

## 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 18.73 acres from "A" Agriculture to "R/A" Residential/Agriculture, with condition that all lot development be a minimum of 2.50 acres in size to be compatible with the surrounding area.

Application filed by: Blake Jolley on behalf of property owners, Jimmy and Erica Williams.

Board of County Commissioners Public Hearing Date: February 6, 2024.

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- Lindsey Dalley, Commission Clerk
  - CC-4: Property Owners Notice List & Notice- Lindsey Dalley, Commission Clerk
  - CC-5: Notice of Posting- Ashley Taylor- Planner
  - CC-6: Oath of Affirmation- Blake Jolley
  - CC-6: (1 & 2) Photographs submitted by Blake Jolley
  - CC-7: Oath of Affirmation- Ross Carroll
  - CC-8: Oath of Affirmation- Ed Spraybeary
  - CC-9: Oath of Affirmation- Keith Young
  - CC-10: Oath of Affirmation- Mickey Thiel
  - CC-11: Oath of Affirmation- Scot Wanstrom
  - CC-12: Oath of Affirmation- Ed Spraybeary
  - S-20: Planning & Zoning Reason & Decision signed by Chairman Darren Leavitt on October 20, 2023
  - S-21: Planning & Zoning P&Z Public Hearing Minutes & Audio- October 11, 2023
2. Exhibits to the Planning & Zoning Commission Staff Report:
  - S-1A: Staff Report- Planning & Zoning Commission
  - A-1: Application for Zone Change
  - A-2: Contents of Application
  - A-3: Proposed Parcel Zone Change Map
  - A-4: Quit Claim Deed
  - A-5 & A-6: Aerial Images
  - 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: Google Imagery
- S-14: Notice of Posting: Addie Jo Harris
- S-15: Site Pictures
- S-16: Proof of Publication- Bingham News Chronicle- Planning & Zoning Commission Public Hearing Notice
- S-17- Firth Government Agency Notice List & Notice of Mailing- Tiffany Olsen
- S-18: Property Owners List and Notice of Mailing- Tiffany Olsen

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

- (T-1) Testimony from Bingham County Surveyor, who stated there appears to be ground stock water rights associated with RP0394307 (Water Rights #27-11709 and #27-11014).
- (T-2) Testimony from Allan Johnson, Regional Engineering Manager with the Idaho Department of Environmental Quality, who provided general land development recommendations.
- (T-3) Testimony from Bingham County Public Works, who had no objection to the zone change but stated any future development must meet Bingham County Ordinances and standards.
- (T-4) Testimony from Laurie Hostetter, Testimony in opposition received on 10/11/2023; and
- (T-5) Testimony from Bingham County Sheriff, who had no concerns.

4. Testimony presented at the Planning & Zoning Commission Public Hearing:

- (T-6) Blake Jolley, Applicant
- (T-7) Ross Carroll (neutral)
- (T-8) Brandylee Goyogana (neutral)
- (T-9) Cathy Haggard (opposition)
- (T-10) Anita Wanstrom (opposition)
- (T-11) Mickey Thiel (opposition)
- (T-12) Jan Mecham (opposition)

- (T-13) Edward Spraybeary (opposition)
- (T-14) Joanne Spraybeary (opposition)
- (T-15) Shane Johnson (opposition)

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 Government Agencies on January 8, 2024 (CC-3 List of Government Agencies and Notice)
  - b. Published in the Bingham News Chronicle on January 10, 2024 (CC-2-Affidavit of Publication)
  - c. Sent to 8 property owners within 300' of this property on January 8, 2024. (CC-4 Property Owners Mailing List and Notice)
  - d. Site was posted on January 11, 2024 and pictures were taken on November 27, 2023 (CC-5 Notice of Posting Affidavit and 15 pictures)
3. There was no testimony received prior to the Boards Public Hearing.
4. With no additional questions for Staff after presentation of the Staff Report, the Public Hearing was opened. The Board received testimony as follows:

**Exhibit CC-6:** Blake Jolley, Applicant, 423 East 700 North, Firth, Idaho 83236, who submitted into the record Exhibits CC-6(1) and CC-6(2). Mr. Jolley stated that he would like to reiterate that the subject area was designated, at the time in which the Comprehensive Plan was put in place in approximately 2018, as Residential Agriculture. Within discussion held with Director Olsen, Mr. Jolley stated the he believes the property was in the Comprehensive Plan to be Residential Agriculture prior to the 2018 as well.

Mr. Jolley referred to Number 2: Proximity to Existing areas of similar population density and Number 3: Lot size compatible with existing lot sizes in the immediate area, both of Bingham County Ordinance 10-4-2 (c) and stated with the request to go to Residential Agriculture can be as part of that zone from one to five acres. The code requirements do not state that the lots have to be one acre but states within the range of one to five acres. Therefore, depending on the market or the current landowner or proposed landowner would like to do, it could be within the range of acreage, making options available.

