

BINGHAM COUNTY PLANNING & ZONING COMMISSION
REASON AND DECISION

APPEAL OF: Administrative Decision by Bingham County Planning and Development Director

APPELLANTS: Oscar and Carmen Mattson

Requested Action: Oscar and Carmen Mattson filed an Administrative Appeal on February 29, 2024 to an Administrative Decision issued by the Bingham County Planning and Development Services Director on February 22, 2024. The Appellants requested the Director's decision be overturned by the Planning and Zoning Commission following the procedures set forth in Bingham County Code Section 10-10-1 *Administrative Appeal*.

Property Location: 749 E 450 N, Firth, Idaho, Parcel No. RP0545716, Township 2 South, Range 37 East, Section 08, consisting of approx. 17.54 acres

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

Appeal Hearing Date: June 12, 2024

I. APPEAL HEARING RECORD AND INFORMATION

1. The following was reviewed by the Commission:
 - a. Administrative Decision dated February 22, 2024;
 - b. Appeal of Administrative Decision dated February 29, 2024; and
 - c. Staff Report.

2. Chairman Aullman started the Administrative Appeal Hearing with reviewing the procedures for the Administrative Appeal meeting. He stated that with an Appeal, the Commission previously found that "affected persons" to be heard at the Administrative Appeal Hearing was the Appellants and property owners within 300 feet of the subject parcel and that would limit those who are able to offer testimony. He stated all testimony at the Appeal Hearing would be presented orally.

Prosecutor Jolley reviewed several sections of Idaho Code that are important and govern the Commissions' decision, such as Idaho Code Title 50 and more specifically Bingham County Code 10-14-3 which states that "*an original parcel in any zone may be divided into no more than four (4) lots including the original parcel. The original parcel shall constitute the first division/building right. Any division of land beyond four (4) of an original parcel shall require a subdivision plat to be filed in accordance with the provisions set forth in this Chapter.*"

Prosecutor Jolley added the reason why that section is important is because as the Appeal is considered, if you find that the Administrator has correctly determined that all of the Division Rights have been utilized, the Commission does not have the discretion under either Idaho Code or Section 10-14-3 to grant any sort of variance for the use of Division Rights. He concluded with advising the Commissioners that the decision before them is to determine if the Division Rights have been used and if they have been used then the Commission is limited by Section 10-14-3.

3. Director Olsen began with stating for the record how notice of the Appeal was determined and directed by the Planning and Zoning Commission. She provided a summary of her Administrative Decision, Exhibit "A" which was included therewith, and a summary of the 2018-2019 Conditional Use Permit Application which was submitted to Planning and Zoning Dept. to transfer three (3) Division Rights from an Original Parcel identified in red to another Original Parcel identified in purple as depicted on Exhibit "A" by Mr. James Mattson who was the owner of the subject lands at the time. Director Olsen stated after the 2018-2019 CUP to transfer three (3) Division Rights was submitted, it was withdrawn by the Applicant, Mr. James Mattson, prior to the Public Hearing on the Application and the file was later closed. Since that time, there has been a change in administration as she took the position of Director in February 2020. Director Olsen explained she noticed that not all that Division Right Transfer Applications were being transferred according to Bingham County Code which provides Division Rights must be transferred from an Original Parcel to an Original Parcel; it was found that many Division Right Transfer Applications included the transfer of Division Rights from a parcel to a parcel and that there was not always an Original Parcel designation. Additionally, the former County Prosecutor found that in some instances, the development of parcels made with Division Rights exceeded the four (4) divisions allowed. Given those findings, in April of 2020, the County Prosecutor reported to the Board of County Commissioners who later issued a Memorandum on April 21, 2020, stating that the enforcement of Bingham County Code 10-14-3(A) and 10-14-3(C)(5) and applicable provisions of Idaho Code must take place. Director Olsen added that she had previously provided the Mattsons' with the Memorandum and explained that had the Division Rights under the 2018 Application been successfully transferred and the used to create parcels, that would have occurred under prior administration. However, since April 21, 2020, as directed by the Board, the Codes referenced are being enforced by the County. Director Olsen included in the Administrative Decision that same information and provided the creation of a subdivision as an option to create their desired land division(s). Chairman Aullman acknowledged that it appeared the Code was being misapplied which the County Commissioners recognized and issued a Memorandum in 2020 to which Director Olsen agreed.

