

## BOARD OF BINGHAM COUNTY COMMISSIONERS

### REASON & DECISION

In regards to: The Appeal of the Planning & Zoning Commissions decision to deny Multi-Family Dwellings via a Conditional Use Permit in an "R/A" Residential/Agriculture Zoning District. The present Cannon Subdivision features 5 manufactured homes on 5 parcels and has access via Highway 26. The Applicant desires to remove the existing residences, discontinue use of the Highway 26 access, create a new access off of Lemhi road, adjust lot lines to 4 parcels, and construct 4 multi-family structures (with 5 units in each building) and an open space component with a park area/soccer field for the Subdivision residents. Pursuant to Bingham County Code Section 10-5-3, *Land Use Chart*, multi-family housing is allowed in a Residential/Agriculture Zoning District with an approved Conditional Use Permit and is required to follow the specific standards of Section 10-7-23 *Multi-Family Development*.

Board of County Commissioners Meeting Date: August 16, 2022.

Appellant's: Royal Rentals, LLC (c/o Collin Hunter) - Applicant.

Applicant's Representative: Connect Engineering.

The Board finds that the record is comprised of:

1. Exhibits to the Board Public Hearing Staff Report:
  - CC-1: Staff Report- Board of County Commissioners
  - CC-2: Notice of Appeal- filed by Connect Engineering
  - S-20: Planning & Zoning Reason & Decision- issued July 12, 2022
  - S-21: Planning & Zoning Minutes & Audio- June 15, 2022
2. Exhibits to the Planning & Zoning Commission Staff Report:
  - S-1: Staff Report- Planning & Zoning Commission
  - A-1: Application for Conditional Use Permit
  - A-2: Applicant's Narrative
  - A-3: Applicant's Site Plan
  - A-4: Warranty Deed
  - A-5: Affidavit of Legal Interest
  - A-6: Annual Report for Royal Rentals LLC filed with the Idaho Secretary of State & email from Brett Falkenrath regarding ownership for the Cannon Subdivision
  - 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 Map
S-12	Irrigation Company Map
S-13	Google Imagery
S-14	Notice of Posting Affidavit- Addie Jo Harris
S-15	Site Photos
S-16	Affidavit of Publication; Bingham News Chronicle
S-17	Government Agency Notice Affidavit and Notice of Mailing
S-18	Property Owners Notice Affidavit and Notice of Mailing

BASIS FOR APPEAL: The Appellant states the following:

1. The proposed site layout has been developed in conjunction with the following entities.

The Appellant stated they have been working with Bingham County Planning & Zoning, Road & Bridge, and the local Irrigation District in the process of applying for the Conditional Use Permit to remediate the concerns of each entity.

2. The proposed on-site potable wells and septic systems were painstakingly modified to adhere to ALL State and Federal regulations.

The Appellant states the proposal was facilitated with several in-person meetings, as well as ongoing email correspondence with both the Departments of Public Health and Environmental Quality. The proposal was presented with the understanding that all designs must receive final approval from both agencies before moving forward with the County's approval process.

3. The Conditional Use exemption was not given adequate consideration. The Appellant states the relatively close proximity of land in question to the current "R" Residential Zone (where multi-family dwellings are out right allowed without a CUP) are found in the surround area and that proximity and allowance should have been taken into consideration by the Planning & Zoning Commission.

4. The proposed concept in-fact conserves more green space/agricultural ground than a traditional "R/A" development would in the same 5 acres. The Appellant states their concept incorporates 4 relatively compact buildings with the remainder of each individual parcel being comprised of a combination of irrigated lawn and shrubs and water conscious xeriscaping. Where a traditional development, under the current zoning, could potentially include 20 separate 1-acre parcels, each with a single-family residence.

5. The future benefits to the area were not adequately explored. The Appellant states the Snake River Valley is experiencing an unprecedented lack of affordable, high-quality housing. With the lack of housing comes the lack of access to local opportunities for

outdoor recreation. The proposed concept provides both! In addition, the lack of affordable housing has affected the ability to attract “key talent” to the area, and will continue to do so, unless remedied.

