

**BINGHAM COUNTY PLANNING & ZONING COMMISSION  
REASON AND DECISION**

**REGARDING:** 1<sup>st</sup> Amended Replat of Teeples-Bergeson Riverview Acres to be known as Brent View Subdivision, a 2-lot Subdivision in a “R” Residential Zoning District  
**PROPERTY OWNERS:** Fredrick D. Beasley  
**REPRESENTATIVE:** Terry Fowler

---

**Requested Action:** Fredrick Beasley to develop the 1<sup>st</sup> Amended Replat of Teeples Bergeson Riverview Acres to be known as the “Brent View Subdivision,” consisting of 2 Lots, on approx. 1.5 acres, in a “R” Residential Zoning District. Lot 1 would consist of 0.68 acres and is proposing a new individual septic system and a shared connection for culinary water with the already existing culinary well system on Lot 2 (through an Easement and Shared Well Agreement to be recorded with the Bingham County Clerk’s Office.) Lot 2 would be 0.81 acres in size, featuring an existing home, individual well and individual septic system. Both Lots would have surface irrigation water rights from Wearyrick Ditch Co., with delivery through an existing ditch along the East and South property boundary which would be buried. Lot 1 is proposing direct access to Highway 39 via an existing unrestrictive approach approved by the Idaho Transportation Department (ITD). Lot 2 is proposing direct access to Highway 39 via an existing residential approach approved by ITD. The existing residential approach, on Lot 2 was later developed into a circular driveway which was not approved by ITD. Therefore, the portion of the circular driveway to the East must be removed and returned to its original approved state. Lot 2 also has an existing farm approach to the East of the existing home which was approved by ITD but for farm access only (and not for residential purposes). The Comprehensive Plan Map has this parcel identified as Multi-Use.

**Property Owner:** Fredrick Beasley

**Representative:** Terry Fowler

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

**Public Hearing Date:** March 8, 2023



## 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 the second half of 2022's taxes will need to be paid in full prior to the Treasurer signing the plat. If the plat is recorded after 4/15/2023, 2023's taxes will need to be prepaid in full.

(T-2) Gwen Inskeep, Bingham County Surveyor, had the following comments:

- Show all line types in legend, the location of proposed cluster mailbox
- Show jog in Right-of-Way at stations 60+77 and 60+82 per State Plans S-1721(5)
- List intended use
- Note power line easement per Inst. No. 55459 and show location of easement per Inst. No. 124370
- Provide approach permit approval for added approach to existing house
- Provide verification ITD approves approach at approx. 60+45
- Remove or provide ITD approach permit for the newest access, being the 3<sup>rd</sup> access from the westerly property line.

(T-3) Allan Johnson, Regional Engineering Manager with Idaho Department of Environmental Quality, provided general land development recommendations as shown in his response.

(T-4) GWSD Board Chairman had the following comments:

- GWSD has an existing pressure sewer line available at the Hwy 39 frontage to the proposed sites.
- GWSD does not have a water line connection available within reasonable proximity to the property.

(T-5) Verl Jarvie, Fire Marshall, had no issues with the Application.

(T-6) Eric Staats, Idaho Transportation Department, stated here are three (3) deeded approaches as shown on the associated replat - 1 "unrestricted" approach; 1 "residential" approach; and 1 "farm" approach. Each of these approaches is documented/permitted in the warranty deed indicated as instrument number 124367, associated with ITD historic Project No. S-1721(5). (an excerpt from the Warranty Deed reference was included in his response)

These approaches would be classified under the following categories of the Idaho Administrative Procedure Act (IDAPA) 39.03.42:

**"unrestricted approach"** = 39.03.42.010.56 Private Approach - Every privately owned traveled way that is used for ingress to and egress from the highway right-of-way and an abutting property.

**"residential approach"** = 39.03.42.010.56 Private Approach - Every privately owned traveled way that is used for ingress to and egress from the highway right-of-way and an abutting property.

**"farm approach"** = 39.03.42.010.35 Field Approach - An approach that serves only nonresidential agricultural property, including farmyards.

It would appear that there is an additional unauthorized encroachment that has been constructed to the east of the permitted approach at Sta. 62+01 Rt. An unauthorized encroachment is defined by IDAPA 39.03.42.010.84 as, "Any encroachment that has been placed, modified, or maintained, or removed within the highway right-of-way without authorization by the Department."

Per IDAPA (aka Idaho Administrative Code), ITD retains the authority to issue all encroachment permits on the State Highway System and encroachment permits approved by the Department are required for private and public approaches (driveways and streets), utilities and other miscellaneous encroachments. To help preserve the highways as constructed and provide responsible growth where allowed, any *individual*, business, or other entity planning to *add, modify, change use*, relocate, maintain, or remove an encroachment on the state highway or use highway right-of-way for any purpose other than normal travel, shall obtain a permit to use state highway right-of-way.

