

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
COUNTY OF LATAH, STATE OF IDAHO**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING A PETITION BY LEN MCCOY TO REZONE (RZ #754) 3.31-ACRES OF A 31.74-ACRE PARCEL OF LAND FROM AGRICULTURE/FOREST (A/F) TO RURAL RESIDENTIAL (RR). THE PROPERTY IS LOCATED EAST OF HIGHWAY 95 APPROXIMATELY FOUR (4) MILES NORTH OF THE CITY OF MOSCOW, IN SECTION 18, TOWNSHIP 40 NORTH, RANGE 5 WEST, B.M., IN LATAH COUNTY, AND REFERENCED AS ASSESSOR'S PARCEL NUMBER RP40N05W181968A.

WHEREAS, Len McCoy made application for rezoning on July 20, 2007; and

WHEREAS, this matter came before the Latah County Zoning Commission for public hearing on September 5th; and

WHEREAS, this matter came before the Latah County Board of Commissioners for decision on whether to accept the Zoning Commission's Findings of Fact and Conclusions of Law, or hold their own public hearing on said application on October 24th, 2007; and

WHEREAS, the Latah County Board of Commissioners elected to hold a public hearing; the public hearing was held December 10th, 2007 and continued to January 7th, 2008; and

WHEREAS, having reviewed the application, including all exhibits entered, and having considered the issues presented by the applicant and the opponents,

THE BOARD OF LATAH COUNTY COMMISSIONERS, STATE OF IDAHO, AFTER DUE DELIBERATION AND CONSIDERATION, HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

I. FINDINGS OF FACT

1. The subject parcel is 31.74 acres. The applicant is requesting to rezone a 3.31-acre parcel to Rural Residential.
2. The subject parcel is zoned Agriculture/Forest (A/F). The surrounding properties are zoned Agriculture/Forest (A/F).
3. The existing uses of the parcel are residential and agriculture in that a portion of the subject property is currently in CRP. The surrounding uses include agriculture, forestry, and residential.
4. The subject parcel and neighboring parcels are designated "Rural" on the Latah County Comprehensive Plan map.

RZ-754 Latah County Board of Commissioners Findings, Conclusion

BOCC HRG: RZ 780
Applicant: BGB LLC
Exhibit No. 81
Date: March 31, 2009

LCZC Hrg: RZ780
Applicant: BGB LLC
Exhibit #: 61
Date: 12/17/2008

5. As set forth in Latah County Ordinance #269, the proposed rezone would no longer allow full-scale commercial agricultural operations and would only allow orchards, commercial fruit and vegetable gardening, plant nurseries and related horticultural operations, not including any processing or year round sales facilities related to the primary use of the property and animal husbandry not to exceed 10 animal units. It would also allow for a short-plat subdivision which would create eligibility for one additional residential building permit on the subject property which is the intent of the owner.
6. The Agriculture/Forest Zone allows a limited number of residential building permits. The subject property is the product of a land division on a 45-acre parcel within the Agriculture/Forest zone.
7. The applicant submitted written and oral testimony discussing a soil types map and a description of soil types in the area of the rezone application, stating that the proposed rezone area on the subject property consists of less productive soils and is therefore suitable for conversion from agriculture to development (Exhibit #22, Exhibit #32).
8. Mr. Charles Graham, representative for the applicant, submitted oral testimony that the soils in the proposed rezone area are well drained and less steeply sloped although the subject property does have steeply sloped areas. Mr. Graham also testified that there is no evidence of slope failures in the proposed rezone area.
9. The applicant testified that the proposed rezone area on the subject property abuts two higher density residential developments known as the Nearing Addition and Hideaway Hills which exist within the Agriculture/Forest zone. The applicant also submitted written and oral testimony that between forty-five and fifty homes currently exist within a one-mile radius of the subject property, including those within the adjacent Nearing Addition and Hideaway Hills (Exhibit# 12). It was shown that the average lot size of these parcels is between five (5) and seven (7) acres and that they are not conducting activities typical for the Agriculture/Forest zone.
10. Mr. Ed Button, Fire Chief for the Moscow Rural Fire District, submitted written testimony in support of the subject rezone request which stated that provided the proposed development complies with the 2003 International Urban-Wildland Interface Code requirements for fire department access roads (20 ft-width minimum), fire apparatus turn-around accommodation, and all-weather road surface (graveled road); the proposed property development would not have a negative impact upon the services provided by the Moscow Rural Fire District (Exhibit #21).
11. The subject property is accessed from a location on U.S. Highway 95 North. The Idaho Transportation Department conditionally approved an amendment to the applicant's current access permit to upgrade it to five single-family residences from one two-family residence, based on sight distance and ITD spacing criteria (Exhibit #26, 35). ITD did not take county zoning criteria into account in its decision (Exhibit #35).
12. Both the Zoning Commission and the Board of County Commissioners expressed concern that the area of the access road is unsafe due to the steep, hilly topography and the speed of travelling vehicles (Exhibit #5, 6, 9, 17). The Board found that concerns with the steepness of that stretch of road, the volume of traffic travelling upon, entering and exiting the road, and seasonal adverse road conditions

created safety requirements beyond the conditions placed upon the access permit by ITD. The Board found that Section 8.02.01.5 of Latah County Land Use Ordinance #269 requires that access onto Highway 95 requires a public road, because the ordinance does not permit a private driveway from a subdivision to enter directly onto state highways maintained by ITD, for safety reasons. The Board further found that a public road would provide improved signage and higher construction standards, which would address some safety concerns. The Board found that a public road would be eligible for funding which could be used to pay for improvements to the intersection, further reducing safety concerns. The Board further discussed traffic safety issues at the potential intersection of a new road and Highway 95. They felt there were still potential safety concerns of people pulling out and causing collisions.

