

BOARD OF BINGHAM COUNTY COMMISSIONERS

REASON & DECISION

In regards to: The Planning & Zoning Commission's recommendation to approve the request for Zoning Amendment of approximately 12.21 acres from "A" Agriculture to "R/A" Residential/Agriculture, located at approximately 132 S. 900 W. and 142 S. 900 W., Blackfoot as well as to amend the Comprehensive Plan Map designation from Agriculture to Residential/Residential Agriculture.

Application filed by: Sheri Peck

Board of County Commissioners Public Hearing Date: September 19, 2023

At the onset of the Public Hearing, Commissioner Jackson recused himself due to the subject property located close to his home. Chairman Manwaring and Commissioner Bair both agreed. Commissioner Jackson was removed from the decision making at that time.

The record provided to the Board is comprised of the following:

1. Exhibits to the Board Public Hearing Staff Report:

CC-1: Staff Report- Board of County Commissioners

CC-2: Proof of Publication- Bingham News Chronicle- Board of County Commissioners

CC-3: Blackfoot/Snake River Government Agency Notice List & Notice

CC-4: Property Owners Notice List & Notice- Lindsey Dalley- Commission Clerk.

CC-5: Notice of Posting- Addie Jo Harris- Planner

CC-6: IAS EnviroChem Inorganic Chemical Analysis Report for Public Water Systems on Peck's Culinary Well with a collection date of 8/3/2023

CC-7: IAS EnviroChem Inorganic Chemical Analysis Report for Public Water Systems on Peck's soil in 2 locations on the former dairy site with a collection date of 8/3/2023

CC-8: IAS EnviroChem Inorganic Chemical Analysis Report for Public Water Systems at 166 S 900 W, Blackfoot, ID (Cornelsen Culinary Well) located south of the Peck properties by 0.20 miles with a collection date of 8/17/2023

CC-9: IAS EnviroChem Inorganic Chemical Analysis Report for Public Water Systems at 905 W 215 S, Blackfoot, ID (Sensenbach Culinary Well) located south of the Peck properties by 0.68 miles with a collection date of 8/17/2023

CC-10: Letter of opposition- Alan Stander

CC-11: Letter of opposition- Alicia & Justin Clark/ Brian & Charlotte Carper

CC-12: Oath of Affirmation- Chris Street- HLE

CC-13: Oath of Affirmation- Sheri Peck- Applicant

CC-13A: Applicant's Letter of Testimony- Sheri Peck

CC-14: Oath of Affirmation- Dawn Bingham

CC-15: Oath of Affirmation- Jeanne Isom

CC-15A: Photograph submitted by Jeanne Isom
S-20: Planning & Zoning Reason & Decision- August 31, 2023
S-21: Planning & Zoning P&Z Public Hearing Minutes & Audio- August 9, 2023

2. Exhibits to the Planning & Zoning Commission Staff Report:

S-1: Staff Report- Planning & Zoning Commission
A-1: Application for Zone Change
A-2: Contents of Application
A-2A: Pre-demolition site photographs of Parcel No. RP0246601 provided by Applicant, Sheri Peck
A-2B: Letter of Testimony- Applicant, Sheri Peck
A-3: Proposed Parcel Zone Change Map
A-4: Certified Judgment Divesting Title

S-2: Zoning Map
S-3: Comprehensive Plan Map
S-4: Flood Plain Map
S-5: Aerial Map
S-6: Subdivision Map
S-7: Area of Impact Map
S-8: School District Map
S-9: Utilities Map
S-10: Nitrate Priority Area Map
S-11: Irrigation Provider Map
S-12: ½ mile proximity parcels by size Map and List
S-13: Zoning & Comp Plan Map
S-14: Google Earth Imagery Map
S-15: Notice of Posting: Addie Jo Harris
S-16: Site Pictures
S-17- Proof of Publication- Bingham News Chronicle- Planning & Zoning Commission Public Hearing Notice
S-18: Blackfoot/Snake River Government Agency Notice List & Notice of Mailing
S-19: Property Owners List and Notice of Mailing- Addie Jo Harris-

3. All Information and Testimony presented prior to the Planning & Zoning Commission Public Hearing:

T-1: Testimony from Bingham County Surveyor
T-2: Testimony from Verl Jarvie- Blackfoot Fire Marshall
T-3: Testimony from Bingham County Public Works
T-4: Testimony from Allan Johnson- Department of Environmental Quality
T-5: Testimony from Richard & Dawn Bingham
T-6: Testimony from Jeanne Isom
T-7: Testimony from Amanda Hardy- Department of Environmental Quality

