

# BOARD OF BINGHAM COUNTY COMMISSIONERS

## REASON & DECISION

In regards to: The Planning & Zoning Commission's recommendation to conditionally approve to create North River Estates Subdivision containing 36 single-family Residential lots ranging in size from 1.00 to 1.30 acres and one non-buildable landscaping lot consisting of 0.11 acres, zoned "R/A" Residential/Agriculture in accordance with Bingham County Code Title 10 Chapter 14 *Subdivision Regulations*.

Chairman Manwaring recused himself from the decision in regards to the Application due to conflict.

Temporary Chairman: Commissioner Drew Jensen

Property Owners & Developers: Rockwell Homes, Inc

Board of County Commissioners Public Hearing Date: February 26, 2025

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: Shelley 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- Addie Jo Jackman, Assistant Planning & Development Director/ Lead Planner
  - CC-6: Oath of Affirmation: Dusty Whited
  - CC-7: Oath of Affirmation: Niel Humphreys
  - CC-8: Oath of Affirmation: Chris Nelson
  - CC-9: Oath of Affirmation: Paul Worlton
  - CC-10: Oath of Affirmation: Nate Clark
2. Exhibits to the Planning & Zoning Commission Staff Report:
  - S-1: Staff Report- Planning & Zoning Commission
  - A-1: Application for Subdivision Plat
  - A-2: Letter from Eagle Rock Engineering
  - A-3: North River Estates Preliminary Plat
  - A-4: Quit Claim Deed
  - A-5: Custom Soil Resource Report- United States Department of Agriculture
  - A-6: Guarantee- Old Republic National Title Insurance Company
  - A-7: Well Construction Search- Idaho Department of Water Resources
  - A-8: Email Correspondence with Eastern Idaho Regional Sewer District regarding Commitment to Serve Letter

- A-9: Email regarding Eastern Snake Plain Aquifer
- A-10: Email with Woodville Canal President regarding Water Rights
- S-11: Site Photographs
- S-12: Proof of Publication- Bingham News Chronicle- Planning & Zoning Commission Public Hearing Notice
- S-13: Shelley Government Agency Notice List & Notice of Mailing- Addie Jo Jackman, Assistant Director/Lead Planner
- S-14: Property Owners List and Notice of Mailing- Addie Jo Jackman, Assistant Director/Lead Planner

As to procedural items, the Board of County Commissioners 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 28, 2025 (CC-3 List of Shelley Government Agencies and Notice)
  - b. Published in the Bingham News Chronicle on February 1, 2025 (CC-2- Affidavit of Publication)
  - c. Sent to 91 property owners within 300' of this property on January 28, 2025. (CC-4 Property Owners Mailing List and Notice)
  - d. Site was posted on February 7, 2025 (CC-5 Notice of Posting Affidavit and pictures)

There was no testimony received prior to the Boards Public Hearing.

At the Public Hearing, the Staff Report was presented by Tiffany Olsen, Planning & Development Director.

Commissioner Jackson asked for confirmation that the easement road would not be paved and that it would be gravel. Ms. Olsen confirmed and stated that the easement will be maintained by Developers and not paved. Commissioner Jackson asked Ms. Olsen in regards to the individuals that will use that road to get to their property, what is on the other side and if it was farm ground. Ms. Olsen stated there is one lot that is a private gravel pit, according to testimony there is some truck traffic. Commissioner Jackson asked if there were stipulations for having to apply something to keep the dust down, to which Ms. Olsen stated that would be a question for Public Works Director.

Dusty Whited, Bingham County Public Works Director (CC-6), stated that Magnesium Chloride is what would be placed in order to keep the dust down but there was no testimony in regards to this matter. Commissioner Jensen stated it would be beneficial to having a condition stating that

Magnesium Chloride should be placed and asked Mr. Whited what the cost would be for application. Mr. Whited stated that the cost for material would be minimal but finding an individual to apply it would be hard as there are not many private entities that do so.

Commissioner Jackson stated it was mentioned that there is a well on the property for irrigation and asked if there was a way that well could be used to supply water to the homes. Ms. Olsen stated that water rights for that use are for irrigation only and are seasonal from April to October.