13. The applicant testified that Mr. Graham, his legal representation, had drawn up a legal document which proportionally distributes driveway maintenance thereby enabling the five permitted residences to share driveway maintenance costs. The applicant further stated that if a property owner currently owns a property with a well but no home that individual will not have to help maintain the driveway until there is a dwelling on the property.
14. A neighboring property owner testified that he felt an additional residence would be advantageous for splitting driveway maintenance and snow removal costs.
15. Neighboring property owners testified that the area is known for deep, low producing wells but that people who choose to live in that area are aware of the water scarcity issues and manage to get by with the assistance of holding tanks and conservation measures.
16. A neighboring property owner whose property touches on the north end of the subject property testified that he had expressed objections at the Zoning Commission hearing for the proposed rezone based upon concerns about water and that he had mentioned a potential relationship between a new well which had been dug nearby and the loss of a neighbor's water in their well for one week.
17. The Commissioners discussed that the proposal would create the only parcel zoned rural residential within the general area, however they did not view this as a concern given the large number of smaller parcels adjacent to the subject property and that the character and use of the proposed rezone area and subsequent development would be consistent with the character and use of these adjacent smaller parcels.
18. It was discussed that the additional risks for wildfire related to the low well production in the area, the lack of water storage, and the number of smaller, forested residential properties adjacent to the subject property which were brought up by the Zoning Commission members during the hearing had been addressed by the written testimony of Ed Button in support of the proposed rezone (Exhibit #21).

**BASED ON THE FOREGOING FINDINGS, THE ZONING COMMISSION OF LATAH COUNTY
HEREBY MAKES THE FOLLOWING CONCLUSIONS:**

II. CONCLUSIONS OF LAW

1. The Community Design Element of the Comprehensive Plan seeks to ensure a pattern of planned growth which results in the orderly and attractive development of Latah County. Policy #5 encourages "low density residential development to occur in a pattern which minimizes both conflicts with existing land uses and public service costs." The existing use of the subject property is residential and CRP. The surrounding existing uses are primarily residential as the smaller parcel sizes characterizing the area limit prospects for agricultural and forestry production on adjacent parcels. The proposed rezone is consistent with this element, as the rezone to a higher residential density would be consistent with the size and character of use of parcels in the area.
2. The Population Element of the Comprehensive Plan seeks to ensure that population growth is accommodated in an orderly pattern and to limit higher density residential development to areas easily served by infrastructure and public services. The proposed development is consistent with adjacent residential densities.
3. The Housing element of the Comprehensive Plan seeks to encourage the development of a variety of housing types on land suitable for development. The proposed rezone and development is located on land that is currently in CRP however oral and written testimony was provided that the proposed rezone area is comprised of less productive soils and is therefore suitable for development and consistent with the Housing Element of the Comprehensive Plan.
4. The Economic Development element of the Comprehensive Plan seeks to protect agriculture and forestry lands from scattered development. Because this development is in an unproductive area, it will not be taking potentially productive agricultural or forest lands out of production, which makes this proposal consistent with this element.
5. The goal of the Public Services, Facilities and Utilities Element of the Comprehensive Plan is to provide an orderly pattern of development which will ensure adequate public facilities and services without excessive costs. No testimony was received that the required public services would involve excessive costs to the public. However, testimony was received concerning the poor water availability in the area and the Commissioners concluded that the potential for water scarcity is a characteristic of the area which is understood and acknowledged by residents. Testimony was given that residents in the area may be able to tolerate low well production with the assistance of holding tanks and conservation measures thereby mitigating potential costs of additional residential development to adjacent property owners. Additional testimony received from the Idaho Transportation Department and the Moscow Rural Fire District demonstrated that the proposed rezone and subsequent development are consistent with this element and that they would not involve excessive costs to the public for fire protection services or transportation. Moreover, a requirement for the proposed development to include a public road accessing Highway 95 will provide a public benefit by improving the existing infrastructure of the area.
6. The School Facilities and Student Transportation element of the Comprehensive Plan was determined to be not applicable to the proposed rezone.
7. The Transportation Element of the Comprehensive Plan seeks to promote an efficient and safe transportation system in Latah County. More specifically, policy #1 requires that access onto public roads will not disrupt traffic flow and that access is adequate for emergency response vehicles and

policy #2 of this element requires that the number of access points to state and federal highways be limited. The Commissioners discussed several public safety concerns associated with the road and the subject property's access point which intersects with US Highway 95. In order for the proposed rezone and subsequent development to be consistent with this element the Commissioners concluded that the Idaho Transportation Department's access approval for five residences was necessary but not sufficient and that requirements for the applicant to provide a public road accessing Highway 95 which must be accepted into the North Latah County Highway District's public road system and that the North Latah Highway District address safety concerns at the intersection will address most of their public safety concerns and rendered this proposal consistent with this element. Additionally, requiring a public road prior to allowing a subdivision will bring the development into compliance with Section 8.02.01.5 of Latah County Land Use Ordinance #269.

