

**BINGHAM COUNTY PLANNING & ZONING COMMISSION**

**REGARDING THE APPLICATION OF:**

Rod Hendricks Subdivision, a 4-lot Subdivision in a  
“R/A” Residential/Agriculture Zoning District

**REASON AND DECISION**  
**November 9, 2022**

Property Owners and Developers: Rodney and Robyn Hendricks

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Requested Action: Rodney and Robin Hendricks requested to develop a 4-lot Subdivision, to be known as the “Rod Hendricks Subdivision”, on approx. 4.50 acres, located in a “R/A” Residential/Agriculture Zoning District, with lots ranging in size from 1 acre to 1.38 acres, located at 480 W 300 N Tressel Road, Blackfoot. There is an existing home, septic system, and culinary well on Lot 1, owned and resided in by the Hendricks. Lots 2, 3, and 4 will also have an individual septic system, drain field, and culinary well. All Lots will have irrigation water rights assessed by the People Canal & Irrigation Company with delivery through a pressurized irrigation system and road frontage along a 50-foot wide access easement. The Comprehensive Plan Map has this area identified as Residential/Residential Agriculture.

Property Owners and Developers: Rodney and Robin Hendricks

Representative: Chris Street, Professional Licensed Surveyor, HLE, Inc.

Location: 480 W 300 N, Blackfoot, Idaho 83221, Parcel Numbers RP0302002, RP0302010, and RP0302012, Township 2S, Range 35 East, Section 17, consisting of approx. 4.50 acres

Applicable Regulations: Bingham County Comprehensive Plan, Dated November 20, 2018  
Bingham County Zoning Ordinance 2012-08

Public Hearing Date: November 9, 2022

**I. MEETING INFORMATION AND TESTIMONY**

1. The following was reviewed by the Commission:
  - a. Application;
  - b. Staff Report;

c. Governmental Agencies who provided comments were:

(T-1) Bingham County Treasurers Office, stated taxes for 2022 will need to be prepaid prior to the Treasurer signing the Plat.

(T-2) Spencer Larsen, The People's Canal & Irrigation Company, stated the Hendricks are required to maintain all of their shares in one group and form a HOA to be billed for the annual assessment. The delivery of the water would come from the Dubois lateral and would need to be coordinated with the leadership of that lateral.

(T-3) Bingham County Public Works, stated Lots 2, 3, and 4 will need to use the existing easement for access. 300 W. Tressel Road is a Local Road, the speed limit is posted at 45 mph, and the approach spacing is 60 feet (*which is not applicable if no new approaches are being added*). The developer is in charge of placing posts and signage.

(T-4) Allan Johnson, Regional Engineering Manager with Idaho Department of Environmental Quality, provided general land development recommendations as shown in his response.

(T-5) Jeff Gardner, Bingham County Sheriff, had no comments or concerns.

(T-6) Gwen Inskeep, Bingham County Surveyor, stated the following:

- Update surveyor and owner information
- Provide road name and grid number for private easement and ensure it closes
- Add street sign and cluster mailbox requirement note and show proposed mailbox location
- Correct dimensions on Lot 1 and the private easement for closure and darken contour lines
- Update the canal company on both sheets to reflect correct company
- Note that the address of the existing residence will most likely need changed and addressed off the proposed easement, if approved.

(T-7) Keith Salisbury, Secretary of the Dubois Ditch Company, stated Mr. Hendricks has not paid a water assessment to the Dubois Ditch Company for several years, thus his space has been terminated in their canal. The Dubois Ditch Company is a private lateral off of the People's Canal Company.

d. No public response was received prior to the Public Hearing.

2. Public Hearing testimony included:

a. Applicant's Representative Testimony:

(T-8) Chris Street, Professional Land Surveyor with Harper Leavitt Engineering, 800 W Judicial, Blackfoot, Idaho, provided the Commissioners with a larger copy of the Proposed Plat (Exhibit T-8A). Mr. Street stated the Applicant's daughter was in a serious motorcycle accident and instead of requesting a temporary secondary dwelling for medical necessity, he decided to propose a Subdivision to provide his daughter and other children with the option to build next to their home. He explained that the additional two lots being created would not be for sale in the immediate future and are intended for family. Mr. Street addressed the irrigation issue that was recently brought to their attention; Mr. Hendricks has water shares but was unaware that he also had to pay assessments to get the water shares (via the Dubois Ditch Company) to his property which he had quit paying. Subsequently, the Dubois Ditch Company sold Mr. Hendricks water shares and no longer has enough volume to provide his water shares back to him. There are currently systems in place with a pump but no way to get water to the pump.