With no further questions from the Board, testimony was presented by Niel Humphreys, Applicants Representative (CC-7), 1331 Fremont Avenue, Idaho Falls, Idaho, reiterated that the Application is for thirty-six (36), one (1) acre single family residential homes. The sewer will be provided through Easter Idaho Regional Sewer District (EIRSD), culinary water would be provided with wells on each individual lot and the irrigation water will be assessed through the Woodville Canal Company delivered by pressurized irrigation system. Mr. Humphreys stated in relation to the irrigation is that the existing farm ground is being serviced through existing infrastructure on the east side with an agriculture pump and to service the pressurized irrigation on this development, the pump would be upgraded and pulling water from the same location to provide water to the property.

Commissioner Jensen asked if it was a deep well, to which Mr. Humphreys stated that it is canal water.

Mr. Humphreys added that the cisterns discussed will be fed through the pressurized irrigation system to the two locations. Currently there are six (6) inch lines shown that may require further analysis to size lines appropriately for the subdivision itself but the capacity of those tanks will be kept topped off all of the time and ready for access in the case of fire emergency.

Commissioner Jackson asked Mr. Humphreys if he has put cisterns in any other subdivisions that he has constructed. Mr. Humphreys stated that he has not done so previously but does know that Caden Fuhrman, Eagle Rock Engineering, has been working with Chief Randy Adams pertaining to the location and sizes, to be completed and preapproved prior to submitting final improvement drawings.

Ms. Olsen stated there is an existing wet well on the property that is going to be used for fire suppression services not for irrigation.

With no further questions for Mr. Humphreys, the Chairman called for testimony from the public.

There was no testimony in support of the Application.

Testimony in neutral was received as follows:

Chris Nelson (CC-8), 1585 N. 775 E., Shelley, stated that he is the Manager of Deer Meadows Development and runs the HOA for Cedar Estates Subdivision, which is next to the proposed development. Mr. Nelson stated that he is familiar with the irrigation system and would like to clarify that there is a concrete structure, which is approximately 14 x 20, which has two pumps in

it on each side and the property line goes through the middle. Mr. Nelson stated that has been shared responsibility for that but they are both surface water and stated that he does not believe that there is a wet well anywhere near the property. Mr. Nelson stated that he would also like to clarify that Woodville Canal Company does supply the surface water but they will issue a bill directly to the HOA, so the HOA will need to be organized to cover that bill.

Ms. Olsen stated that code requires when there is a shared system that the county see an Operating Agreement or a Shared Water Users Agreement between two HOA's and to be sure that each has easement access to what may be on the others property, which would be done prior to Final Plat.

Commissioner Jackson asked Mr. Nelson if he has experience with cisterns, to which Mr. Nelson stated that previous to his occupation now he sold tanks and pipe, which is the only experience but there have not been cisterns in any of his developments.

Commissioner Jensen asked if there was a man door in case there is sand to be cleaned out, to which Mr. Nelson stated there is a maintenance door.

Paul Worlton (CC-9) 1537 N. 800 E., Shelley, stated that his home borders the southwest corner of the subject property and his main concern is the 37-inch culverts that are being put in the ditch. Mr. Worlton stated there is a tremendous amount of sand and the ditch needs cleaned once or twice per year. Since the pond was put in, Cedar Estates does not get any of the sand but it comes down the ditch by Mr. Worlton's home. Mr. Worlton has been on the ditch for fifty (50) years and there has been a sand problem for the entirety of that time. If the ditch needs to be cleaned, he would like to be sure there is access to the ditch, a 15- or 20-foot access on both sides of the ditch. The private road will serve as one but when the ditch is cleaned the sand is put out to the south side and Mr. Worlton stated that he is not sure where the property lines will be but it is necessary. Mr. Worlton stated they cannot get a backhoe or trackhoe and a truck down the road if the sand needs to be hauled off.

Mr. Worlton stated that he also would like to address since the Gem Lake Dam was put in, he is notified by Idaho Falls, that if the dam were to fail he would be in the dam flood zone, which also was not addressed. Mr. Worlton stated the ditch is supplied from April 15<sup>th</sup> through October 15<sup>th</sup>, unless it is a low water year, which is monitored by the Idaho Department of Water Resources. Mr. Worlton stated since the dam was put in, he is not on the actual canal anymore but there is a 24-inch siphon tube out of Gem Lake which works well until moss grows then it is plugged. With everyone watering at night he will see an influx of water. Mr. Worlton stated that he would like to know if the fire suppression is going to get first dibs on the water and how the culverts will be cleaned out when they are placed.

