

BEFORE THE BOARD OF BINGHAM COUNTY COMMISSIONERS

In regards to: The Planning & Zoning Commission's recommendation to approve the Lilya Estates Subdivision, a 4-lot subdivision in a "R/A" Residential/Agriculture Zoning District.

Board of County Commissioners Meeting Date: June 27, 2023

Property Owners & Developers: Jason and Nicole Lilya

The Board reviewed the record, which is comprised of:

1. Exhibits to the Staff Report:
 - S-5: Planning & Zoning Commission Staff Report
 - A-1: Application for Subdivision Plat
 - A-2: Subdivision Narrative
 - A-3: Plat
 - A-4: Legal Description & Warranty Deed
 - A-5: Custom Soil Resource Report- United States Department of Agriculture
 - A-6: Guarantee- Old Republic National Title Insurance Company
 - A-7: IDWR- Well Information Summary
 - A-8: Flood Plain Map
 - A-9: Parcel Map
 - A-10: Zoning Map
 - A-11: Comprehensive Plan Map
 - A-12: Aerial Map
 - A-13: Area of Impact Map
 - A-14: Subdivision Map
 - A-15: School District Map
 - A-16: Utilities Map
 - A-17: Proposed Location Map
 - A-18: Google Imagery Maps
 - S-2: Proof of Publication- Bingham News Chronicle- Planning & Zoning Commission
 - S-3: Blackfoot/Snake River Government Agency Notice & Notice of Mailing- Tiffany G. Olsen
 - S-4: Property Owners List & Notice of Mailing- Tiffany G. Oleson
 - S-6: Notice of Posting- Addie Jo Harris
2. Planning & Zoning Commission Meeting Exhibits & Minutes from March 9, 2022 and Planning & Zoning Commission sign in sheet for March 9, 2022.
3. All Information and Testimony presented at the Commissions Public Hearing on March 9, 2022.
4. Planning & Zoning Commission Reason & Decision, signed by Chairman Darren Leavitt on March 23, 2022.

- A. **REQUESTED ACTION:** Uphold, conditionally uphold, or overrule the decision of the Planning & Zoning Commission on the proposed subdivision. At the March 9, 2022 Planning & Zoning Commission Public Hearing, the Commission considered the Application from Jason and Nicole Lilya to develop a 4-Lot Subdivision, to be known as “Lilya Estates” on approximately 4.47 acres in a Residential/Agricultural Zoning District, with lots ranging in size from 1-acre to 1.22 acres, located 2 miles North of Groveland on McDonaldville Road. All lots are proposed to have individual septic systems and private wells for culinary purposes with access via a new 50-foot private easement extending from Lot 1 at 400 West (McDonaldville Road) and will be free of obstructions. Lots will have irrigation water rights assessed by the Peoples Canal and Irrigation Company and the Applicant proposed for delivery along the southern boundary line of the lots. The Comprehensive Plan Map has this area identified as Agriculture. Therefore, if recommended for approval, the Commission shall recommend to the Board of Commissioners to amend the Comprehensive Plan Map to reflect the change to Residential/Residential Agriculture pursuant to Bingham County Code Section 10-15-4(C).

REASON

Based on the entire record and Staff Report, the Board finds:

- a. The Board found that the Application met the requirements in Bingham County Code Section 10-4-2 (C) as the purpose of “R/A” zone is to permit the establishment of low-density single-family dwellings with lot sizes sufficient for individual sewer and water facilities. The Board found the proposal is compatible with existing uses in the area with residential and agricultural use of the land and is compatible with existing lot/parcel sizes in the area as the proposed Subdivision. The parcel is surrounded by Residential/Agricultural zoned land and have proposed lot sizes between 1-acre and 1.22 acres, which is compliant with the zoning regulations. The Board reviewed testimony from the Planning & Zoning Commission related to the traffic on 400 West but determined 400 West is a county road and the functional classification of the road is capable of handling the increase that a subdivision of 4 single family residential parcels would create. The subdivision access will be via a new 50 ft. private easement to be created and maintained by the Applicant and shall meet the requirements of Bingham County Code 10-6-8; and
- b. The Board found that the Application met the requirements in Bingham County Ordinance Section 10-6-6(B)(1) and 10-14-4(B) because proposed lots exceed the 1-acre minimum with individual culinary wells and sanitary sewer systems; and
- c. The Board found that the Application met the requirements of Bingham County Code Section 10-14-4(A) because the Application was complete and included all items listed in Sections 10-14-4(A) 1-23; and
- d. The Board found that the proposed subdivision is considered to be consistent with the Bingham County Comprehensive Plan however the parcel is presently designated in the Comprehensive Plan Map as Agriculture. Given the

Residential/Agriculture Zoning, the Commission moved to amend the map designation to Residential/Residential Agriculture Zoning to be compliant with the zoning designation.