6. Lastly, the Appellant requests that if the Board cannot find in favor of the Appeal, that it considers remanding the Application to the Planning & Zoning Commission to obtain more information related to the discussion and reasons the Commission denied the Application, which may include statements from the Department of Environmental Quality, Idaho Transportation Department, irrigation company, major employers in the area, and the School District.

Upon completion of presentation of the Staff Report by Tiffany Olsen, Planning & Development Director, Commissioner Bair declared a potential conflict as he is neighbors with Blake Jolley, Connect Engineering, and Collin Hunter, Appellant, has secured a real estate mortgage for him several years ago but he does not believe this would influence his decision on the Application. Chairman Manwaring nor Commissioner Lewis had an issue and the meeting moved into the Board’s discussion and review of the Appellant’s Basis for Appeal.

### **BOARD’S DISCUSSION**

Chairman Manwaring stated there was testimony regarding the school district and that they would prefer the access be on a County Road rather than a State Highway for safety reasons. A brief discussion was held in regards to the speed limit on Lemhi Road and Mr. Whited stated in his testimony that this road is a minor collector.

Chairman Manwaring referred to Exhibit S-20 (T-11), wherein Jolene Secrist, represented England Lateral Ditch Company, testified there are several canals through the area and this development may cause a loss of access issues for maintenance of the ditches. Chairman Manwaring explained that via Idaho Code, canal companies have a right to clean and work the canal and he would agree that development might cause issues. Director Olsen stated this matter was discussed and indicated the Applicant is willing to place a fence along the easement line to give a safe area but still had enough room by Idaho Code to maintain the canal.

Chairman Manwaring stated this property is not located in the flood plain but being in close proximity to canals, the response was that there would be no basements. Chairman Manwaring stated one concern to discuss is the location of access and his previously mentioned concern regarding access to the canal or ditch to allow for maintenance.

Commissioner Bair agreed that the safest access would be on Lemhi Road as there is a significant amount of traffic on Highway 26.

A brief discussion was held in regards to an extended turning lane to Lemhi Road, wherein Commissioner Lewis added this could be further discussed at the time a plat is presented. Director Olsen added the Application for Subdivision is dependent on the decision made by the Board today. If granted the access will be on Lemhi Road, which could be reviewed prior to a

proposed plat being presented to the Board. Director Olsen referred to Exhibit S-15, wherein there is a deceleration lane turning right when traveling west on Highway 26.

### **REVIEW OF APPELLANT'S BASIS FOR APPEAL**

1. The proposed site layout has been developed in conjunction with the following entities.

The Appellant stated they have been working with Bingham County Planning & Zoning, Road & Bridge, and the local Irrigation District in the process of applying for the Conditional Use Permit to remediate the concerns of each entity.

**Planning & Development Staff Comments:** The Appellants are correct in the representation of meetings and on-site discussions with county departments prior to the Public Hearing, which resulted in a modified design to the proposed site plan.

The County requested that the access be on Lemhi Road rather than Highway 26.

2. The proposed on-site potable wells and septic systems were painstakingly modified to adhere to ALL State and Federal regulations.

The Appellant states the proposal was facilitated with several in-person meetings, as well as ongoing email correspondence with both the Departments of Public Health and Environmental Quality. The proposal was presented with the understanding that all designs must receive final approval from both agencies before moving forward with the County's approval process.

**Planning & Development Staff Comments:** The Department of Public Health did not provide an Agency comment to the Application but the Applicant testified he has engineered plans for a larger drain field and 4 larger septic systems than the existing 5 that are on the site; the intent is to abandon the 5 and create 4 new systems (1 per structure/lot) that are up to date and meet all regulations. Further, the Applicants Representative testified he has been working with both the Department of Public Health and Environmental Quality to ensure specifications are met and will be viable for residential/multi-family use. In section II(b), the Planning & Zoning Commission recognized permitting for these utilities are subject to the two regulatory agencies but were suspicious that the Applicant (Appellant) may be trying to avoid higher standards or requirements from such agencies by placing each lot in separate ownership. Pursuant to Bingham County Code, in R/A Zoning, a single septic system is allowed on one (1) acre parcels; the proposal is for one larger septic system, per parcel, servicing one structure containing 5 dwellings in each structure.