8. The Natural Resources element of the Comprehensive plan requires that there is sound stewardship of the County's natural resources. There were no natural resource concerns with this development, except for potential groundwater issues, which Policy #3 requires that the County maintain sustainable groundwater resources and prevent the degradation of groundwater quality. The Commissioners received testimony concerning the poor water availability in the area and the Commissioners concluded that the potential for water scarcity is a characteristic of the area which is understood and acknowledged by residents. Testimony was given that residents in the area may be able to tolerate low well production with the assistance of holding tanks and conservation measures thereby mitigating potential costs of additional residential development to adjacent property owners. The Board concludes that without additional scientific information on the water in this area, and with the possibility that the individuals living there could have storage to make up for poor water supplies, that the proposal was consistent with this element.
9. The goal of the Special Areas element of the Comprehensive Plan is to recognize and preserve special areas and sites of historic, archeological, architectural, geological, biological, or scenic significance. No special areas were identified as being at the location where this rezone was proposed.
10. The Hazardous Areas element of the Comprehensive Plan seeks to protect life and property from natural hazards. Policy #1 ensures the appropriate regulation of development in hazardous areas such as unstable slopes. The USGS 7.5 minute topographic map shows the subject property has steeply sloped areas however the applicant's representative testified that the soils in the proposed rezone area are well drained, less steeply sloped and that there was no evidence of slope failure. Therefore this proposal is consistent with this element's intent to minimize higher residential density in hazardous areas. Additionally, Policy #2 ensures that appropriate measures are used to minimize loss of property due to wildfire in rural developments. The Commissioners concluded that this proposal was consistent with Policy #2 due to the Moscow Rural Fire Department's testimony that the proposal would not burden its ability to provide fire protection services in the area.
11. The Recreation element of the Comprehensive Plan does not have any applicable goals or policies for the subject application.
12. The site is located within the Rural land use designation of the Comprehensive Plan Land Use Map. The proposed density is consistent with the land use element in that the rezone would allow a low density development in an area that is suitable for further low density residential development given the

surrounding parcel sizes and character of use in addition to the proposed rezone area's less productive soils.

13. The Board finds that county staff has made the efforts required to comply with the Implementation element of the Comprehensive Plan. The citizen participation was clear and advertised and staff provided a complete packet of information on the subject application and all exhibits received.
14. The Property Rights Element of the Comprehensive Plan seeks to protect property owners from policies and regulations that unconstitutionally violate private property rights. There was no testimony received regarding this element.
15. As required by §6.01.02(1) of the Latah County Land Use Ordinance, the Board of Latah County Commissioners has reviewed the proposal as it relates to the Latah County Comprehensive Plan. The Board of Latah County Commissioners concludes that this application, if conditioned to address traffic safety, is consistent, as a whole, with the goals and policies of the Latah County Comprehensive Plan.
16. As required by §6.01.02(2) of the Latah County Land Use Ordinance, the Board of Latah County Commissioners has reviewed the proposal and determined that the rezone is compatible with the surrounding area and the uses permitted in that area.
17. As required by §6.01.02(3) of the Latah County Land Use Ordinance, the Board of Latah County Commissioners has reviewed the proposal and determined that the rezone would not impose costs on the general public or to public services that exceed the benefits resulting from the proposed rezone.
18. As required by §6.01.02(4) of the Latah County Land Use Ordinance, the Board of Latah County Commissioners has reviewed the proposal and determined the rezone will not impose a significant burden to any public services.
19. As required by §6.01.02(5) of the Latah County Land Use Ordinance, the Board of Latah County Commissioners has reviewed the proposal and determined that the rezone is not a spot zone.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, the Latah County Board of Commissioners approves the application to rezone 3.31-acres of a 31.74-acre parcel from Agriculture/Forest (A/F) to Rural Residential (RR) with the following conditions to be set forth in a development agreement:

1. A public road must be provided that accesses the state Highway (US Highway 95) that the North Latah County Highway District has to accept into their public road system, which will be utilized by the lot this subdivision creates, prior to a short plat being allowed.
2. The North Latah County Highway District should address the safety concerns of the intersection of the new public road and Highway 95.
3. The rezoned property and any subsequent development will be in substantial compliance with the application as presented and the materials as submitted.

4. The rezoned property and any subsequent development will be in compliance with Federal, State and local regulations.

IV. REQUIRED LEGAL NOTICES

NOTICE OF EFFECTIVE DATE AND NOTICE OF RIGHT TO APPEAL

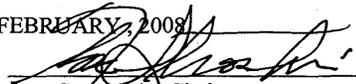
This decision is effective on the date passed and signed by the Latah County Board of Commissioners. This is a final action. An affected person aggrieved by this decision may, within twenty-eight (28) days after the effective date, seek judicial review as provided by Chapter 52, Title 67, Idaho Code.

NOTICE OF RIGHT TO REQUEST REGULATORY TAKINGS ANALYSIS

The owner of the property that is the subject of this decision may make a written request to the Latah County Planning and Building Department for a Regulatory Takings Analysis within twenty-eight (28) days from the date of this decision as provided by Chapter 80, Title 67, Idaho Code.

PASSED BY THE BOARD OF COMMISSIONERS OF LATAH COUNTY THIS 13TH DAY OF

FEBRUARY 2008



Tom Stroschein, Chairman
Board of Latah County Commissioners

Aimee Shipman

From: Phil Garner [ppg@wsu.edu]
Sent: Tuesday, December 16, 2008 9:09 AM
To: ashipman@latah.id.us
Subject: Rezone Application RZ #780

Dear Zoning Commission,

As a resident of Moscow Mountain, I want to go on record AGAINST the proposed rezone. A rationale for OPPOSITION to this rezone has been clearly elucidated in a letter that my neighbor Marilyn Beckett has sent to you. I agree with her assessment. I have also read your rejection of the previous application to rezone this property (RZ #731). In my opinion, the current application does not overcome your previously stated objections and, therefore, should be rejected as a spot zone.