Commissioner Bingham asked if the office had given permission for the Mattsons' to transfer the three (3) Division Rights or to use them if transferred? Director Olsen stated the Mattsons' indicated in their Narrative that they had visited with former Staff member(s) of the Planning and Zoning Department who made verbal assurance the process to use the Division Rights and that the transfer could be done at any time but the Director could not be for certain of those conversations noting the verbal content of the conversation.

4. With no further questions for Staff, the Commission moved to the Appellant's testimony.

(T-1) Oscar Mattson, 807 E Presto Rd, Blackfoot, ID, testified as the Appellant, and referenced the letter and justification of denial received by Tiffany Olsen dated February 22, 2024 was inaccurate. Mr. Mattson said he believed his situation falls under Bingham County Code 10-14-3(C)(4) and (5) which states:

(4.) Any unused division rights within an original parcel may be transferred by deed to another lot within the same original parcel except for the one associated with the original parcel. All division right transfers shall be recorded in the Bingham County Clerk's Office giving the full legal descriptions of those properties involved.

(5.) Division rights shall not be transferred from one original parcel to another original parcel unless they are assessed under one ownership and are approved by a conditional use permit.

Mr. Mattson stated he believed the Code is clear and that each parcel is an Original Parcel and that he is the owner of both parcels which meets Bingham County Code Section 10-14-3(C)(5). He explained that he believed his parcels fit into those exceptions and that last sentence of Bingham County Code 10-14-3(A) "*Exceptions to the foregoing are as follows*" is not being recognized by those who are to be upholding the law and was left out of the letter.

Mr. Mattson stated the maps provided in the original Application provide that documentation and what previously was going to take place in that the CUP Application was going to be approved had it not been withdrawn. He continued stating that since Leigh Ann Davis has left the office and Tiffany Olsen has become Director of Planning and Development Services, and the only thing that has changed is the interpretation of the Code. Mr. Mattson concluded with stating he purchased the land with the building rights and was told by the only source, P&Z Director Leigh Ann Davis, that he could use them, then thanked the Commission for their time.

Commissioner Bingham clarified that Mr. Mattson believed the conditions of the Original Parcel conflict with the exception? Mr. Mattson disagreed and read Bingham County Code 10-14-3(A) and stated he believed the last sentence which says "*Exceptions to the foregoing are as follows*" includes subsections (B), (C), (D), (E), (F) & (G) as Exceptions, and specifically referred to subsection (C)(5). Mr. Mattson said what Mrs. Olsen read was not accurate because she left out the Exceptions which included the remainder of the Section. Mr. Mattson said he owned both parcels as shown in red and purple on Exhibit "A" with the red Original Parcel having 3 Division Rights and the purple Original parcel having none. Mr. Mattson believes that because both parcels are held in the same ownership, he has the right to transfer the division rights. Commissioner Bingham further clarified that Mr. Mattson believes Section 10-14-3(A) conflicts with Section 10-14-3(C). Mr. Mattson again disagreed saying there are exceptions to Section 10-14-3(A) and that allows Section 10-14-3(C) as exceptions.

Commissioner Johns added that Section 10-14-3(C)(5) ends with “*if approved by a Conditional Use Permit*” and asked if there was an approved Conditional Use Permit for this property. Mr. Mattson replied he did not have a Conditional Use Permit, but referred Commissioner Johns back to Section 10-14-3(C)(4). Commissioner Bingham & Chairman Aullman agreed that maybe Mr. Mattson was reading the subsections of 10-14-3(C)(4) and (5) of Code out of context a bit. Commissioner Bingham and Mr. Mattson discussed where they believed the “exceptions” belonged in the Code. Commissioner Bingham said the exceptions of Number 1 include an allocation of land in legal condemnation and Number 2 include the exchange of land that does not result in an increase of lots or decrease a lot in area to less than the required minimum size for the zone. Commissioner Bingham clarified for Mr. Mattson that there are the two exceptions and that Section (B) is a new Section and therefore exceptions in Section (A) do not apply to that Section.

Commissioner Jolley questioned why a Subdivision Plat is not desired to create the parcels to which Mr. Mattson explained he wanted to retain as much farm ground as possible and could keep the lot sizes to 1-acre using Division Rights stating he believed utilizing the Division Rights would allow for smaller and simpler lots. Mr. Mattson stated he could not verify 100% that the 2019 Division Right Transfer Application would have been approved but when looking at the information that had been submitted and what was going on in 2019, he believed the Application would have passed. Mr. Mattson referred to Idaho Code Section 67-6515(A), as it refers to the transfer of development rights, and stated that the Code Section allows for the transfer to occur.

