

**BEFORE THE BOARD OF BINGHAM COUNTY COMMISSIONERS**

In regards to: The Planning & Zoning Commission’s recommendation to approve the Zoning Amendment from “R” Residential to “C2” Heavy Commercial.

Application filed by: Jose Martinez

Board of County Commissioners Public Hearing Date: November 29, 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: Blackfoot/Snake River Government Agency Notice List & Notice of Mailing
  - CC-4: Property Owners Notice List & Notice of Mailing
  - CC-5: Notice of Posting- Tiffany Olsen- Planning & Development Director
  - S-20: Planning & Zoning Reason & Decision- May 11, 2022
  - S-21: Planning & Zoning Minutes- May 11, 2022
  
2. Exhibits to the Planning & Zoning Commission Staff Report:
  - S-1: Staff Report- Planning & Zoning Commission
  - A-1: Application for Zone Change
  - A-2: Reasoning for Application for Zone Change
  - A-3: Site Plan
  - A-4: Quit Claim Deed- Instrument No. 688433
  - A-5: Planning & Zoning Commission Minutes from the Public Hearing held on September 14, 2016
  - A-6: Planning & Zoning Commission- Findings of Facts and Conclusions of Law dated August 11, 2016
  - A-7: Bingham County Board of Commissioner- Minutes from the Public Hearing held on August 29, 2016
  - 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 Company Map

- S-13: ½ miles proximity parcels by size
- S-14: Map
- S-15: Notice of Posting: Addie Jo Harris
- S-16: Site Photographs
- S-17- Proof of Publication- Bingham News Chronicle- Planning & Zoning Commission
- S-18: Blackfoot/Snake River Government Agency Notice List & Notice of Mailing
- S-19: Property Owners List & Notice of Mailing

3. Planning & Zoning Commission Meeting Minutes September 14, 2022 and Planning & Zoning Commission sign in sheet for September 14, 2022.
4. Planning & Zoning Commission Reason & Decision, signed by both Chairman Darren Leavitt and Tiffany Olsen, Planning & Development Director on October 3, 2022
5. All Information and Testimony presented at the Planning & Zoning Commission Public Hearing on September 14, 2022:
  - T-1: Testimony from Bingham County Sheriff
  - T-2: Testimony from Bingham County Surveyor
  - T-3: Testimony from Allan Johnson- Department of Environmental Quality
  - T-4: Testimony from Bingham County Public Works
  - T-5: Oath or Affirmation- Jeromy Pharis, Attorney for the Applicant
  - T-6: Exchange Deed recorded as Instrument No. 672701
  - T-7: Oath or Affirmation- Dewaine Nafus
  - T-8: Oath or Affirmation- Lew Graff

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

1. Requested Action: The Public Hearing was held pursuant to Bingham County 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. In accordance with Bingham County Code 10-3-6 Notice was provided as follows:
  - a. Sent to Government Agencies on October 24, 2022 (CC-3 List of Government Agencies and Notice of Mailing)
  - b. Published in the Bingham News Chronicle on November 1, 2022 (CC-2: Affidavit of Publication)
  - c. Sent to property owners within 300' of this property on October 24, 2022. (CC-3 Property Owners Mailing List and Notice of Mailing)
  - d. Site was posted on October 24, 2022 (CC-5 Property Posting)
3. There was no testimony received from Government Agencies prior to the Boards Public Hearing.

4. There was no public response received prior to the Board's Public Hearing:
5. Testimony received at the Board's Public Hearing:
  - a. (CC-6) Jose Luis Martinez, Applicant's Son, residing at 785 S. 800 W., Blackfoot, Idaho, stated his father is wanting to take advantage of the growth that Blackfoot is having and increase property value. It would be beneficial to change the designation of this land to Heavy Commercial, to be used by themselves or to be sold for future use. Lastly, Mr. Martinez confirmed that all concerns previously mentioned have been discussed and cured.
6. Chairman Manwaring confirmed there was no testimony in favor, opposition, nor in neutral. At this time, testimony was closed and the Board moved into deliberation.
7. Discussion was held in regards to easement and legal access, wherein Director Olsen stated that the Applicant has deeded commercial access and explained if approved, the Applicant would move forward with discussion with the Idaho Transportation Department to do an approach permit depending on what the future land use would be.
8. Chairman Manwaring asked for confirmation that the subject property is currently flood irrigated, to which Mr. Martinez stated was correct with water shares from Trego Canal. He added that all requirements have been met and he has no concerns in regards to this Application.
9. Commissioner Bair stated the Application meets all requirements and when the multi-use corridors were created, the Board was wanting to allow applications such as this to occur in the corridor along the highway.
10. Commissioner Lewis asked the Applicant if there were any buildings or structures on the subject property, which was confirmed there is not. The subject property is only pasture. She stated there is access to highways for commercial uses, which is important. In Mr. Pharis's testimony, he explained that previously the Application did not fit what the ordinance required but with the update of the Comprehensive Plan, a turning lane being added and multiple commercial properties surrounding the subject property, this Application meets all requirements.