- T-8: Testimony from Benson Isom
 - T-9: Testimony from Kevin Rhodehouse- Rhodehouse Construction
 - T-10: Testimony from Trevor Peterson
 - T-11: Testimony from Alicia Clark
 - T-12: Testimony from Charlotte L. Carper
 - T-13: Testimony from Brian Carper
 - T-14: Testimony from Justin Clark
 - T-15: Testimony from Alan Stander
4. Testimony presented at the Planning & Zoning Commission Public Hearing:
- T-16: Oath or Affirmation- Chris Street
 - T-16A: Pura Vida Place Map- HLE
 - T-17: Oath or Affirmation- Sheri Peck
 - T-17A: Letter from Sheri Peck
 - T-18: Oath or Affirmation- Rex Hammond
 - T-19: Oath or Affirmation- Jeanne Isom
 - T-20: Oath or Affirmation- LaVern Steingaugh
 - T-21: Oath or Affirmation- Steve Williams
 - T-22: Oath or Affirmation- Bonnie H. Egbert

As to procedural items, the Board finds the following:

1. Requested Action: The Public Hearing was held pursuant to Bingham County Code Section 10-3-6(A)(11) where the Board held a Public Hearing, using the same notice and hearing procedures as the Commission, on the Application for an Amendment to the Zoning Designation.
2. In accordance with Bingham County Code 10-3-6, Notice of the Boards Public Hearing was provided as follows:
 - a. Sent to 41 Government Agencies on August 22, 2023 (CC-3 List of Government Agencies and Notice)
 - b. Published in the Bingham News Chronicle on August 25, 2023 (CC-2: Affidavit of Publication)
 - c. Sent to 8 property owners within 300' of this property on August 22, 2023. (CC-4 Property Owners Mailing List and Notice)
 - d. Site was posted on August 24, 2023 (CC-5 Notice of Posting)
3. Testimony received prior to the Boards Public Hearing was provided as follows:
 - (CC-10) Testimony in opposition from Alan Stander received on 9/8/2023.
 - (CC-11) Testimony in opposition from Alicia & Justin Clark and Brian and Charlotte Carper, received on 9/18/2023.
4. With no additional questions for Staff after presentation of the Staff Report, the Public Hearing was opened. The Board received testimony as follows:

(CC-12) Applicant's Representative, Chris Street- Professional Surveyor with HLE, 800 W., Blackfoot, Idaho, stated the zoning amendment request meets all criteria and fits the subject area. Mr. Street stated originally for the Planning & Zoning Commission Public Hearing, there was only one water sample out of Ms. Peck's home. After which, two additional samples were taken and came back non-detectible for nitrates. Mr. Street stated the Applicant is working with the Health Department to do additional test hole sampling, in order to be prepared for the subdivision application that would be forthcoming. The Applicant is also working with the Department of Environmental Quality on the requirements needed to proceed further.

Commissioner Bair asked Mr. Street if there are water rights for the property, to which Mr. Street stated there are water rights that will stay with the property. Mr. Street also added that a delivery system will be proposed during the Subdivision Application.

Commissioner Bair stated within the Staff Reports, it stated that concrete was buried, to which Commissioner Bair asked Mr. Street how deep said concrete was buried. Mr. Street stated he believes it was buried at approximately 10-feet.

Testimony received in favor of the Application was as follows:

(CC-13) Applicant, Sheri Peck, 142 S 900 W, Blackfoot, Idaho, submitted a letter of her testimony into the record as Exhibit CC-13A. Ms. Peck stated that concrete was buried directly in front of her home, which is located to the East side of her home and there would not be a home built. Further, Ms. Peck stated that the application conforms with Bingham County Code and the Comprehensive Plan area.

There was no testimony in a neutral position offered.

Testimony in Opposition:

(CC-14) Dawn M. Bingham, 903 W 200 S, Blackfoot, Idaho, stated that she lives south of the subject property and has since 1977. Ms. Bingham stated the major concern that she has is the water, which is exactly what the Department of Environmental Quality stated in their testimony letter. Ms. Bingham stated when they moved to the area, a post hole could not be dug without having water fill the hole. Ms. Bingham stated that they have a shallow water system and when you start adding septic systems, it will cause major issues.

(CC-15) Jeanne Isom, 150 S 900 W, Blackfoot, Idaho, submitted a photograph into the record as Exhibit CC-15A, which shows the major hole dug, wherein concrete

was buried, is deeper than the 10-feet referred to by Mr. Street and shows a large amount of moisture and puddles of water. Ms. Isom stated that she would like to acknowledge that the property owner has rights but her concern is what has been done with the facility recently and over the years.

