

BEFORE THE BOARD OF BINGHAM COUNTY COMMISSIONERS

In regards to: The Planning & Zoning Commission's recommendation to approve the Lava Ridge Cove Subdivision, a 16-Lot Subdivision.

Application filed by: Gale Lim Construction, LLC and Rod Albertson

REASON & DECISION

- A. The Board finds that the record is comprised of:
1. Exhibits to the Staff Report:
 - S-1: Planning & Zoning Commission Staff Report
 - A-1: Application for Subdivision Plat
 - A-2: Lava Ridge Cove Subdivision Narrative- HLE
 - A-3: Lava Ridge Cove Subdivision Plat
 - A-4: Lava Ridge Cove Subdivision Description
 - A-5: Custom Soil Resource Report- United Department of Agriculture Resources
 - A-6: Guarantee- First American Title Company
 - A-7: Idaho Department of Water Resources Well Construction Search
 - S-2: Lava Ridge Cove Subdivision- Parcel Map
 - S-3: Lava Ridge Cove Subdivision- Zoning Map
 - S-4: Lava Ridge Subdivision- Comprehensive Plan Map
 - S-5: Lava Ridge Subdivision- Flood Plain Map
 - S-6: Lava Ridge Subdivision- Aerial Map
 - S-7: Lava Ridge Subdivision- Subdivision Map
 - S-8: Lava Ridge Subdivision- Area of Impact Map
 - S-9: Lava Ridge Subdivision- School District Map
 - S-10: Lava Ridge Subdivision- Utilities Map
 - S-11: Lava Ridge Subdivision- Nitrate Priority Area Map
 - S-12: Lava Ridge Subdivision- Irrigation Company Map
 - S-13: Approximate proposed location map
 - S-14: Notice of Posting (Addie Jo Harris- March 21, 2022)
 - S-15: Miscellaneous photographs
 - S-16: Proof of Publication- Bingham News Chronicle
 - S-17: Blackfoot/Snake River Government Agency Notice List & Notice of Mailing (Addie Jo Harris- March 18, 2022)
 - S-18: Property Owners Notice List & Notice of Mailing (Addie Jo Harris- March 18, 2022)
 2. Planning & Zoning Commission sign in sheet for April 13, 2022 and Planning & Zoning Commission Meeting Minutes April 13, 2022.
 3. Planning & Zoning Commission Reason & Decision, dated May 9, 2022.
 4. All Information and Testimony presented at the Commissions Public Hearing on April 13, 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 Government Agencies on March 18, 2022 (S-17 List of Government Agencies and Notice)
 - b. Published in the Bingham News Chronicle on March 22, 2022 (S-16 Affidavit of Publication)
 - c. Sent to 18 property owners within 300' of this property on March 18, 2022. (S-18 Property Owners Mailing List and Notice)
 - d. Site was posted on March 21, 2022 (A-15 pictures & S-14 Property Posting)
 3. Government Agencies provided the following comments:

(T-1) Tanna Beal, Bingham County Treasurer, stated taxes for 2022 will need to be pre-paid prior to the Treasurer signing the plat.

(T-2) Craig Rowland, Bingham County Sheriff, had no issues.

(T-3) David Romrell, Bingham County Surveyor, had the following questions and comments:

 1. Property appears to consist of enough acreage to make lots 1 acre or more, therefore, why are some less than 1 acre?
 2. How is irrigation water being delivered to lots?
 3. Unable to review lots for closure because all lot lines do not have bearings shown.
 4. Lot 7 Block 2 is missing curve information.
 5. Please review C1 in the curve table.

(T-4) Dusty Whited, Bingham County Public Works, stated future lots will not have direct access to 350 N or 700 W, as they will need to utilize the new County Road within the subdivision. 350 N is a local road and must be a minimum of 65 feet from the nearest approach.

(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 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-6) Marc Pange, Groveland Water and Sewer District Chairman, stated GWSD does not have water and sewer connections available within a reasonable proximity to the property as the nearest connection is approx. 3.7 miles away.

4. Public Response received prior to the Public Hearing:
 - (T-7) Petition in Opposition containing 81 signatures, received on April 5, 2022.
 - (T-8) Letter from D. Andrew Rawlings, Attorney at Law, in opposition, received on April 5, 2022.
 - (T-9) Austin & Bonnie Moses, letter in opposition, received on April 11, 2022.
5. Testimony provided at the Public Hearing on both the Zoning Amendment and Subdivision included (T-8 and T-10) [T-10] Chris Street, the Applicant's Representative, who reviewed Road Classifications and counts from a recently conducted traffic analysis conducted by HLE; According to the Federal Highway Standards, Local Roads can accommodate approximately 400 trips/day, Minor Collectors can accommodate approximately 150-1000 trips/day. HLE's traffic study, done between 3/29/2022 and 4/11/2022; yielded an average daily count on 700 W of 350 trips/day (5-day run) and 341 trips/day (7-day run) and noted that out of the 4,000 vehicles that passed, 90% were mid-sized vehicles.