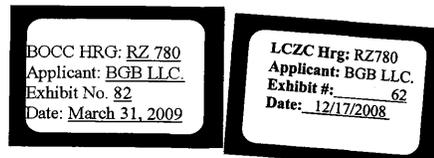
Sincerely yours,

Philip Garner
1069 Nearing Road
Moscow, ID 83843

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Philip Paul Garner
Professor of Chemistry
Washington State University
Pullman, WA 99164-4630

phone: (509) 335-7620
fax: (509) 335-8867
email: ppg@wsu.edu
<http://garner.chem.wsu.edu/>

12/16/2008



Aimee Shipman

From: Jarrod Nichols [jnichols@latahrealty.com]
Sent: Tuesday, December 16, 2008 9:48 AM
To: Aimee Shipman
Subject: Fw: Letter of Support

----- Original Message -----

From: [Larry Leppelman](#)
To: [Jarrod at Latah Realty](#)
Sent: Tuesday, December 16, 2008 9:37 AM
Subject: Fw: Letter of Support

Dec. 16, 2008

Latah County Zoning Commission,

I am a long time resident of Latah County and currently live in a country setting. I feel rezone #780 is a great proposal and should be supported by the county. It's clear this area is a rural residential neighborhood and 4 home sites on 135 acres will not differ measurably from the many homes that surround it.

Sincerely,

Larry Leppelman
1040 Browns Lane
Potlatch, ID 83855

FREE Emoticons for your email! [Click Here!](#)



12/16/2008

BOCC HRG: RZ 780
Applicant: BGB LLC.
Exhibit No. 83
Date: March 31, 2009

LCZC Hrg: RZ780
Applicant: BGB LLC.
Exhibit #: 63
Date: 12/17/2008

December 13, 2008

Latah County Zoning Commission
522 S. Adams St.
Moscow, ID 83843

RE: Rezone #780

LATAH COUNTY
DEC 16 2008
RECEIVED

I am in support of the 40 acre rezone from Agricultural/Forest to Rural Residential north of Moscow. The owners have a well thought out plan that is in favor of the neighboring homeowners, the residents of Latah County and the new owners as well. They are designating a large parcel for nature conservations which allows for the current landscape to remain as well as offering a buffer between current and developed residences. I believe that rezone #780 will be a great addition to Moscow and the surrounding area.

Sincerely,

RAY MATSON

Ray Matson

BOCC HRG: RZ 780
Applicant: BGB LLC
Exhibit No. 84
Date: March 31, 2009

LCZC Hrg: RZ780
Applicant: BGB LLC
Exhibit #: 64
Date: 12/17/2008

December 13, 2008

Latah County Zoning Commission
522 S. Adams St.
Moscow, ID 83843

RECEIVED

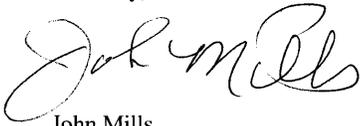
DEC 16 2008

LATAH C

RE: Rezone #780

I am writing this letter in my support of rezone #780. I believe that developing the 40 acre Agricultural/Forest area to Rural Residential will be a positive addition to the north end of Moscow. The owners designated parcel for nature conservation will provide ample ground to conserve the historic rolling hills as well as create distance between homes to maintain the ambiance to the Palouse. The owners of this property have the best interests of the Latah County, the community, and the neighboring homeowners at heart and have put much thought into the planning of the development of this property.

Sincerely,



John Mills

BOCC HRG: <u>RZ 780</u> Applicant: <u>BGB LLC</u> Exhibit No. <u>85</u> Date: <u>March 31, 2009</u>	LCZC Hrg: <u>RZ780</u> Applicant: <u>BGB LLC</u> Exhibit #: <u>65</u> Date: <u>12/17/2008</u>
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Aimee Shipman

From: Linda Spady [lspady@moscow.com]
Sent: Thursday, December 18, 2008 9:25 AM
To: ashipman@latah.id.us
Subject: Rezone application #780

Hello Ms. Shipman,
I am a resident at the dead-end of Foot Hill Rd. and want to comment on application #780 for rezoning of property that is in the Lewis Rd/Foot Hill Rd. area.
I believe it is best to leave that property as the quality producing farmland that it is and not tax the well water in this area or increase congestion. We have had to put two wells in and had to hydro fracture our second well not long ago due to decrease in water flow. Many people out here have had similar problems. Thanks you for considering this email.
Sincerely, Linda Spady

12/16/2008

BOCC HRG: RZ 780
Applicant: BGB LLC.
Exhibit No. 86
Date: March 31, 2009

LCZC Hrg: RZ780
Applicant: BGB LLC.
Exhibit #: 66
Date: 12/17/2008

Aimee Shipman

From: CRAIG.KNOTT@usbank.com
Sent: Wednesday, December 17, 2008 8:44 AM
To: ashipman@latah.id.us
Subject: letter of reference RP40N05W177230 RP40N05W165616

Aimee - a late arrival support letter for Rezone #780. This is from Rick Minard of Moscow Building Supply. - Craig

----- Forwarded by Craig D Knott@USB on 12/17/2008 08:41 AM -----

"Rick Minard" <theminards@roadrunner.com>
To <craig.knott@usbank.com>
cc
12/17/2008 08:09 AM
Subject letter of reference RP40N05W177230 RP40N05W165616

In my line of work, I have people that are tired of paying so much for a city lot that is so small and expensive. I understand there may be a parcel north of town that may be able to be rezoned and chopped into 4 larger lots that would be affordable. My take on this would be that it may give people a nice option for \$\$ and value for a sizable lot. It's close to town and it sounds like it would be a very nice looking site(s). I also understand that the remaining land would be donated to as conservation land.

Yes, I'm in the building industry, but I think this rezone would make sense as potential homebuyers look for values in the future.

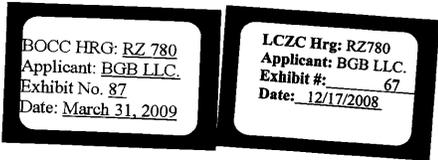
Regards

Rick Minard
Moscow Building Supply

U.S. BANCORP made the following annotations

Electronic Privacy Notice. This e-mail, and any attachments, contains information that is, or may be, covered by electronic communications privacy laws, and is also confidential and proprietary in nature. If you are not the intended recipient, please be advised that you are legally prohibited from retaining, using, copying, distributing, or otherwise disclosing this information in any manner. Instead, please reply to the sender that you have received this communication in error, and then immediately delete it. Thank you in advance for your cooperation.