Commissioner Carroll referred to the 2019 Application and asked why the Application was withdrawn to which Mr. Mattson explained that he originally was going to purchase the Home Parcel and the Farm Parcel from his family. It was later decided that only the farm ground would be purchased and the Division Rights would be transferred to the farm ground and the Application in 2019 was then submitted. The Application was later withdrawn because the Home Parcel and farm ground were to be purchased as one.

Commissioner Bingham clarified that the only decision to make was if the Division Rights have been used within the Farm Ground Original Parcel and stated that he believed it appeared the Division Rights had all been utilized, to which was also acknowledged by the Appellant. Chairman Aullman pointed out that the Home Parcel/Original Parcel, which is 1-acre in size, still has the 3 (three) Division Rights available although they seem unusable and that the Commission have previously seen Division Rights transferred off of small parcels. Commissioner Jensen stated that it seemed interesting knowing that the same outcome could be achieved with a Short Plat. Chairman Aullman reminded the Commissioners that it was the job of the Commission to determine if Idaho Code and Bingham County Code were applied properly, to determine if the Division Rights were used for this property, and if it was appropriate to transfer more Division Rights onto the Farm Parcel to further divide the land.

Commissioner Jensen acknowledged the Appellant owned both properties to which Chairman Aullman asked Prosecutor Jolley to help with the wording and intent of Bingham County Code. Prosecutor Jolley stated the *Exceptions* are applied to Bingham County Code

Sections 10-14-3(A)(1) and (2). He also stated that the decision of the Commission is to determine if the Division Rights have been used in the Original Parcel and if they have, then the Commission does not have the discretion to deviate from the Code. Chairman Aullman asked for clarification on Section 10-14-3(C)(1-6) and if he was correct in that this Section refers to how remaining Division Rights may be used within an Original Parcel to which Prosecutor Jolley agreed was correct. Further, Chairman Aullman provided clarification that the Home Parcel and Farm Parcel are separate Original Parcels which helps this scenario make more sense.

Commissioner Bingham clarified that the Division Rights may be transferred if the parcels are under the same ownership and are both Original Parcels. Chairman Aullman added that the Commission have seen transfers from individuals wanting to park or retain Division Rights but it is not so that they can further divide the land. Prosecutor Jolley agreed and clarified that the Code must be read in context and that the exceptions are intended only for the Subsection which they are under, otherwise there would not be additional Subsections created.

With no further questions from the Commission Members, testimony from affected parties was received.

5. Testimony in support was received by:

(T-2) Carmen Mattson, 807 E Presto Road, Blackfoot, ID, stated she was frustrated about the Agenda item and that there was a determination of the distance for affected parties. She recalls having multiple conversations with previous Staff and left in good faith that the Division Rights are there and were theirs to use at their discretion at any time.

(T-3) Adyson Thacker, 749 E 450 N, Firth, ID, believed the Code is clear and even though this could possibly be achieved with a Subdivision Plat, allowing Division Rights to be utilized would be saving the agriculture ground and add that it means a lot.

6. Testimony in a neutral position was not provided. Testimony in opposition was received by:

(T-4) Charles Mattson, 436 N 775 N, Firth, Idaho, stated that during previous verbal communication between the Mattson siblings around January 2019, it was determined that the Division Rights would not be transferred to the Farm Parcel and that meetings with family and previous Planning & Development Staff determined there was three (3) available Division Rights on the Home Parcel and one (1) Division Right on the Farm Parcel. Mr. Mattson also gave a history of the Home Parcel ownership stating that Grandpa (Mattson) would not want more homes built on his property and that the Appeal should be denied based on current Bingham County Code.

7. With no additional testimony in opposition, Mr. Oscar Mattson provided rebuttal testimony and discussed previous conversations of who would receive the Division Rights and also stated that there are currently 10 homes built on the Farm and that Grandpa (Mattson) would be fine with his prosperity building homes on the land. He provided clarification to

a previous comment made by Commissioner Butler and stated that he recognized there are no more Division Rights left on the Farm Parcel, and that the request is to transfer and use Division Rights from another Original Parcel.