Mr. Jolley stated that he believes that the Planning & Zoning Commission placed the condition of requiring 2 ½ acre minimum for each lot in order to have responsible development and growth.

Mr. Jolley referred to Exhibit CC-6(1) and CC-6(2), which are photographs of Meadow Brooke Subdivision. He explained that as a reference this subdivision was mentioned as being around the 1.7 acres in size and it can be seen that a lot of the homes have large yards and have taken ½ an acre to have some sort of agricultural use that fits within the area. This would give an idea as to what the acreage could be used for.

Mr. Jolley stated there was a concern expressed through testimony during the Planning & Zoning Public Hearing and that the subject property does not have water shares, which is correct and there are no water shares owned by the landowner. Mr. Jolley stated that he has had conversation with Blackfoot Irrigation Company and there are no available water shares available to purchased. Mr. Jolley stated that his home is located west of the property and he does have water shares that he is not using but in order to utilize any of those water shares, the point of diversion would need to be approved by the Blackfoot Irrigation Company.

Mr. Jolley stated that he has held conversation with Ross Carroll, resident, in regards to his concerns and he wanted to be sure that he honors what he advised him, which is that if this zone change is approved, a thought that he had would be to create affordable type housing that would be in the area so long as it is on permanent foundation and a manufactured home could be placed. He has changed his thoughts and would propose something along the lines of 1400 square feet that is a stick-built home with a two-car garage and two roof changes.

Chairman Manwaring asked Mr. Jolley if water shares that he has available would have the ability to be transferred and if they come through the ditch and deliver to his property. Mr. Jolley stated that the same ditch does not come to his property and again the point of diversion would need to be approved by Blackfoot Irrigation Company to be able to transfer the water shares to be utilized off of another irrigation ditch. Mr. Jolley reiterated that his property and the subject property are serviced off of two separate ditches. Mr. Jolley stated in brief conversations with the irrigation company, they did not see this being an issue but it would need to be a formal request.

Commissioner Bair asked Mr. Jolley if there was a ditch that comes close to the subject property and if it would be hard to get water to the subject property. Mr. Jolley explained that on the Northeast side of the property owned by Williams' there is was a ditch that serviced this property at one point but has since been blocked due to there being no irrigation. Mr. Jolley stated that he is under the impression that if the water shares are able to be transferred to that property, that ditch could be opened and utilized again.

Chairman Manwaring confirmed there are no further questions for the Applicant and opened the meeting for testimony.

Chairman Manwaring asked if there was testimony to be given in favor of the Application, wherein there was none.

Chairman Manwaring asked if there was testimony to be given in neutral of the Application, which was presented as follows:

**Exhibit CC-7:** Ross Carroll, 480 East 700 North, Firth, Idaho, stated that he wanted to reflect on what Mr. Jolley testified and stated that he chose to testify in neutral because he wants the Williams property to be cleaned up. They have been living in fifth wheel trailers for the last four years, the place is a mess and would like to see the neighborhood cleaned up.

Mr. Carroll stated there are a lot of people moving to Idaho and there will be growth but it needs to be controlled growth. Mr. Carroll stated that he looked at the Bingham County GIS Map and made a list of the places within the subject area that had homes already placed on the property and what the property size, wherein the average property size is 4.74 acres. Therefore, he would propose that be the property size and although there is growth forthcoming it should be controlled.

Mr. Carroll expressed his concerns with the water table and sewer availability with having a smaller lot size, as the smaller lots there are, the more homes will be placed. The current homes within the area are close and know that water depth and pulling water from a shallow well will affect neighbors in the long run. Therefore, keeping the lot size bigger will help the neighbors not have to struggle. Mr. Carroll stated one of the existing properties on the property has a shallow sewer/septic system because of where the water table is.

Commissioner Jackson asked Mr. Carroll what the water depth is in the subject area, to which Mr. Carroll stated his home is dug at 50 feet and the water tables at about 40 feet. Mr. Carroll added it should be considered when moving forward with a subdivision that in looking at water and sewer within the area, the Northwest line of the subject property, which is referenced as Firth Creek. Mr. Carroll stated that is not an actual creek but is a drainage line that goes out to the river, due to the City of Firth having to pump sub out of the city. Mr. Carroll stated that he will be working with the city to make that into more of a ditch instead of a free flooded wetland area. Chairman Manwaring asked if this occurs due to the river flow being high, to which Mr. Carroll stated that was correct.

**Exhibit CC-8:** Ed Spraybeary, 401 East 700 North, Firth, Idaho, 83236, stated as far as sub-water during the summer months is two to three feet underneath the ground and he is not sure of there have been any test holes dug but the current season would be the wrong time of year to be digging test holes. His well is 40 feet underneath the ground but the house on the corner of Hopkins Lane was under the water in 1997.