Testimony in Neutral was provided by (T-9 & T-11) Rod Albertson, Developer of this proposed Subdivision and area Builder, whose address is 657 W 45 S Blackfoot, testified that he has lived in the Snake River area his entire life and that there is a need for housing. After zoning review, he does not believe that this is spot zoning as the property was contiguous with existing "R/A" zoning. Mr. Albertson stated he reviewed the petition and only 6 out of the 80 signatures were those that lived within the 300' radius (notification area).

(T-10 & T-12) Gale Lim, Developer of this proposed Subdivision and whose address is 919 W 200 S, Blackfoot, ID, who discussed the growth in Blackfoot, high traffic in the area and his intentions of placing Conditions, Covenants and Restrictions to ensure the Subdivision remains a good place to raise a family.

Testimony in Neutral:

(T-11 & T-13) Spencer Larsen, Peoples and United Canal Companies Manager, whose address is 864 W. 650 N., Blackfoot, Idaho, noted an existing and adjacent 75-foot canal easement to the South and stated if the Application was approved, they would work with the Developer on establishing an irrigation system and ensure easement setbacks are respected.

(T-15 & T-17) Ryan Tew, whose address is 250 N. 800 W., Blackfoot, Idaho, stated he would like to put the record straight that his brothers (Martin Farms) had been farming the land the previous year, had intentions of continuing to farm and were planning on purchasing if made available, as previously shaken on.

Testimony in Opposition:

(T-12 & T-14) D. Andrew Rawlings, Attorney at Law, whose address is 1000 Riverwalk Dr., Suite 200, Idaho Falls, Idaho, testified that he was the author of the Petition containing 80 signatures, of who were all locals and living in the immediate area. He stated that farming is happening throughout the area and questioned how recent the traffic study was. He did not agree that traffic was much heavier during harvest time but questioned what the annual numbers would look like for traffic counts and shared his clients concern with the impact to the infrastructure due to an increase in traffic, if the Application were approved. Mr. Rawlings referred to Bingham County Code and believed that the Commission needed to take into account the adjoining Agriculture land as it should be protected from the infiltration of urban development.

Mr. Rawlings reviewed the Comprehensive Plan and believed there was a balancing act that needed to happen in allowing for housing opportunities and protecting agricultural land but believed fragmentation should be discouraged and the Application would be considered leapfrogging and urban development. He also didn't think the Commission should be changing the Comprehensive Plan in order to accommodate a Zone Change and the County should be setting a precedence for future applications.

Further discussion was held regarding irrigation and water rights in the area.

(T-14 & T-16) Carlos Baldwin, whose address is 602 W 350 N, Blackfoot, Idaho, expressed concerns with traffic control, increased traffic and safety of children and animals due to increased traffic. Mr. Baldwin believed there needed to be an environmental impact study done and a speed limit reduction.

Chairman Leavitt and Mr. Baldwin discussed current and future road usage.

(T-16 & T-18) Brian Jones, whose address is 690 W 350 N Blackfoot, ID, described his property and why the nearby 1-acre parcels exist. Mr. Jones also expressed concerns with the proposed subdivision, stating he once lived in an urban subdivision and did not like it.

Applicant's Rebuttal:

(T-8 & T-10) Chris Street expressed gratitude for the testimony given and argued that there were numerous types of agricultural ground and being zoned "R/A" and having a parcel large enough to plant a garden and be self-sufficient is still agricultural. Mr. Street discussed the traffic studies done by HLE's traffic engineers, which showed Lemhi Rd. had the capacity to handle the extra trips a day and noted they will be asking for a speed limit change in the area, specifically on Lemhi Rd, and noted that Mr. Lim is required to drive his trucks at 35 mph.

Further discussion was held regarding water usage and size of lots.