Mr. Mattson asked if the information that was provided in 2019 was irrelevant to the Planning and Zoning Commission to which Commissioner Jolley stated earlier in the evening at the same Public Hearing Meeting, an Application was heard where Division Rights were transferred to be parked on an Original Parcel because they could not be used, and clarified if Mr. Mattson was seeking the Division Rights to be moved with the desire to utilize (and not park) to which Mr. Mattson stated that was correct. Mr. Mattson added that it has historically been allowed and that needed to be taken into consideration. Mr. Mattson added that Division Right Transfers can be seen throughout Bingham County. With no further questions for Mr. Mattson, the testimony portion of the Appeal was closed.

8. Commission discussion began with Director Olsen responding to questions of the Commission where she acknowledged that three (3) Division Rights do exist on the Home Parcel "Presto School House Parcel" and that those Division Rights can be transferred to the "Farm Parcel" as they are under the same ownership and both parcels hold Original Parcel designations. She added that the Appeal is to determine how the Division Rights can be utilized or parcels created and not that the Division Right Transfer cannot be allowed. Director Olsen referenced a portion of the Appellants Appeal Application where the Mattsons' stated they were told they could transfer the Division Rights from the "Presto School House Parcel" to the 18-acre "Farm Parcel" but that the Mattsons' could not use them to create buildable parcels.

Commissioner Johns clarified that the Commission should determine if the Division Rights on the Farm Parcel have been utilized? Director Olsen stated that was correct. Commissioner Jolley asked that if documentation were to be provided, would it be honored? Director Olsen clarified that the Board's Memorandum states if there was a written decision prior to the date (April 21, 2020), the written decision would be honored. Director Olsen added that the Memorandum was sent to all the approved CUP Applications for Division Right Transfers but that the Appellants did not receive the Memorandum as the Application was withdrawn and therefore the Memorandum did not apply to a withdrawn Application.

Chairman Aullman clarified that all previous Division Right Transfers approved prior to the date of the Memorandum would be honored and that moving forward, Bingham County Code would be followed to which Director Olsen agreed. Commissioner Bingham asked if this is something previous Staff could testify to? Prosecutor Jolley stated that if a previous employee erroneously provided incorrect information to the public, it would not be legally enforceable.

Commissioner Jensen believed it was conflicting because a Short Plat could be applied for with the same end result. Director Olsen stated that pursuant to Idaho Code, a buildable parcel can be created in 1 of 2 ways; by utilizing a Division Right or by a Subdivision Plat. Commissioner Carroll believed the Appeal should not be allowed as it was already denied

by the Planning and Development Director. He also stated that a new Application could be applied for to transfer the Division Rights which would allow them to be parked.

II. REASON

The Planning and Zoning Commission found:

1. the Appeal was made within ten (10) calendar days after receiving the decision of the Administrator (Planning & Development Director) by filing with the Administrator a Notice of Appeal specifying the grounds upon which the Appeal is made in compliance with the requirements of Bingham County Code Section 10-10-1(A); and
2. on May 8, 2024, in accordance with Bingham County Code Section 10-10-1(D), the Administrator sought direction from the Planning and Zoning Commission as to how notice should be provided to all affected persons. The request for direction was placed on the meeting Agenda, noticed for action, and Commission determined thereby determined the following:
 - a. All affected persons are defined as those property owners within 300 feet of the property subject to the Appeal and the Appellants; and
 - b. Notice of the Appeal Hearing date shall be provided to those defined affected persons with more than seven (7) days' notice (as required by Bingham County Code Section 10-10-1(D) with Planning and Development Services providing at least fourteen (14) days' notice of the Appeal Hearing; and
 - c. The Appellants may provide supplemental written information to their Appeal no later than seven (7) days prior to the Appeal Hearing date; and
 - d. All testimony presented at the Appeal Hearing, by the defined affected persons and the Appellant, will be provided orally. No written evidence may be submitted at the Appeal Hearing.

the Administrator provided notice of the Appeal in accordance with the direction provided by the Planning and Zoning Commission; and

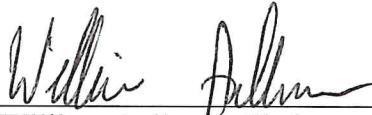
3. the Administrator transmitted to the Commission all papers constituting the record upon which the Appeal is based on May 23, 2024 pursuant to Bingham County Code Section 10-10-10-1(B); and
4. Oscar and Carmen Mattson desire to transfer the three (3) remaining Division Rights from an Original Parcel, referred to as the "Old Presto School Parcel" to another Original Parcel, referred to as the "Farm Parcel" for further land division and development; and
5. in the Administrative Decision, the Planning and Development Services Director determined that Division Rights within the "Farm Parcel" Original Parcel boundaries have been exhausted as there are presently five (5) parcels created consisting of four (4) buildable parcels and one (1) non-buildable parcel; and