Chairman Manwaring stated that the developer could plan but the final approval is made by the Department of Public Health and the Department of Environmental Quality, not the County.

3. The Conditional Use exemption was not given adequate consideration. The Appellant states the relatively close proximity of land in question to the current “R” Residential Zone (where multi-family dwellings are out right allowed without a CUP) are found in the surround area and that proximity and allowance should have been taken into consideration by the Planning & Zoning Commission.

***Planning & Development Staff Comments:*** In review of Exhibit S-3 in the Planning & Zoning Staff Report, the nearest Residential “R” Zoning District is approx. 260 feet or 0.05 miles to the South East of the subject parcel and the larger “R” Zoning (near Moreland) is 0.25 miles from the subject parcel. Pursuant to the Land Use Chart, in a “R” Zone, multi-family dwellings are allowed without further permitting as long as the Applicant complies with all requirements of Bingham County Code Section 10-7-23 “Multi-Family Development.”

Commissioner Bair stated the Comprehensive Plan identifies this area as Multi-Use except for one corner portion that is Agriculture. The subject property is close to a Residential/Agriculture Zone and although there were several questions regarding water and sewer, that would be discussed during the subdivision hearing.

Commissioner Lewis stated in looking at the Land Use Chart, a Conditional Use Permit for multi-family housing is allowed in an “R/A” designation zone. The subject property is also close to areas that are zoned “R” where this would be allowed.

Chairman Manwaring added the surrounding land uses are: “R/A” Residential/Agriculture, property to the East is designated as “A” Agriculture, “C2” Heavy Commercial & “M1” Light Manufacturing, property to the South is designated as “M1” Light Manufacturing and property to the West is designated as “R/A” Residential/Agriculture and “M1” Light Manufacturing.

4. The proposed concept in-fact conserves more green space/agricultural ground than a traditional “R/A” development would in the same 5 acres. The Appellant states their concept incorporates 4 relatively compact buildings with the remainder of each individual parcel being comprised of a combination of irrigated lawn and shrubs and water conscious xeriscaping. Where a traditional development, under the current zoning, could potentially include 20 separate 1-acre parcels, each with a single-family residence.

Planning & Zoning Staff had no comments regarding this statement.

5. The future benefits to the area were not adequately explored. The Appellant states the Snake River Valley is experiencing an unprecedented lack of affordable, high-quality housing. With the lack of housing comes the lack of access to local opportunities for outdoor recreation. The proposed concept provides both! In addition, the lack of affordable housing has affected the ability to attract “key talent” to the area, and will continue to do so, unless remedied.

Planning & Zoning Staff had no comments regarding this statement.

6. Lastly, the Appellant requests that if the Board cannot find in favor of the Appeal, that it considers remanding the Application to the Planning & Zoning Commission to obtain more information related to the discussion and reasons the Commission denied the Application, which may include statements from the Department of Environmental Quality, Idaho Transportation Department, irrigation company, major employers in the area, and the School District.

### **DECISION**

Commissioner Bair moved to overrule the decision of the Planning & Zoning Commission and approve the Conditional Use Permit for Royal Rentals LLC, for a Multi-Use Family Development on approximately 4.619 acres, approximate location is Township 2S, Range 34E, Section 23, which is based on the record as presented and the Reason & Decision of the Planning & Zoning Commission. Commissioner Lewis seconded. Chairman Manwaring stated that he would like to add two conditions, which are as follows:

- 1) Access to be on Lemhi Road.
- 2) Be sure there is a clear space to maintain the ditches and canals.

Commissioner Bair amended his motion to add the conditions that access will be on Lemhi Road instead of Highway 26 and the ditch that runs parallel to Highway 26 will be fenced in a manner that the canal companies can conduct maintenance. Commissioner Lewis seconded. All voted in favor, the motion carried.

Upon denial or approval of a Conditional Use Permit with adverse conditions, 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 Code.

Dates this 12 day of September 2022.

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

  
Whitney Manwaring, Chairman

\_\_\_\_\_  
Mark Bair, Commissioner

  
Jessica Lewis, Commissioner