(T-7) Bingham County Sheriff's Office had no comments or concerns.

(T-8) Ken Keller, Southern Idaho Public Health (SIPH), stated care must be taken in the development of these lots in order to meet all setback requirements for individual subsurface sewage disposal systems (IDAPA 58.01.03). Additional detailed information will be required to better determine the suitability of these lots for subsurface sewage disposal. Based on plat map of this subdivision, it shows an existing sanitary sewer line running along Highway 39 in front of this proposed subdivision. All efforts should be made to connect to sanitary sewer when available. SIPH is not able to issue septic permits when sanitary sewer is available. Further, there is an existing well on Lot 2 and a new private well proposed for Lot 1. The information provided mentions a shared well from the existing well on Lot 2. There are questions why they are sharing a well and also proposing a new well be drilled

on Lot 1. These are preliminary comments. Prior to any final comments regarding the proposed subdivision, SIPH must complete the subdivision review process.

2. No public written response was received prior to the Public Hearing.
3. Staff provided within the presentation of the Staff Report a Cost Estimate from Professional Engineer, Spence Ward, with HLE, for water and sewer connections was obtained at Planning and Development's request. The estimated cost for the installation of a lift station and connection fee to receive service from the Groveland Water and Sewer District's (GWSD) pressurized line is \$16,641.

Staff clarified the Construction Cost Estimate provided only included the GWSD fee and not the City of Blackfoot fee that is also required for connection. A Residential IN-District Availability Fee is \$5,000 per Equivalent Dwelling Unit (also referred to as EDU) for the City of Blackfoot plus \$3,000 per EDU for Groveland Water and Sewer District for a total of \$8,000 per EDU. A Residential OUT-of-District Availability Fee is \$5,000 per EDU for the City of Blackfoot plus \$4,500 per EDU for GWSD totaling \$9,500 per EDU. This property is out of the GWSD boundaries, but the owner can join the district if they wish as the boundaries do not need to be contiguous. Therefore, the corrected total for an IN-District connection would be 20,141 and Out-of-District would be \$21,641.

Commissioner Aullman asked for clarification on late submission of Mr. Keller's letter marked as Exhibit T-8 as he has been unable to review it before the start of the meeting. *Director Olsen provided him a copy for review.* Director Olsen clarified that Mr. Keller's letter was not able to be loaded to the website due to late submission.

Director Olsen stated when a connection to municipal service is feasible and available for connection, Staff will always encourage connection. In Mr. Keller's letter, he references an Idaho Administrative Code Section 58.01.03. Director Olsen specifically referred to 58.01.03.005.05 titled "Basis for Permit Application Denial", which states the judgment is held to the Director who may deny a permit application for an individual septic system based on the following 5 criteria:

- a. Application is incomplete, inaccurate or misleading.
- b. The system, as proposed, is not in compliance with rules or regulations.
- c. The system, as proposed, when put into use would be considered a failing system.
- d. The design and description of a public system was not made by a professional engineer.
- e. Public or central waste water facilities are reasonably accessible.

Director Olsen stated the lack of definition for the term "reasonably accessible" is challenging. The requirement of a connection is not defined with a distance to a facility connection in Bingham County Code, Idaho Codes nor in IDAPA's regulations.

Commissioner Aullman asked if this connection is not a requirement, why did Harper Leavitt Engineering provide a construction cost estimate for wastewater and culinary water systems? Director Olsen stated providing this facility availability analysis on all Subdivision Applications with connection opportunities in the area, which will allow the Planning and Zoning Commission to make an informed and educated recommendation.

4. Testimony presented at the Public Hearing included:

(T-9) Applicant's Representative, Terry Fowler, 134B N 150 W, Blackfoot, ID, stated the parcel is located on Highway 39 and consists of an existing home with a small pasture on each side. Mr. Fowler said he has struggled to keep livestock in the pastures year-round because of the small size and inability for the animals to forge as well as the cost of feed being too expensive to supplement year-round. The parcel currently has water rights and will be deeded to the new parcel. A portion of the existing ditch will be buried to make it appealing to the new home that will be built there. Mr. Fowler stated he would like to upgrade the current well system to provide a shared well between the proposed Lot 1 and Lot 2. Mr. Fowler clarified the Construction Cost Estimate Harper Leavitt Engineering provided was because they were the engineers of the sewer system. Mr. Fowler and the Applicant decided the most appealing and best use of this ground would be to divide into two and build on the vacant piece of land.