Chairman Leavitt asked for clarification as to statute of limitations, notification, and timelines pertaining to the sale of Mr. Hendricks water shares. Mr. Street didn't have answers to those questions but stated Mr. Hendricks quit paying the Dubois Ditch Company and given that someone else wanted the water volume (shares) so the Ditch Company sold Mr. Hendricks shares. Perhaps Mr. Hendricks was confused or unaware he was supposed to be paying both canal companies but Mr. Street wasn't certain; in summary, Mr. Hendricks had been paying the shares/fees associated with the Peoples Canal but not the Dubois Ditch

b. Testimony in favor, neutral, nor in opposition was received. After the Applicant's testimony, the Public Hearing was closed for this item.

3. The Commissioners moved to discussion and deliberation wherein Commissioners Aullman, Sellers, and Croft all agreed the Application did not meet the requirement of Bingham County Code Section 10-14-4(B)(4)(d) as the Applicant does not have the ability to deliver water from the People's Canal, through the Dubois Ditch, to the proposed Subdivision based upon the Applicants non-payment of water assessments to the Dubious Ditch Company.

Commissioner Aullman stated he had no other concerns in terms of the recommending approval for this Application as it seems to meet all of the requirements other than the irrigation water delivery and questioned if the Application could be recommended for approval to the Board of County Commissioners once an irrigation delivery method and shares were identified. Mr. Paul Rogers, County Attorney, further stated that he was unsure if the Planning & Zoning Commission would be able to recommend



approval of the Application, even with conditions placed on the motion to determine water availability and delivery prior to the presentation of the recommendation to the Board of County Commissioners, due to the wording in Bingham County Code and because of the word “*shall*”. Therefore, the right condition would have to be placed on the Application to allow for that recommendation to be brought before the Board of County Commissioners.

The Commissioners agreed that for this Application to be considered for approval, the Applicant has to find irrigation water. Mr. Rogers asked if it would be appropriate to verify if those rights exist and that the Planning & Zoning Commission should allow time for that information to come forward in order to meet the Code requirements. The Commissioners discussed the options moving forward and determined those to be (1) recommending approval of the Application subject to identifying the ability and delivery of irrigation water; (2) tabling the action item for a future date once Bingham County Code Section 10-14-4(B)(4)(d) can be met. Commissioner Sellers suggested waiting for more information on the water delivery may be prudent prior to proceeding.

## II. REASON

The Planning & Zoning Commission hereby found:

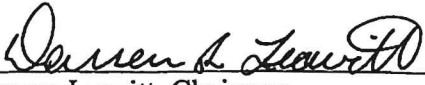
1. the Application met the requirements of Bingham County Code Section 10-4-2(D) as the purpose of the “R/A” Residential/Agricultural zone is to permit the establishment of low density single-family dwellings with lot sizes sufficient for individual sewer and water facilities that have suitability of parcel for agricultural purposes; proximity to existing areas of similar population density; lot size compatible with existing lot sizes in the immediate area; compatible with the existing uses in the immediate area; protection from incompatible uses; accessibility to adequate utilities; and adequate service by roadways. The Commission reviewed the Application and did not have any concerns with this criteria being met with exception to the delivery of irrigation water; and
2. the Application met the requirements in Bingham County Code Sections 10-6-6(B)(1) and 10-14-4(B) because proposed lots meet the 1 acre minimum and are proposed with individual culinary wells and individual sanitary sewer systems; and
3. 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 with the exception of Section 10-14-4(B)(4)(d) wherein the Application did not meet the requirements as water rights are associated with the property and cannot be delivered. The Commissioners received written testimony from the Dubois Ditch Company stating the Applicant no longer has shares in the Dubois Ditch Company based upon lack of water assessment payment(s). According to the Applicant’s Representative, the water shares with the People’s Canal are available however there is currently no option to deliver the water from the People’s Canal to the proposed Subdivision if not through the Dubois Ditch Company (who does not have volume capacity for Mr. Hendricks); and

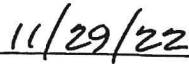
4. the proposed Subdivision is considered to be consistent with the Bingham County Comprehensive Plan as the area is designated as Residential/Residential Agriculture; and
5. the Application met the requirements of Idaho Code §67-6513 and Bingham County Code Section 10-3-6 because the Public Hearing 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.

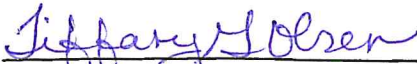
### III. DECISION

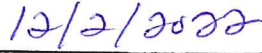
Based on the record and the discussion, and in accordance with Bingham County Code Section 10-14-4(B)(4)(d), Commissioner Sellers moved to table the request by Rodney and Robin Hendricks, for a 4-lot Subdivision to be known as the "Rod Hendricks Subdivision" in order for the Applicant to obtain additional information verifying the appropriate water share ownership and method of irrigation water delivery to be served to the proposed Subdivision and meet Bingham County Code Section 10-14-4(B)(4)(d).

Commissioner Croft seconded the motion. Commissioners Sellers, Croft, Aullman and Carroll voted in favor. The Motion carried.

  
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Darren Leavitt, Chairman  
Bingham County Planning and Zoning Commission

  
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Date

  
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Tiffany G. Olsen,  
Planning & Development Director

  
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Date