## REASON

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

1. The Zoning Amendment Application was filed by the property owners in accordance with Bingham County Code Section 10-15-2(D); and
2. The Application met the requirements of Bingham County Code Section 10-15-3 as all information required was contained in the Application; and
3. Bingham County Code Section 10-4-2(F) provides for the description and qualifications for the Heavy Commercial Zoning District in that the parcel meets the following criteria:
  - a. Adequate service by major roadways- The Board found the parcel has adequate service by Highway 39 as the parcel has highway frontage.
  - b. Location that minimizes potential traffic problems- The Board found that since 2016, when the Applicant's first Application to modify the zoning of this parcel was denied, turn lanes have been added to Highway 39 to address access concerns

and now allows for adequate space for vehicles to turn on and off the Highway. The Board also noted there has been an increase of commercial businesses along the multi-use highway corridor that typically operate Monday through Friday, which are regulated hours versus residential traffic coming and going more frequently.

- c. Compatibility with existing uses- The Board had no concerns.
- d. Protection from encroachment of residential uses- The Board found that the area surrounding the Applicant's property is more Commercial than it is Residential.
- e. Accessibility to adequate utilities- The Board found there are adequate utilities accessible to the parcel.

The Application meets the criteria of Bingham County Code Section 10-4-2(F) and could be zoned to Heavy Commercial based on the findings above; and

- 4. The Application meets the requirements of Bingham County Code Section 10-15-7(B)(1) as a Zoning Amendment has not been approved on the property within the last four (4) years and written consent from the property owner for the Zoning Amendment to Heavy Commercial was received from the property owner in the form of a signed Application; and
- 5. The Application meets the requirements of Bingham County Code Section 10-15-7(B)(2) as the property owner provided a new Application requesting the same zoning designation of Heavy Commercial but did so more than one (1) year after the denial; and
- 6. The proposed Zoning Amendment is considered to be consistent with the Bingham County Comprehensive Plan as the area is designated as Multi-Use, which is established in locations that have traditionally and historically had mixed uses. The area does not change the underlying zoning of the parcel but allows for any type of zoning in the area that may be in conflict with existing uses; and
- 7. The Application met the requirements of Idaho Code Section 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 Public Hearing and notice was posted on the property a minimum of one week prior to the Public Hearing.

### **DECISION**

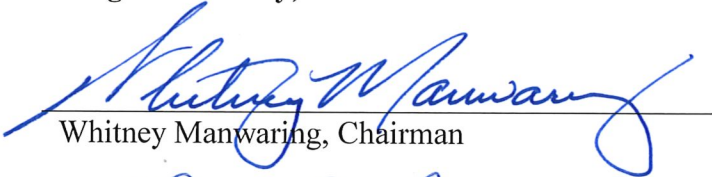
Commissioner Lewis moved to uphold the Planning & Zoning Commissions recommendation to approve the Zone Change of approximately 4.01 acres from "R" Residential to "C2" Heavy Commercial, located South of Highway 39, West of 500 West Thomas Road and East of 600 West Clark Road in Blackfoot Idaho. The property is owned by Jose Martinez. This decision is based upon the information within the record, testimony provided today and the Reason & Decision of the Planning & Zoning Commission. Commissioner Bair seconded. All voted in favor. 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 12 day of December 2022.

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



Whitney Manwaring, Chairman



Mark Bair, Commissioner

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Jessica Lewis, Commissioner