6. the justification for the Administrators Decision is pursuant to Bingham County Code Section 10-14-3(A), "*An original parcel in any zone may be divided into no more than four (4) lots including the original parcel. The original parcel shall constitute the first division/building right. Any division of land beyond four (4) of an original parcel shall require a subdivision plat to be filed in accordance with provisions set forth in this chapter,*" Idaho Code Section 50-1301(18), and a Memorandum issued by the Bingham County Board of Commissioners, dated April 21, 2020; and
7. Mr. and Mrs. Mattson believe the exceptions provided in Bingham County Code Section 10-14-3(A) apply to all subsections of 10-14-3 (B-G). According to the Bingham County Prosecutor, the exceptions provided in Bingham County Code Section 10-14-3(A) are only applicable to subsections 10-14-3(A)(1) and 10-14-3(A)(2). Applying those exceptions to subsections 10-14-3 (B-G) is not a correct interpretation or application of the law; and
8. the Bingham County Prosecutor reviewed several sections of Idaho Code that are important and govern the Commissions' decision, such as Idaho Code Title 50 and more specifically Bingham County Code 10-14-3 which states that "*an original parcel in any zone may be divided into no more than four (4) lots including the original parcel. The original parcel shall constitute the first division/building right. Any division of land beyond four (4) of an original parcel shall require a subdivision plat to be filed in accordance with the provisions set forth in this Chapter.*" Prosecutor Jolley added the reason why that section is important is because as the Appeal is considered, if you find that the Administrator has correctly determined that all of the Division Rights have been utilized, the Commission does not have the discretion under either Idaho Code or Section 10-14-3 to grant any sort of variance for the use of Division Rights. He concluded with advising the Commissioners that the decision before them is to determine if the Division Rights have been used and if they have been used then the Commission is limited by Section 10-14-3; and
9. should Mr. and Mrs. Mattson desire to transfer the remaining three (3) Division Rights from the "Old Presto School Parcel" to the "Farm Parcel", the transfer could be applied for with a Conditional Use Permit Application as both parcels have been determined to be Original Parcels and are assessed under one ownership pursuant to Bingham County Code Section 10-14-3(C)(5); and
10. if the Conditional Use Permit Application is approved by the Planning and Zoning Commission, the three (3) Division Rights would be transferred to the "Farm Parcel." The transferred Division Rights could not be used to create additional buildable parcels on the "Farm Parcel" as this Original Parcel has exceeded the number of land divisions utilizing Division Rights, pursuant to Bingham County Code Section 10-14-3(A); and
11. Mr. and Mrs. Mattson have the opportunity to achieve additional buildable parcels within the Original Parcel boundaries of the "Farm Parcel" by applying for a Subdivision Application; and
12. the Administrative Decision of the Planning and Development Director was correct and should be upheld.

III. DECISION

Based on the record, Commissioner Johns moved to deny the Administrative Appeal filed by Oscar and Carmen Mattson. Further, Commissioner Johns stated that the Mattsons' may apply for a Conditional Use Permit to transfer three (3) Division Rights from what is identified as the "Old Presto School Parcel" to the "Farm Parcel" but the three (3) Division Rights cannot be used to create buildable parcels. The "Farm Parcel" has exceeded the number of land divisions allowed by Idaho Code Section 50-1301(178) and Bingham County Code Section 10-14-3(A). Any future land division within the "Farm Parcel" shall be platted. This denial is based upon the referenced codes and on the advice of Bingham County legal counsel who stated the Appellants request to transfer and create parcels with the three (3) Division Rights within the boundaries of the "Farm Parcel" is not legal.

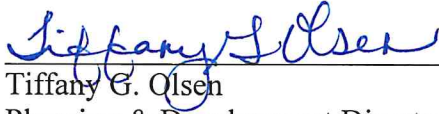
Commissioner Carroll seconded the motion. Commissioners Johns, Carroll, Bingham, Butler, Jensen, and Jolley voted in favor and the motion carried.



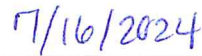
William Aullman, Chairman
Bingham County Planning and Zoning Commission



Date



Tiffany G. Olsen
Planning & Development Director



Date