Mr. Spraybeary stated that it needs to be taken into consideration to have larger lots instead of several small lots.

There was no further testimony in neutral.

Chairman Manwaring asked if there was testimony to be given in opposition, to which was presented as follows:

**Exhibit CC-9:** Keith Young, 462 East 700 North, Firth, Idaho 83236, stated that he is in opposition of the Application. He referred to Number 2 of the Bingham County Ordinance 10-4-2 (c), and stated that the Application does not meet requirements. All lots in the subject area are five acres or larger except two lots.

Mr. Young referred to number 3 of Bingham County Ordinance 10-4-2 (c), which goes along the same lines and he does not believe that the Application complies.

**Exhibit CC-10:** Mickey Thiel, 462 East 700 North, Firth, Idaho 83236, stated that she bought her home when there were code requirements of five acres and she believes that it should stay that way as it would make lots more desirable. The acreage that Williams has would be more desirable if the acreages were larger such as the others. She is not against growth but she is against growth that does not fit in the area. If a future development is approved, the traffic will become unbearable because Highway 91 is busy already.

**Exhibit CC-11:** Scott Wanstrom, 504 East 700 North, Firth, Idaho 83236, stated that his home is located East of the Williams property and that Tom Christensen previously owned the subject property area and over the years sold the property. Mr. Wanstrom stated when he purchased his property, there were no water shares for their property until Tom Christensen offered that if Mr. Wanstrom assisted in the upkeep of Mr. Christensen's property, he could use his water shares. Prior to Mr. Christensen passing away, Mr. Wanstrom stated that he purchased the 30 water shares, which he still has and owns. Mr. Wanstrom stated that he made a deal with Mr. Rex Williams, the previous owner of the subject property, that he could use the water as long as he needed but did not sell any of those water shares to Mr. Rex Williams. After Mr. Rex Williams passed away, that deal was no longer in place due to the relationship with the new owners not being in a good place. Mr. Wanstrom stated that he has water shares available and if the landowners were reasonable, he would be happy to make a deal to use said water shares.

Mr. Wanstrom stated his concern in regards to the Williams property and the fact that they have been in violation of Bingham County Ordinance 10-2-3, due to living in trailers since 2019.

**Exhibit CC-12:** Ed Spraybeary, 401 East 700 North, Firth, Idaho 83236, stated that he would like to know what the intentions of the developer are as far as either a mobile home or a house. He does not see being able to get enough funding to build a home. Chairman Manwaring stated this specific Public Hearing is specific to the zone change but within Mr. Jolley's testimony, he stated that his intentions would be stick built.

Chairman Manwaring confirmed there was no further testimony in opposition to be presented and the time was turned over to the Applicant for rebuttal statement.

Applicant's Rebuttal: Blake Jolley, Applicant, stated that there were test holes dug after the October Hearing, which were over eight feet deep and did not encounter any sub-water at that time. He does understand that in October, irrigation season is over but it did not appear there would be any sub-water. Along those lines, there are Government Agencies that should be followed, such as the Health Department and the Department of Environmental Quality. Due to the area, he believes they would require monitoring of the sub-water for a period of time and through an irrigation season to determine what needs to be done.

Mr. Jolley stated that he mentioned that he has water shares as he would propose the water shares be purchased to guarantee they can take care of and water their property.

Mr. Jolley referred to the Williams property and their home, which would be the only home that he would propose to get them into a manufactured home as quickly as possible. Mr. Jolley stated that the Williams do not have the ability to maintain five acres or more and would like to keep two to three acres. The reason behind the two to three-acre request is that Jimmy Williams drives semi-truck and would need the ability to turn a truck around.

Chairman Manwaring asked if there were homes in the subject area that have a basement, to which Mr. Jolley stated he did not believe so.

Director Olsen stated that she worked with Rex Williams for several months prior to his passing and he did make an effort to cure the ordinance violation. The current occupant has been uncooperative. As the county looks at the subject Application and potential approval, she asked Legal Counsel if there could be a condition placed on the zoning amendment that the Zone Change Ordinance would not be recorded until the Williams' trailers were moved and the property was brought into code compliance. Director Olsen stated she wondered if that could be a conditional option on the Zone Change to satisfy concerns of the county pertaining to ongoing code enforcement issues and the testimony received from those in attendance.

Mr. Blake Jolley stated that his suggestion is to allow the zone change to take place but with a restriction to only be able to sell two parcels within the proposed subdivision. Director Olsen stated the angle she is looking at is that this has been on the radar and when pursuing code enforcement and receive a non-responsive action, she has gone through the court process and had them removed by a judge, which would be the next step for the Williams' due to their non-compliance. Therefore, knowing that the Application has been received, Ms. Olsen stated that she transitioned the complaint to a potential resolution file without having to go before a judge. Ms. Olsen stated there needs to be some sort of guarantee that the property has a condition of compliance connected in the event the Application is approved.