Mr. Fowler stated he reviewed the letter from Southeastern Idaho Public Health just prior to the meeting but had concerns that Mr. Keller chose not to take the opportunity to look at the soils prior to issuing the letter the day of the meeting, possibly rectifying any problems. Commissioner Aullman reiterated that the letter states that a septic permit may not be issued because of the sanitary sewer connection's close proximity. Mr. Fowler states that the soil has been tested and is capable of having a septic system and that he and the Applicant would like to explore this option first based upon the significant cost for connection to the Groveland Water and Sewer District system.

Chairman Leavitt reiterated with the close proximity to the Groveland Water & Sewer District's sewer line in the Right of Way on Highway 39, Southeastern Idaho Public Health may not issue a permit for an individual septic system. Mr. Fowler understood they will be required to connect to that line if the Health Department does not grant a septic permit. Mr. Fowler stated that the closest pump is located roughly a mile away so their manhole would need to include a pump sufficiently sized to be able to move one mile of sewage and will be an increase expense.

Commissioner Cox confirmed the location of the drain field on Lot 2, which runs North & South; the location was marked on the screen by Director Olsen and entered into the record as Exhibit T-9A.

5. No Testimony in favor, neutral or opposition were received. After the Commissioners questions for the Applicant's Representative, the Public Hearing for this item was closed.
6. Commissioner Aullman thought a motion with conditions would be in order as this Application meets the requirements of the Code and perhaps by conditioning the motion on whether or not an individual septic system would be permitted will allow the Applicant to further discuss the connection with Southeastern Idaho Public Health as their testimony was received the day of the Public Hearing and Mr. Fowler hadn't an opportunity to review the same with Mr. Keller. After this suggestion, the Commission discussion concluded.

## 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 parcel is zoned Residential, is contiguous to other properties of similar size, and land to the East, South, and West are also in a Residential Zoning District. The Commission found there are two permitted approaches to Highway 39 which will provide adequate road access and lot frontage, meeting Bingham County Code. Additionally, the Applicant learned one of the approaches to Highway 39 is not a permitted approach, based upon testimony received from the Idaho Department of Transportation, and the Applicant's Representative agreed it will be removed; and
2. the proposed Subdivision met the Area Regulations of Bingham County Code Section 10-6-6 as the two lots exceed 0.5 acres with a proposed shared culinary well system between Lots 1 and 2, and that a Shared Well Agreement would be entered and recorded for the operation and maintenance of the community system; and
3. the Applicant's proposal included a new sanitary sewer septic system on Lot 1 to match the sanitary sewer septic system currently contained on Lot 2 (with an existing residence and culinary well). The Commissioners expressed concern with the close proximity and available capacity in the Groveland Water and Sewer District's pressurized sewer main running adjacent to the proposed Subdivision and their desires for the Applicant to make connection. The Applicant testified he would first like to receive a denial of a sanitary sewer permit from Southeastern Idaho Public Health District before considering connection to the Groveland Water and Sewer District's sewer main based upon the cost of connection; and
4. that both lots would have surface irrigation water rights from Wearyrick Ditch Co., with delivery through an existing ditch along the East and South property boundary which would be buried, at the Applicant/Developers cost; and
5. 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



6. the proposed Subdivision is considered to be consistent with the Bingham County Comprehensive Plan has the area is designated as Multi-Use which allows for any type of zoning; and
7. the requirements of Idaho Code and Bingham County Code were met because the public hearing was noticed in the official newspaper, the public hearing notice was posted on the premises, and notice was provided to all property owners within 300 feet of the proposed project prior to the hearing.

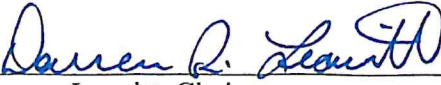
### III. DECISION

Based on the record and the discussion, Commissioner Aullman moved to recommend to approve the request by Fredrick D. Beasley for the 1st Amended Replat of Teeples-Bergeson Riverview Acres Subdivision creating a 2-lot Subdivision to be known as "Brent View Subdivision" in a "R" Residential Zone with a shared culinary well between Lots 1 and 2 and to have an Easement and Shared Well Agreement, as described in the Application materials as supplemented with additional information in the Staff Report, in accordance with the requirements of Bingham County Code Title 10 "Zoning Regulations" and subject to all applicable laws and regulations. The motion included the following condition:

*If an individual septic permit for Lot 2 from Southeastern Idaho Public Health is denied, the Applicant will be required to connect to the Groveland Water & Sewer District's pressurized sewer line located in Highway 39 Right-of-Way.*

Further, any phases and/or parcels created in the vicinity must be continuous and progress in an orderly fashion.

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

  
\_\_\_\_\_  
Darren Leavitt, Chairman  
Bingham County Planning and Zoning Commission

3/27/23  
Date

  
\_\_\_\_\_  
Tiffany G. Olsen,  
Planning & Development Director

3/27/23  
Date