12/17/2008



Aimee Shipman

From: Jarrod Nichols [JNichols@LatahRealty.com]
Sent: Wednesday, December 17, 2008 8:56 AM
To: Aimee Shipman
Subject: Fw: Letter of Support

"Eric Busch" <eric.busch@buschdist.com>

To <CRAIG.KNOTT@usbank.com>

cc

12/16/2008 05:25 PM

Subject FW: Letter of Support

To: Latah County Commissioners and Zoning Commission
522 S. Adams
Moscow, ID 83843

I am in support of the 40 acre rezone off Lewis/Foothill Rd. from AG/F to Rural Residential to create 4 home sites.

Eric Busch

12/17/2008

BOCC HRG: RZ 780
Applicant: BGB LLC.
Exhibit No. 88
Date: March 31, 2009

LCZC Hrg: RZ780
Applicant: BGB LLC.
Exhibit #: 68
Date: 12/17/2008

INTRODUCTION-RZ 780

In 2002, Richard Whitmore applied for a land division (LD02-036) on a 308-acre parcel owned by Claudine Lewis. The land division created a 5.91-acre buildable parcel and left an approximately 302-acre remainder buildable parcel. The new parcel was conveyed to Richard Whitmore. In 2004, the remainder property was transferred to Richard Whitmore and Lynette Jordan through the estate of Ms. Lewis. Lynette Jordan then quitclaimed her 1/2 interest to Mr. Whitmore. The portion of the property that was located south of Lewis Road in sections 20 & 21 was then deeded to Charlene Connelly thru the estate of Ms. Lewis, which created a new existing parcel. The building permit for the parcel north of Lewis Road that was owned by Mr. Whitmore was transferred to a 10-acre parcel and deeded to Thomas Besser and Kathleen Potter. This left Mr. Whitmore with an unbuildable parcel of 135 acres. This 135-acre parcel, that is the subject of this rezone, is not eligible for any other land divisions.

Additionally, in 2006 this 135-acre parcel was the subject of a similar rezone request (RZ 731). At that time the Latah County Zoning Commission recommended denial of the rezone application based upon lack of consistency with the goals and policies of the Comprehensive Plan; incompatibility with the surrounding area and the uses permitted in that area; likely imposition of costs on the public that exceed the benefits; imposition of significant burden on public services; and the determination that the rezone would constitute a spot zone.

2) Section 6.01.02 states that the Zoning Commission may recommend Board approval of a rezone application if the Commission finds that the proposed rezone conforms to each of the following criteria:

1. The rezone is in accordance with the goals and policies of the Comprehensive Plan.
2. The rezone, and the uses it permits, shall not be detrimental to or incompatible with the surrounding area, and the uses permitted in that area.
3. The rezone must provide some public benefit that exceeds any costs imposed upon the public.
4. The rezone shall not impose a significant burden to any public services.
5. The rezone shall not be a spot zone.

The Zoning Commission may recommend approval for rezone proposals that do not initially meet criteria 1-5, if the applicant can provide substantial mitigation through a written development agreement as provided by 6.01.03.4 of this ordinance. The Commission may also recommend approval for applications not meeting the criteria listed above, if the Commission finds that the rezone is essential to the public health, safety, or welfare

The following exhibits will now be entered into the record:

EXHIBITS:

- Exhibit #1.** Staff Report
- Exhibit #1A.** Criteria Worksheet
- Exhibit #1B.** Latah County Comprehensive Plan and Vicinity Map
- Exhibit #1C.** Zoning Map

