

BEFORE THE BOARD OF BINGHAM COUNTY COMMISSIONERS

REASON & DECISION

In regards to: Basalt Bar Estates Subdivision, a 4-Lot Subdivision in an “R” Residential Zoning District

Board of County Commissioners Meeting Date: November 1, 2022

Property Owners: Daniel and Catherin Wachs, Brian and Donna Aschliman & Jay and Lee Ann Wells

Developer: Daniel and Catherin Wachs

A. The Board reviewed the record is comprised of:

1. Exhibits to the Staff Report:

CC-1: Board of County Commissioners Staff Report

CC-2: Updated Preliminary Plat

CC-3: Declaration of Covenants, Conditions, and restrictions of Basalt Bar Estates

S-1: Planning & Zoning Commission Staff Report

A-1: Application for Subdivision Plat

A-2: Subdivision Narrative

A-3: Preliminary Plat

A-4: Personal Representative’s Deed

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

A-6: Guarantee- Old Republic National Title Insurance Company

A-7: Letter from Michael L. Anderson- Woodville Water & Sewer District

A-8: Permit- Subsurface Sewage Disposal- Idaho Public Health Districts

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 Map

S-13: Google Imagery Map

S-14: Notice of Posting- Addie Jo Harris

S-15: Site Photographs

S-16: Proof of Publication- Bingham News Chronicle- Planning & Zoning Commission

S-17: Shelley Government Agency Notice & Notice of Mailing- Addie Jo Harris

S-18: Property Owners List & Notice of Mailing- Addie Jo Harris

2. Planning & Zoning Commission Meeting Exhibits & Minutes from August 10, 2022 and Planning & Zoning Commission sign in sheet for August 10, 2022
3. All Information and Testimony presented at the Commissions Public Hearing on August 10, 2022
4. Planning & Zoning Commission Reason & Decision, signed by Chairman Darren Leavitt on September 14, 2022

B. REQUESTED ACTION: Uphold, conditionally uphold, or overrule the decision of the Planning & Zoning Commission on the proposed subdivision. At the August 10, 2022 Planning & Zoning Commission Public Hearing, the Commission recommended approval of the Application from Daniel and Catherin Wachs, Brian and Donna Aschliman, and Jay and Lee Ann Wells, to develop Basalt Bar Estates Subdivision, consisting of 4-Lots, in a Residential Zoning District, within the Woodville Townsite. Lots 1, 2 and 4 all feature existing residences; Lots 1 and 4 will be unaffected by the Subdivision Application as they are merely a property lot line adjustment to rectify legal descriptions. Lot 3 has an existing home and garage on 0.25 acres (both Lots 2 and 3 are owned by the Wachs). The Lots 2 and 3 will share a community septic system drain purposes, with irrigation water being assessed by the Woodville Canal Company and delivered via an existing irrigation ditch on the west property line. Lot 3 will be accessed from a new private easement extending to the South from the original driveway access of 707 E 1550 N, Shelley, Idaho (Lot 2) and will be 20 feet in width. The Comprehensive Plan Map has this area designated as Residential/Residential Agriculture.

REASON

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 the “R” zone is to preserve desirable Residential neighborhood characteristics and to prevent overcrowding of the land while encouraging the development of areas that are best suited for Residential purposes that are close to a Townsite; contiguous to another “R” zone; lot sizes that are compatible with the requested area; and have adequate services by roadways; and
- b. the proposed Subdivision does not affect Lots 1 and 4 as those lots have existing homes and are buildable, however, said Lots were included in the Subdivision Application to correct property lines and legal descriptions to accurately describe the Lots; and
- c. the Board was unsure if the proposed Subdivision meets the Area Regulations of Bingham County Code Section 10-6-6 as all Lots are, or will be, connected to the Woodville Water and Sewer District’s water system. Additionally, Lots 2 and 3 are

- proposed to share a sanitary sewer system drain field with individual septic systems as previously approved by the Idaho Department of Public Health; and
- d. the Board expressed concerns regarding the shared septic drain field system in the event lots are sold to someone other than the Applicant's and their son as joint ownership would also create shared maintenance and operation of the system; and
 - e. Commissioner Bair expressed his concern that the subdivision will have smaller lots, individual septic systems for each and being in close proximity to the Snake River. Chairman Manwaring concurred and stated the individual septic systems for each individual lot is also a concern for him.
 - f. Commissioner Lewis asked Director Olsen for clarification as to the definition of a "community system", due to the code not specifying what a community system is while simultaneously allowing for ¼ lots if both lots are community systems. Director Olsen stated that the proposal meets the code, as Lot 3 is greater than ¼ acre and the other lot is less than half acre, the area contains the entire drain field in the easement with the community water system.
 - g. Discussion was held in regards to Bingham County Code Section 10.2.3, Community Sewage Disposal System and Bingham County Code Section 10.6.6(b)(1)&(2), Residential Zoning District and it was determined that these code are contradicting. Director Olsen stated there could be an argument to be made if the septic system involves a septic permit or if it is a community sewage disposal system. One thing that could be considered, if approved with conditions, would be to add a condition that a septic permit and all associated items that come with a joint system, be approved by the Department of Public Health before moving forward.
 - h. 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
 - i. the proposed Subdivision is considered to be consistent with the Bingham County Comprehensive Plan as the area is designated as Residential/Residential Agriculture; and
 - j. 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.
 - k. Commissioner Lewis stated she does not feel comfortable in approving this Application without having additional information, specifically from Legal Counsel and the Department Public Health. Commissioner Bair concurred.

DECISION

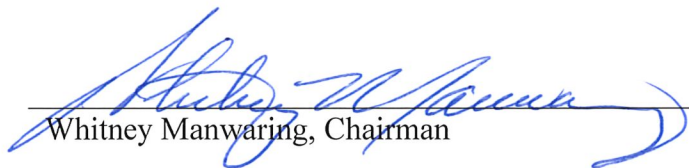
Commissioner Lewis moved to remand the Application for Basalt Bar Estates Subdivision back to the Planning & Zoning Commission for more information specifically on the community sewage disposal system that is proposed on Lot 2 and Lot 3. Also for additional input regarding the definition Bingham County Code Section 10-2-3 on the Community Sewage Disposal System and Section 10-6-6(B)(1)&(2) the Area Regulation- Residential Zoning District, as they are contradicting. In addition, the Board is requesting input from Legal Counsel and the Idaho Department of Public Health on the best way to move forward. 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 16 day of November 2022.

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


Whitney Manwaring, Chairman


Mark Bair, Commissioner

Jessica Lewis, Commissioner