Commissioner Jensen asked Mr. Worlton if the culverts are placed higher in the ditch, they would wash themselves out or would that put too much stress on each side of the ditch. Mr. Worlton stated that it washes bad and it may help but the sand is still going to be there. Commissioner Jensen asked Mr. Worlton if a 36-inch culvert is adequate to supply water that is needed, to which Mr. Worlton stated that would be adequate to supply the water. Mr. Worlton stated when the pivots are on it and running, they would run for 4-5 days then would shut the water down. There is a gate

that is opened and closed to get the siphon tube going and can trail water that way. If it is shut too tight then the siphon is lost. If it is open too far, then flooding will occur.

Mr. Worltin stated the gravel pit referred to is a private gravel pit and is owned by Five Brothers out of St. Anthony. The gravel pit itself is mined out but it is currently being filled with fill dirt and he is not sure if the 8-foot approach would be enough to protect the roadway.

There was no testimony in opposition.

With no further testimony from the public, Mr. Humphreys gave a rebuttal statement stating that he is happy to work with the downstream uses to be sure they have access and feel comfortable with easement sizes. Mr. Humphreys stated he will work with the canal company and downstream users to ensure that any culverts are sized appropriately, cleaning methods and other instances are all done appropriately to be sure they are not affected.

Commissioner Jensen asked Mr. Humphreys if there would be an issue with giving the canal company and downstream users an easement to the South of the ditch. Mr. Humphreys stated the existing easement is 16 ½ feet wide and he believes that is more than likely what has been used in the past. Mr. Worltin stated that the South side of the ditch is used and do not use the roadway. Mr. Worltin stated if a trackhoe is needed and should be loaded onto a truck, both South and North sides are used. Commissioner Jensen again asked Mr. Humphreys if there would be an issue, to which Mr. Humphreys stated that would be a determination of the property owners, Rockwell Homes, but he is sure they would be happy to have such conversations to assure access and cleanability.

Commissioner Jensen stated most canals, whether they are in a subdivision or not, have 20-foot easements on each side of the bank, which is something that could be considered to place as a condition in order to be sure the easement is there to maintain the canal.

Commissioner Jackson stated it is important to have an easement along the canals for maintenance.

Commissioner Jackson moved to re-open the Public Hearing for testimony in order to answer specific questions. Commissioner Jensen seconded. Both voted in favor. The motion carried.

Testimony in favor was received as follows:

Nate Clark (CC-10), 5615 Cottontree Lane, Ammon, stated that he is with Rockwell Homes and the entire private road is the ditch easement and in order to access the two culverts, any individual could drive down the road and conduct maintenance from the private road, which is a 16-foot easement. Mr. Clark stated the he understands having an easement on both sides for a canal but as a small private ditch, he finds it is sufficient to have a 16-foot easement on one side that is accessible with a maintained road in order to get a mini excavator or whatever equipment may be needed, in order to clean the culvert.

Mr. Clark stated in regards to the cisterns, they are each approximately 5,000 gallons and as soon as they are installed they will be filled with water and will not be drained unless there is a fire. There is a manhole cleanout that will be on top with a 36-inch riser to bury the cisterns below the frost line and above there will be a cleanout and a hydrant that comes up in order for the fire station to connect directly to the hydrant. There will be an automatic float as well so that when the water is pulled out, it will trigger the pump station in the wet well in the canal to pull the water in order to fill it back up.

Commissioner Jackson asked for clarification and that the cistern is filled with canal water, to which Mr. Clark stated that is correct. Commissioner Jackson stated the canal is only full from spring until fall and asked Mr. Clark if there was a fire, how would it be refilled. Mr. Clark stated that it would have to be filled with either a private truck or find another option.

Ms. Olsen referred to testimony presented by Fire Chief Randy Adam(A-13), which indicates the locations of the cisterns look great and to inform him when Rockwell has the other information on tank sizes and configuration. Therefore, that information is something that will be ensured to be mutually agreed upon by both the Developer and the Fire District prior to construction.