Ryan Jolley, County Legal Counsel, stated that he would need to do research in regards to placing a condition as proposed by Director Olsen but the item today is not in regards to a subdivision. That discussion would be held during the subdivision process and once an application for subdivision is submitted.

Nothing further.

Chairman Manwaring stated that the Public Hearing would be closed to testimony and the Board would hold their deliberation, which was as follows:

Chairman Manwaring referred to testimony presented by Keith Young who stated there was an issue with proximity to existing areas of similar population density and lot size compatible with existing lot sizes in the immediate area and stated that in Bingham County there have been several parcels that are five to ten acres that parents make one acre lots from division rights for their kids to be able to afford to build. In this particular area, people have 5-acres lots and could have division rights and are allowed to build on those with one acre lots.

Chairman Manwaring stated that he looks at each Application, the surrounding area and testimony given to assist with making his decision. The subject Application meets the Comprehensive Plan and as Mr. Wanstrom stated, there are water shares available, which was originally a concern for him. His recommendation at this time would be to have the lots be 3-acres.

Commissioner Bair stated that each property owner has the right to apply for a Zone Change. This specific property is defined within the Comprehensive Plan as Residential Agriculture and if approved, unless a condition is placed, there could be 1-acre lots. Commissioner Bair asked Legal Counsel if a condition could be placed to allow 1-acre lots but cap the number of homes built in the subdivision at 9 or 10 homes that way there would be a variety of lot sizes within the subdivision and more affordable but also have larger lots for those that can afford to do so.

Ryan Jolley stated that once the Subdivision Application is submitted and approved, a limit could be placed. Today the Board could include limitations on lot size but as far as limiting the number of houses what would need to occur during the Subdivision Application process.

Director Olsen asked Legal Counsel if the Board could limit lot size but could limit the average lot size so there could be a variety in size. Ryan Jolley confirmed that could be done within the decision made by the Board.

Commissioner Jackson stated that he does not like to see prime farm ground turned into housing but the subject property does not seem to be prime farm ground where it does have the sub water and proximity to the river. To him the subject property is an ideal spot to approve a Zone Change with a possible subdivision application in the future. Commissioner Jackson added that he would be in favor of an average lot size of 2 ½ acre, as put in place by the Planning & Zoning Commission. Chairman Manwaring concurred.

Commissioner Bair stated that he likes the idea of giving the developer the freedom on lot size without making them too small and therefore, he would be in favor of a 2 ½ acre lot average.



## 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. Chairman Manwaring stated the property owner will have the ability to have a garden or livestock.
2. Proximity to existing areas of similar population density.  
The Board found no concerns.
3. Lot size compatible with existing lot sizes in the immediate area.  
The Board found no concerns.
4. Compatible with the existing uses in the immediate area.  
The Board found no concerns.
5. Protection from incompatible uses.  
The Board found no concerns.
6. Accessibility to adequate utilities  
The Board found no concerns.
7. Adequate service by roadways.  
The Board found no concerns.

There was no further discussion and Chairman Manwaring requested a motion at this time.

## DECISION

**Decision: Commissioner Bair moved to approve the proposed Zone Change from Agriculture to Residential Agriculture, for property owners Jimmy & Erica Williams, for approximately 18.73 acres at approximately 500 East 700 North, Firth, Idaho, based on the Reason & Decision of the Planning & Zoning Commission, testimony received and discussion held. Also to add one condition that there will be a two acre average lot size. Commissioner Jackson seconded. All voted in favor.**

**Director Olsen asked for clarification and if the Board would remove the condition placed by the Planning & Zoning Commission, which was to require that all lots would be a minimum of 2.5 acres. Commissioner Bair amended his motion as such and states the**

reasoning is based upon making cost affordable for individuals and give the opportunity to have larger lots if desirable and compatible with the area. 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.

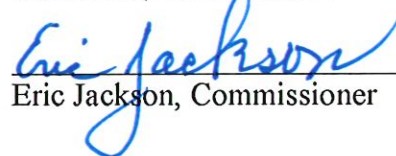
**Regulatory Takings:** Additionally, the Applicant may request a regulatory takings analysis as per Idaho Code Section 67-8003. An affected person aggrieved by a final decision concerning matters identified in Section 67-6521(1)(a), Idaho Code may within twenty-eight (28) days after all remedies have been exhausted under local ordinance, seek Judicial Review as provided by Chapter 52, Title 67, Idaho Code.

Dates this 23<sup>rd</sup> day of February 2024.

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

  
Whitney Manwaring, Chairman

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Mark Bair, Commissioner

  
Eric Jackson, Commissioner