BOCC HRG: <u>RZ 780</u> Applicant: <u>BGB LLC</u> Exhibit No. <u>90</u> Date: <u>March 31, 2009</u>	LCZC Hrg: <u>RZ780</u> Applicant: <u>BGB LLC</u> Exhibit #: <u>70</u> Date: <u>12/17/2008</u>
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- Exhibit #1D.** Aerial Photo and Adjacent Property Owners Map
- Exhibit #1E.** U.S.G.S. 7.5 Minute Topographic Map
- Exhibit #1F.** Photos of Subject Property
- Exhibit #1G.** Latah County Zoning Commission Findings of Fact and Conclusions of Law for RZ 731
- Exhibit #2.** Application Form (Submitted by Applicant)
- Exhibit #2A.** Applicant's Narrative (Submitted by Applicant)
- Exhibit #2B.** Aerial Photo Map with Proposed Rezone and Conservation Areas (Submitted by Applicant)
- Exhibit #2C.** Aerial Photo Map with Proposed Lots and Conservation Areas (Submitted by Applicant)
- Exhibit #2D.** Parcel Map with Proposed Rezone Area (Submitted by Applicant)
- Exhibit #2E.** Aerial Photo Map with Addressed Structures with a 6700 foot radius of Section 17 (Submitted by Applicant)
- Exhibit #2F.** Latah County Comprehensive Plan Land Use Map (Submitted by Applicant)
- Exhibit #2G.** Vicinity Map (Submitted by Applicant)
- Exhibit #2H.** Assessor's Plat Map (Submitted by Applicant)
- Exhibit #2I.** Latah County Short Plat Acknowledgement Form for School District (Submitted by Applicant)
- Exhibit #2J.** Letter from North Latah County Highway District to Brad Lewis dated July 29, 2008 (Submitted by Applicant)
- Exhibit #2K.** Letter from North Central District Health Department to Jarrod Nichols dated November 26, 2008 (Submitted by Applicant)
- Exhibit #2L.** Latah County Short Plat Acknowledgement Form for Sheriff (Submitted by Applicant)
- Exhibit #2M.** Letter to Brad Lewis from Palouse Land Trust (Submitted by Applicant)
- Exhibit #3.** Email to Planning and Building Department from Kevin Clary received December 1, 2008
- Exhibit #4.** Email to Planning and Building Department from Tom Besser and Kathleen Potter received November 29, 2008
- Exhibit #5.** Letter to Latah County Zoning Commission from Emily Hurley received December 4, 2008
- Exhibit #6.** Letter to Latah County Zoning Commission from Gary Tribble received December 5, 2008
- Exhibit #7.** Letter to Planning and Building Department from Russell Spangler received December 5, 2008
- Exhibit #8.** Letter to Planning and Building Department from Wes Carscallen received December 5, 2008
- Exhibit #9.** Letter to Planning and Building Department from Christy Sanderson received December 5, 2008
- Exhibit #10.** Letter to Planning and Building Department from David Whitcomb received December 5, 2008
- Exhibit #11.** Email to Planning and Building Department from Sam Dial via Craig Knott received December 8, 2008
- Exhibit #12.** Letter to Latah County Zoning Commission from Eric and Kyla Kiblen received December 8, 2008
- Exhibit #13.** Letter to Latah County Zoning Commission from Jeff Pilcher received December 8, 2008
- Exhibit #14.** Letter to Latah County Zoning Commission from Shannon McLuen received December 8, 2008
- Exhibit #15.** Letter to Latah County Zoning Commission from Ben McLuen received December 8, 2008
- Exhibit #16.** Letter to Latah County Zoning Commission from Lani Lemmon received December 8, 2008
- Exhibit #17.** Email to Planning and Building Department from Brad Broenneke via Craig Knott received December 10, 2008
- Exhibit #18.** Letter to Latah County Zoning Commission from Tim Kinkeade received December 10, 2008
- Exhibit #19.** Letter to Latah County Zoning Commission from John Bailes received December 10, 2008
- Exhibit #20.** Email to Planning and Building Department from Dave Kiblen received December 11, 2008
- Exhibit #21.** Letter to Latah County Zoning Commission from Chuck Spurgeon received December 11, 2008
- Exhibit #22.** Letter to Latah County Zoning Commission from Nancy Largent received December 11, 2008
- Exhibit #23.** Letter to Latah County Zoning Commission from David Germer received December 11, 2008
- Exhibit #24.** Email to Planning and Building Department from Sid Eder received December 11, 2008
- Exhibit #25.** Letter to Latah County Zoning Commission Concerning RZ 731 from William Elliott received October 26, 2006 (Requested by Sid Eder)

- Exhibit #26. Letter to Latah County Zoning Commission Concerning RZ 731 from Kevin Brackney received October 30, 2006 (Requested by Sid Eder)
- Exhibit #27. Copy of Powerpoint Presentation (Submitted by Applicant)
- Exhibit #28. Email to Planning and Building Department from Sid Eder received December 11, 2008
- Exhibit #29. Letter and Attachments to Latah County Zoning Commission Concerning RZ 731 from Dr. George Grader received October 31, 2006 (Requested by Sid Eder)
- Exhibit #30. Email to Planning and Building Department from Kevin Driskill via Craig Knott received December 11, 2008
- Exhibit #31. Letter to Latah County Zoning Commission from David Mendenhall received December 11, 2008
- Exhibit #32. Letter to Latah County Zoning Commission from Cliff and Lynette Byers received December 11, 2008
- Exhibit #33. Letter to Latah County Zoning Commission from Scott and Kelly Hall received December 11, 2008
- Exhibit #34. Email to Planning and Building Department from Chanc Hiatt via Craig Knott received December 11, 2008
- Exhibit #35. Letter to Latah County Zoning Commission from Linda Sprenger received December 11, 2008
- Exhibit #36. Letter to Latah County Zoning Commission from Mike Sprenger received December 11, 2008
- Exhibit #37. Email to Planning and Building Department from Dave Potter received December 12, 2008
- Exhibit #38. Copy of Powerpoint Presentation of Topographical Views of Proposed Rezone Area (Submitted by Dave Potter)
- Exhibit #39. Email to Planning and Building Department from Shelley Frei received December 12, 2008
- Exhibit #40. Letter to Latah County Zoning Commission from William Bonney received December 12, 2008
- Exhibit #41. Email to Planning and Building Department from Sid Eder received December 12, 2008
- Exhibit #42. Letter to Latah County Zoning Commission from Shawna Yuill received December 12, 2008
- Exhibit #43. Email to Latah County Zoning Commission from Marc Thiel received December 12, 2008
- Exhibit #44. Letter to Latah County Zoning Commission from Gerald and Judy Nichols received December 12, 2008
- Exhibit #45. Letter to Latah County Zoning Commission from Tiffany Bentley received December 12, 2008
- Exhibit #46. Email to Planning and Building Department from Rick Whitmore received December 12, 2008
- Exhibit #47. Email to Planning and Building Department from George Grader received December 12, 2008
- Exhibit #48. Email to Latah County Zoning Commission from Kyle Hawley received December 12, 2008
- Exhibit #49. Letter to Latah County Zoning Commission from Marilyn Beckett received December 12, 2008
- Exhibit #50. Photo of Subject Property and Cropland Acreage Map Submitted by Marilyn Beckett

The following exhibits were submitted after the staff packets were sent out.