- e. Discussion was held in regards to the abandoned well. Director Olsen stated that the abandoned well has never been used as a well but, as far as she understands, it has been used as an underground storage area. Director Olsen stated that Developer plans to fill in the abandoned well, grade it and utilize the 50-foot access. Commissioner Bair asked who completed the sampling and how deep was the sample taken. Director Olsen stated that IAS EnviroChem (Pocatello, Idaho) took the sample but she is unsure of the depth.
- f. Chairman Manwaring asked Director Olsen if Idaho Code restricts individual access to a canal. Director Olsen referred to Idaho Code 42-1102, Irrigation and Drainage-Water Rights and Reclamation, Rights of Way, which specifically states, "watering of said lands cannot be had, such owners or claimants are entitled to a right-of-way through the lands of others, for a ditch, canal, or conduit to convey water to the place of use for the purposes of irrigation". In this process, the Lilyas have obtained legal counsel and would like preliminary plat entitlement to show that the county has approved the preliminary plat, to encourage participation of the landowner to provide the easement access. Chairman Manwaring stated this is normally done in a different order. Director Olsen replied that the county would not be able to record a final plat unless irrigation would be delivered and she has no issue if there is a preliminary plat entitlement subject to irrigation water being delivered to the property. Developer has two years from the date that the final plat is entitled to record the final plat. If those negotiations take longer than two years, the Lilyas know that they will be required to go before the Planning & Zoning Commission. Legal Counsel for the Lilyas would need to work with Mr. Harris to come to an agreement for an easement to get water. Director Olsen stated in the event that irrigation cannot be delivered, this matter would be brought before the Board to give an update on how the properties would be irrigated but will ultimately be a civil matter between the landowners.
- g. Commissioner Bair referred to testimony from Scott Harris, wherein Mr. Harris stated there are fuel tanks located on the property. Director Olsen stated that Developer is unaware of any fuel tanks located on the property. Director Olsen stated if an underground fuel tank is located on the property, it will need to be inspected on an annual basis or removed accordingly. Director Olsen recommended if approved, there be a condition placed that if an underground fuel tank is located, that Planning & Development would be notified to ensure compliance with the removal of the tank.
- h. Chairman Manwaring stated that he has no major concerns regarding the proposal but has never approved a preliminary plat without having all requirements lined out.
- i. Commissioner Bair stated that the application meets all requirements other than the issue with the water, which is being worked on, and the change of the Comprehensive Plan.

DECISION

Commissioner Jackson moved to change the Comprehensive Plan to reflect this parcel as Residential/Residential Agriculture. Commissioner Bair seconded. All voted in favor. The motion carried.

Commissioner Bair moved to conditionally uphold decision of the Planning & Zoning Commission to approve the Lilya Estates Subdivision with the following conditions:

- 1) To remove conditions 2, 3, and 4 put in place by the Planning & Zoning Commission, which were as follows:

Condition (2) The Developer shall provide a Remediation Plan to remove waste from previous farming activities to the Board of County Commissioners;

Condition(3) Place a note on the Final Plat indicating the property was once a pig farm and had collected animal waste;

Condition (4) Planning & Development to ensure the Remediation Plan is complied with prior to development.

- 2) That the necessary easements will be acquired for delivery of irrigation water from the People's Canal before a Final Plat can be recorded.
- 3) An irrigation easement to be provided to lot 2.
- 4) If an underground fuel tank is located on the property during construction, Planning & Development will be notified immediately and the tanks be removed in accordance with the applicable regulations.


This is based upon the record and discussion held. Commissioner Jackson 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 _____ day of July 2023.

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



Whitney Manwaring, Chairman



Mark Bair, Commissioner

Eric Jackson, Commissioner