to the issuance of any Certificates of Occupancy and the access would be the dedicated accesses for the applicable Subdivision Divisions. Lastly, the Board accepted that proposed Divisions will all be provided pressurized irrigation water via a system installed by the Developer with sufficient easements located on the plat and operated by a Home Owners Association for all Divisions; and

5. the Fire Chief Randy Adams submitted a River Run Master Plan as well as two Records of Survey, all with his signature attached, showing approval of the proposed Master Development Plan pertaining to emergency response. The updated Preliminary Plat shows a turn-a-round for River Run Estates, Division 3 which was a concern of the Board at the prior meeting. Further, testimony was presented that the Applicant has attained a Maintenance Agreement between the landowners and the Shelley-Firth Fire District providing for emergency access and maintenance of an all-weather road extending from 750 E Hanson to their respective parcels, with access being maintained during all weather conditions, by the landowners. Staff presented the Agreement has not been recorded at the time of the Board's Remanded Meeting; and
6. it requested and received additional information pertaining to the cost of connecting 695 E (currently a private easement) from the proposed Division 2 through to 750 E Hanson via the construction of a County Road was estimated at \$243,000 and that the property needed to connect these roads has transferred ownership which prevents the connection of these two roads. The Board does not wish to exercise eminent domain at this time; and
7. the proposed Subdivision will be consistent with the Bingham County Comprehensive Plan as this parcel is designated in the Residential/Residential Agriculture Area which provides for residential development. Additionally, the proposed Subdivision is in the Shelley Area of City Impact and said area is designed for residential growth; and
8. 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 the Hearing and notice was posted on the property a minimum of one week prior to the Hearing.

DECISION

Based on the Reason and Decision contain herein and the testimony from the remanded Public Hearing before the Planning & Zoning Commission, as well as the entire record presented to the Board, Commissioner Bair made a motion to approve the River Run Estates Division 1 and Divisions 2-4 and that the Divisions be required to connect to the EIRWWA sewer line as well as

secure a Maintenance Agreement with the Shelley Fire Department. The motion did not receive a second and therefore the motion failed.

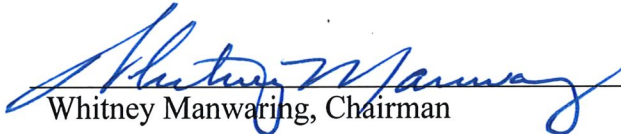
Commissioner Lewis then made the motion to accept the recommendation from the Planning and Zoning Commission to approve the River Run Estates Division 1 and River Run Estates Divisions 2-4 with the condition that a Maintenance Agreement be signed with the Shelley Fire Department and Chairman Manwaring seconded. Chairman Manwaring and Commissioner Lewis were in favor, Commissioner Bair was against.

Motion for Reconsideration: Pursuant to Idaho Code Section 67-6535(2)(b) any 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.

Appeal: Upon denial of the Amended Plat, 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 ordinances seek judicial review as provided by Chapter 52, Title 67, Idaho.

Dated this 17 day of June 2022.

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


Whitney Manwaring, Chairman


Mark Bair, Commissioner

Jessica Lewis, Commissioner