Commissioner Bair stated in the Planning & Zoning Commission Public Hearing, Ms. Isom mentioned having the well at her home tested and asked if that had been done. Ms. Isom stated she did have the well tested, which came back negative. Ms. Isom added that she currently purchased another piece of property nearby, also tested, which tested high for nitrates but she did not have the documentation in her possession for the Boards review.

Chairman Manwaring asked Ms. Isom if there is sub water, to which Ms. Isom stated there has been but it depends on the flow of the water.

5. Applicant's Rebuttal:

(CC-12) The Applicant's Representative, Chris Street, provided a rebuttal response to the testimony and questions by stating during the Planning & Zoning Commission Public Hearing, the water level was discussed and there are well logs showing the depths of the water and static water levels. Mr. Street stated within the next three (3) weeks, the Health Department would be digging test holes for further testing and monitoring of the water level.

Mr. Street stated if and when there is a Subdivision Application submitted, if there are concerns with surrounding property owners, he would encourage them to get their wells tested. Mr. Street stated that Ms. Peck does not want to damage aquifers nor does she want to damage the neighbors water supply and the more information they have as an engineering firm, the better the decision will be made.

REASON

Public testimony was closed and the Board moved into discussion and deliberation which was held and the Board hereby finds:

Bingham County Code Section 10-4-2(C) which states that the purpose of the "R/A" Zone in that parcel meets the following criteria:

1. Suitability of parcel for agricultural purposes.

The Board found no concerns and that the 8.83 acres of property was previously utilized for the agricultural purpose of operating a dairy, however, there is no longer a desire for dairy operations. Chairman Manwaring stated that an individual would still have the opportunity to have a garden or have a few animals; and

2. Proximity to existing areas of similar population density.

The Board found no concerns and that the Application is similar to the recently rezoned lands created for the Furniss Estates Subdivision (adjacent to the Applicants land) and The Acres Subdivision (approximately ¾ mile to the North). Both subdivisions were zoned Agriculture and had a Comprehensive Plan Map designation of Agriculture and received amendments to a Residential/Agriculture Zoning District with a Comprehensive Plan Map designation of Residential/Residential Agriculture; and

3. Lot size compatible with existing lot sizes in the immediate area.

The Board found no concerns and that Exhibit S-6 displayed a number of subdivisions in the immediate area that are currently zoned Residential/Agriculture, therefore being compatible with existing lot sizes in the immediate area; and

4. Compatible with the existing uses in the immediate area.

The Board found no concerns and that surrounding uses are a mixture of agricultural operations and residential parcels; and

5. Protection from incompatible uses.

The Board found no concerns and that a zoning amendment to Residential/Agriculture would protect from incompatible uses as it would not allow for an industrial or manufacturing type use, which would not be compatible with surrounding uses; and

6. Accessibility to adequate utilities

The Board found no concerns as there are existing culinary wells on the property, irrigation water shares, accessibility and power along 900 W.

7. Adequate service by roadways.

The Board found no concerns and that 900 W is adjacent to the property on the East boundary which can provide access. The Bingham County Public Works Director stated that 900 W has a Functional Classification of a Local Road and did not express any concern with the Application, nor did the Bingham County Sheriff.

Chairman Manwaring stated after his review of the documentation within the Planning & Zoning Commission Staff Report, something that really stuck out to him was within testimony from Alan Stander, and the concerns with water but it also states the property is not suitable for farm ground. With a Residential/Agriculture area, it would allow for an individual to have a garden or a few

cattle. Chairman Manwaring stated if the zoning on one side of the four sides is contiguous to that particular zone, he is in favor.

Commissioner Bair stated there were several concerns in regards to water, which would be further discussed in the Subdivision Application process in the future, if approved. Commissioner Bair added there were no individuals through testimony that stated they were against the Zone Change but had issues with the possibility of a subdivision.

DECISION

Commissioner Bair moved to uphold the decision of the Planning & Zoning Commission to approve the zoning amendment requested by Sheri Peck from "A" Agriculture to "R/A" Residential/Agriculture on approximately 12.21 acres at approximately 132 & 142 S 900 W, Blackfoot, Idaho, and a Comprehensive Plan Amendment from Agriculture to Residential/Residential Agriculture. Said decision is based upon the Reason & Decision of the Planning & Zoning Commission, the record as presented by staff and the discussion held today. Chairman Manwaring seconded. Commissioner Jackson recused himself due the subject property being close to his home, therefore, making a conflict. Both Chairman Manwaring and Commissioner Bair 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 6 day of October 2023.

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


Whitney Manwaring, Chairman


Mark Bair, Commissioner

Eric Jackson, Commissioner