Commissioner Jensen asked Mr. Clark in regards to the easement for cleaning of the ditch, if sometimes room is needed to have a trackhoe on one side and a truck on the other in order to dump sand. Mr. Clark stated that he understood but it is such a small ditch he would assume it would be cleaned out quicker which would be less sand, wherein there should be plenty of room to back a truck up to clean directly out of the ditch. Commissioner Jensen asked if the ditch is sized where a trackhoe could straddle the ditch, to which Mr. Clark stated that he does not think the ditch is any larger than five or six feet wide.

Testimony in neutral was received as follows:

Paul Worltin (CC-9) 1537 N. 800 E., Shelley, explained that the ditch comes towards the West and turns South. Therefore, there is 200-300 more feet of it and it is an "L" shaped ditch that also needs access. Chris Nelson stated that Mr. Worltin is a member of the Woodville Canal Board and services the ditch, which gives him the knowledge of what is needed.

No rebuttal statement was given.

### **REASON**

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

- a. The Board found that the Subdivision Application met the recommendation for conditions of approval that would minimize adverse conditions; and

- b. The Board found that the Subdivision Application met the reasons for recommending the approval; and
- c. The Board found that the proposed subdivision to be consistent with the Comprehensive Plan; and
- d. The Board found that the availability of public or private services to accommodate the proposed subdivision; and
- e. That the public financial capability of supporting services for the proposed subdivision; and
- f. Any other health, safety, or environmental problems that may be brought to the commission's attention; and
- g. The recommendations of a city of the proposed development is located within a City of Impact Area or within one mile of a city not having a valid impact area; and

Commissioner Jackson confirmed that conditions 1 and 2 put in place by the Planning and Zoning Commission have been met. Ms. Olsen confirmed and stated that condition number 2 pertaining to the stop sign required by the Public Works Director would be done within the construction plans.

Commissioner Jackson stated that his concern with the egress easement road would be that homes would be next to the gravel road and that potentially there could be a condition placed to have Magnesium Chloride applied yearly. Commissioner Jackson stated that it doesn't seem that it would be a major cost but it could be challenging to find someone to apply. Commissioner Jensen stated where it is not a county road and would have slower speeds, he does not believe a condition such as this would be justified. Mr. Whited stated another option would be to pave the private easement within the boundaries of the subdivision, which would eliminate any annual maintenance or dust issues. Commissioner Jackson stated if that were required, it could be costly to the Developer and he would not be in favor.

Discussion was held in regards to maintenance of the canal, wherein Commissioner Jensen stated that he feels that a trackhoe could straddle the ditch for maintenance as the ditch is part of the 16-foot easement, per Mr. Clark. Commissioner Jensen asked Mr. Whited if he felt that an 8-foot apron would be sufficient to take the turn on the ditch and protect the roads, wherein Mr. Whited stated that 99% of the traffic on the easement will be going straight through and primarily it is just the very edge of the asphalt. Therefore, he believes that paving the private easement by eight (8) feet on each side from the county road would be sufficient.

## DECISION

**Decision:** Commissioner Jackson moved to uphold the recommendation of the Planning & Zoning Commission to approve the North River Estates Subdivision with the following condition:

- 1) To have an 8-foot apron on each side of the private road pavement from the county road.
- 2) To approve the easement for the private road within the subdivision.

**Commissioner Jensen seconded. Both Commissioners 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 12 day of March 2025.

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

*Recused*

\_\_\_\_\_  
Whitney Manwaring, Chairman

*Eric Jackson*  
\_\_\_\_\_  
Eric Jackson, Commissioner

*Drew Jensen*  
\_\_\_\_\_  
Drew Jensen, Commissioner



## CERTIFICATE OF SERVICE

I certify that on the 12 day of March 2025, I served a true and correct copy of the Reason & Decision for the request for North River Estates Subdivision, upon the following person(s) in the manner(s) indicated:

- Mail
- Email: [curtis@rockwellhomes.net](mailto:curtis@rockwellhomes.net)
- Hand Delivered
- Designated Courthouse Box

Rockwell Homes, Inc  
Attn: Curtis Johnson

- Mail
- Email: [tolsen@binghamid.gov](mailto:tolsen@binghamid.gov)
- Hand Delivered
- Designated Courthouse Box

Tiffany Olsen  
Planning & Development Director

  
\_\_\_\_\_  
Lindsey Dalley, Commission Clerk