6. Commission discussion included Commissioner Aullman who stated that he did not believe the Application was considered spot zoning or leap-frogging in any way because of the existing and contiguous R/A zoning but was conflicted, as there was testimony both ways on whether or not the property is prime agricultural land that needs to be protected. He reiterated that R/A zoning was still a form of agricultural zoning, just on a smaller scale. Commissioner Pratt stated he had no doubts the property was prime agricultural land but understood the significance of the contiguous R/A zoning and stated it was a question on which way the County wanted to move forward and see the growth.
7. 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:

1. it approved the Zoning Amendment to Residential/Agriculture and confirmed the Application is consistent with Bingham County Code Section 10-4-2 (C) which provides for the description and qualifications for the Residential/Agriculture Zoning District and found the parcel meets the designation as:
 - a. the lots within the Subdivision could still be used for some agricultural purposes, if so desired by the landowner(s) on a 1-acre parcel, on a much smaller scale. The Board sought more information from the Applicants/Developer on the parcel size and questioned if 2-acre parcels would be a better fit in this area. The Applicants/Developer desired to move forward with the proposed Plat, as presented, with one-acre parcels.
 - b. there are parcels of 1 acre in size, and greater, in the area, although parcels larger than 1 acre are more common.
 - c. there are parcels zoned Residential/Agriculture to the North and to the Southwest of the parcel in question. The lot sizes may be larger than one acre but the Residential/Agriculture zone supports 1-acre minimum as a lot size per Bingham County Code.
 - d. the area features mixed residential and agricultural uses as well as a bee farm and a commercial gravel operation. The Board found the agricultural farming of bees and neighboring family farms should remain unaffected by the residential development as there are already several homes, trees and other farming in the area.
 - e. the parcel would be protected from incompatible uses as the desire is single-family residential development and there is currently a mixed use of residential and agricultural uses.
 - f. the parcel is accessible to utilities.
 - g. the parcel has adequate service by roadways. The Public Works Director provided the distances between approaches as required by the Bingham County Road Standards Manual and the proposed Plat appears to meet those standards. Additionally, Lemhi Road is classified as a *Minor Collector*, which should facilitate

between 150-1,110 average vehicle trips per day. The Applicant's Representative provided a 7-day traffic study showing the current traffic is approximately 350 trips per day on a 5-day run and 341 trips per day on a 7-day run with a peak, which can easily be accommodated by a Minor Collector (Lemhi Rd). N. Williams Road is more rural and doesn't have direct access to the highway like Lemhi Road does and therefore may be used less frequently as a primary road for travel. The additional traffic expected with the development of 16 new homes is 10 trips per day, per home, or 160 trips in total. If traffic uses Lemhi to travel to/from Highway 26, there should be no traffic concerns. The alternative route to Blackfoot would be to use Williams Road which is classified as a *Local Road* which should facilitate between 15-400 average vehicle trips per day. The Commission also heard concerns over the speed limit on Lemhi Road. The Applicants Representative testified that upon completing the Traffic Study, it was decided the Applicant will submit a request to reduce the speed on Lemhi Road to the Public Works division for consideration. Overall, the Board found the roads to be sufficient in light of the opposition that an increase of traffic would be damaging to the community and its residents and encouraged looking at reducing speeds on Lemhi Road if the data warranted to do so.

2. the Application meets the Area Regulations requirement of a Residential/Agricultural Zoning District as the parcels are proposed greater than one-acre in size and will have an individual sanitary sewer system and culinary well as required by Bingham County Code Section 10-6-6. The Application also meets the frontage requirements of Bingham County Code Section 10-6-7.
3. the proposed Subdivision is considered to be consistent with the Bingham County Comprehensive Plan as the parcel map designation was amended by the Board to Residential/Residential Agriculture, as an action item prior to the consideration of this Subdivision.
4. 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.
5. Commission discussion was held specifically in regards to irrigation, wherein it was confirmed that there would be pressurized irrigation system.
6. Commissioner Bair stated a concern is there are surrounding gravel pits that are within $\frac{1}{4}$ of a mile and could be dusty. Other than that concern, he reiterated that Staff has reviewed all Subdivision regulations and he has no further concerns.

DECISION

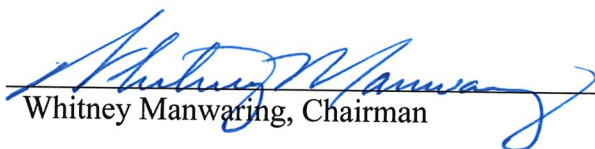
Commissioner Bair moved to uphold the decision to approve the request by Gale Lim Constriction LLC and Rod Albertson for a 16-Lot Subdivision to be known as Lava Ridge Cove Subdivision, on approximately 18.83 acres, as presented and based upon the record and the Reason & Decision of the Planning and Zoning Commission. Further, all phases and/or parcels created in the vicinity must be continuous and progress in an orderly fashion. 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 11 day of July 2022.

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


Whitney Manwaring, Chairman


Mark Bair, Commissioner

Jessica Lewis, Commissioner