- Exhibit #51. Letter to Latah County Zoning Commission from Lauren Fins received December 12, 2008
- Exhibit #52. Email to Planning and Building Department from Richard and Kathleen Jacobs received December 15, 2008
- Exhibit #53. Email to Planning and Building Department from Tod Kiblen forwarded via Jarrod Nichols received December 15, 2008
- Exhibit #54. Email to Planning and Building Department from Karen McGarvey forwarded via Jarrod Nichols received December 15, 2008
- Exhibit #55. Letter from Ted Wright of McPherson and Wright Drilling received December 15, 2008
- Exhibit #56. Letter from John Bush received December 15, 2008
- Exhibit #57. Letter to Michael Hoffman from John Monks dated November 8, 2006
- Exhibit #58. Letter to Planning and Building Department from Jeff DeMeerleer received December 15, 2008
- Exhibit #59. Letter to Latah County Zoning Commission from Marilyn Beckett received December 15, 2008
- Exhibit #60. Email to Planning and Building Department from Terri Guenther forwarded via Craig Knott received December 15, 2008
- Exhibit #61. Board of County Commissioners Findings of Fact and Conclusions of Law for Rezone #RZ754
- Exhibit #62. Email to Planning and Building Department from Philip Garner received December 16, 2008

- Exhibit #63.** Email to Planning and Building Department from Larry Leppelman forwarded via Jarrod Nichols received December 16, 2008
- Exhibit #64.** Letter to Latah County Zoning Commission from Ray Matson received December 16, 2008
- Exhibit #65.** Letter to Latah County Zoning Commission from John Mills received December 16, 2008
- Exhibit #66.** Email to Planning and Building Department from Linda Spady received December 16, 2008
- Exhibit #67.** Email to Planning and Building Department from Rick Minard forwarded by Craig Knott received December 17, 2008
- Exhibit #68.** Email to Planning and Building Department from Eric Busch forwarded by Jarrod Nichols received December 17, 2008
- Exhibit #69.** Vicinity Map with Rural Residential Zoning on Foothill Road (Submitted by Staff)
- Exhibit #70.** Staff Introduction for Latah County Zoning Commission Hearing for RZ 780 on December 17, 2008

That is all staff has unless the Commission has questions.

Aimee Shipman

From: Jarrod Nichols [JNichols@LatahRealty.com]
Sent: Thursday, February 19, 2009 4:25 PM
To: Aimee Shipman
Cc: Michelle Fuson
Subject: Fw: Rezone 780

RECEIVED

FEB 20 2009

LATAH COUNTY

----- Original Message -----

From: <nearla@moscow.com>
To: <jnichols@latahrealty.com>
Sent: Wednesday, February 18, 2009 10:09 AM
Subject: Rezone 780

>
>
> We, Guy J. and Verla Mae Nearing approve of the rezoning of the Lewis
> land (reference rezone 780) north of Moscow. The owners have put a lot
> of thought into this project and it should not interfere with anyone
> else's view or peace and quiet. Guy lived in the area since 1940 and
> Verla Mae since 1947 until June 2007 when we moved to town and our
> grandson, Eric Kibler and wife, bought our place. We are in favor of the
> rezone 780.

>
> Guy J. and Verla Mae Nearing
> 330 Susan Drive
> Moscow, Idaho
> 83343-9482

>
> -----
> This message was sent by First Step Internet.
> <http://www.fsr.com/>

>
>

BOCC HRG: RZ 780
Applicant: BGB LLC
Exhibit No. 91
Date: March 31, 2009

Aimee Shipman

From: Michelle Fuson [mfuson@latah.id.us]
Sent: Friday, February 20, 2009 3:03 PM
To: 'Aimee Shipman'
Subject: FW: Rezone #780

RECEIVED
FEB 20 2009
LATAH COUNTY

From: Tom Stroschein [mailto:tstroschein@latah.id.us]
Sent: Friday, February 20, 2009 9:41 AM
To: 'Michelle Fuson'
Subject: FW: Rezone #780

From: Bill Caldwell [mailto:grundy@turbonet.com]
Sent: Monday, February 16, 2009 4:49 PM
To: tstroschein@latah.id.us
Subject: Rezone #780

I would say that we should not be rezoning farm land to housing development.

Thanks...Bill Caldwell 1091 Saddle Ridge Road Moscow ID 83843

2/20/2009

BOCC HRG: RZ 780
Applicant: BOB LLC
Exhibit No. 92
Date: March 31, 2009

Aimee Shipman

From: Robert Wrigley [robertwrigley@gmail.com]
Sent: Monday, March 02, 2009 5:08 PM
To: ashipman@latah.id.us
Subject: Rezoning Request #780

RECEIVED
MAR 02 2009
LATAH COUNTY

March 2, 2009

Dear Commissioners,

We are writing to express my opposition to the rezoning request that you will be consider (known as RZ #780). We understand the difficulties in trying to balance appropriate development with the county's (as well as the state's and the nation's) long-term interests. But it seems to me that the subdivision development here in question is clearly a development that is inappropriate. We live on Tolo Trail, on the lower slopes the western flank of Moscow Mountain, and every summer we worry a little more about water. Our well is 400+ feet deep and the water is good, but there just isn't very much of it. This is, of course, nothing new. Water's not easy to find here, and some of my neighbors have had far more difficulty with their wells than we have. But this new development will require a considerable amount of water, and that should make us all nervous.

In addition, there is the great tradition of Palouse farmland. We live among some of the most fertile and productive dry land farming ground on the planet, and surely such a thing is worth preserving. Our crops require no irrigation and our farmland is enormously productive. Farming has been a part of Latah County's history since European settlement. It defines our place in the world and our sense of ourselves, and we are told the land in question has been continuously farmed and productive for going on a century.

Finally, there is the matter of this request not complying with the county's land use ordinance 269, which prohibits spot zoning. The land in question is not at all like the land our home is nor our neighbors' homes are on. We can grow trees, mostly yellow pines; there, wheat, peas, lentils, and more. If this is not an example of the very sort of spot zoning the ordinance is meant to prohibit, we cannot imagine what would be.

Thanks in advance for your consideration. We appreciate your hard work and dedication to the county, and we trust in your making the right decision in this case.

Sincerely,
Robert Wrigley & Kim Barnes
1068 Tolo Trail
Moscow, ID 83843
892-9517
robertwrigley@gmail.com
kbarnes@uidaho.edu

--
Robert Wrigley
1068 Tolo Trail
Moscow, ID 83843
208.892.9517

BOCC HRG: RZ 780
Applicant: BGB LLC
Exhibit No. 93
Date: March 31, 2009

3/3/2009

David L. Mendenhall and Lucy Gott Mendenhall
3404 Foothill Road
Moscow, ID 83843
Phone 208 882-2947

Latah Board of County Commissioner
BOCC
PO Box 8068
Moscow, ID 83843

RE: Opposition to RZ #780

Dear Commissioners,

Others have stated their opinions, beliefs and facts as to the negative effects of the proposed Spot rezone with respect to jeopardizing existing neighborhood property values by further diminishing the available water beyond the point where neighboring properties (and those of the unfortunate would-be new home buyers) would be useful as residential property. Loss of aesthetics and of rare, productive non-irrigated agricultural land of a peculiar nature to the local environment, and the inconsistency of this proposal with the County Comprehensive Plan are other points which have been raised. We wish to add our voices to the growing chorus who see these negatives.

Some have even touched on the opportunism by LLC members, in bringing this project before the Commissioners so soon after a nearly-identical project was rejected, to take "a fast lane to riches" at the expense of the pragmatic approach of the Comprehensive Plan for future development, by purchasing farmland at low "protected farm" prices, and make a quick killing by turning it into development property. The approval of this project would be the death knell of the Comprehensive Plan, because it would undoubtedly be cited as a precedent in future re-zone applications, to further erode agriculture in and around Moscow. All currently protected farm land will become fair game for developers to grab, rezone, and dump onto the market.

We all agree that farmers cannot compete monetarily with developers for land, and that is the reason the protection of ag land is a keystone of the Comprehensive Plan. Because of the Commissioner's recent refusal to rezone this parcel, this land was purchased for about 1/10 the lowest-priced residential acreage near Moscow. In short, if this land had not already been set aside as protected farm acreage, this desired windfall profit would not be possible at all. The Applicants need to consider that Latah county has one set of rules which apply to ALL of us, regardless of what they might think. Seeking their fortune by expecting "Special exception" to those rules is not a path to a realization of that fortune.

RECEIVED

MAR 0 2009

LATAH COUNTY
RECEIVED

MAR 0 2009

LATAH COUNTY

BOCC HRG: RZ 780
Applicant: BGB LLC
Exhibit No. 94
Date: March 31, 2009

Recently, my Wife and I attended the P&Z commission's review of the Comprehensive Plan, and during that review, an interesting conversation was had between Michelle Fuson and an attendee. The Gist of the conversation was the availability of buildable home sites within Latah County. The attendee asked Michelle how many "Buildable" sites were already approved and what sites would get automatic approval under the existing ordinances. To which Michelle answered that she believed, that coupled together, the existing approved sites, and the sites that would be automatically approved under the existing rules, could and would easily increase the available housing in Latah County by Fifty to Hundred percent. With this assessment, I would wonder why any developer and/or the County Commissioners would entertain any application for the withdrawal of AG land that has been consistently farmed for over 80 years. At the very least, we know that a lack of suitable land is not a valid factor in this effort, nor is there any pressing need to abrogate the Comprehensive Plan.

After listening, in toto, to the Planning and Zoning Commissioners' meeting that led to their approval of this application, it is clear that some would like to abandon the Comprehensive Plan. It is not an exaggeration to note that a tone of snarling contempt and disregard of the limitations of the Comprehensive Plan is evident, on the part of some of the participating commissioners. Any person who is clearly attempting to circumvent the ordinances he is supposed to administer, or who finds it too complicated to disentangle his personal interests from his public responsibilities, should not serve in the capacity of administrator.

We have been in contact with the Idaho Department of Transportation (IDT) and our expectations are that they will submit the same or similar testimony they did in the previous application to spot rezone this parcel ie. RZ #731, quote:

"The IDT would call upon the NLCHD for all the necessary highway improvements (left and/or right turn lanes) at Highway 95 and Lewis Road to accommodate the increased traffic from the local road approach which could result in excessive cost to the public."

We don't know why they did not respond to the current application prior to the zoning commissions' hearing, but hope this has been remedied, and they will respond before this hearing. The previous finding of fact by the IDT, in the nearly identical case, directly disproves the applicant's Sub section 6.01.02(3), because the applicant has shown NO public benefit from their application, and the IDT has determined there will be "Excessive Costs to the Public".

In conclusion, we request that you uphold your previous protection of dryland farming, and continue to steer our beautiful county into a future of lasting abundance, by denying the spot rezone request RZ #780.

We respectfully request the ability to offer additional testimony at your forthcoming hearing.

Yours truly,

David Lowell Mendenhall

Lucy Gott Mendenhall

Aimee Shipman

From: Michelle Fuson [mfuson@latah.id.us]
Sent: Friday, March 06, 2009 10:55 AM
To: 'Aimee Shipman'
Subject: FW: Rezone 780

REC
MAR 06 2009
LATAH COUNTY

-----Original Message-----

From: Kevin & Lori Clary [mailto:clary@turbonet.com]
Sent: Friday, March 06, 2009 10:54 AM
To: tstroschein@latah.id.us; jnelson@latah.id.us; jbarrett@latah.id.us; mfuson@latah.id.us; CRAIG.KNOTT@usbank.com
Subject: Rezone 780

Dear County Commissioners,

I will keep this simple and to the point. I support Rezone 780 because it is being developed with respect and consideration to the community and our comprehensive plan, but most of all, because it fills a need to home buyers.

10 acres and close to town is hard to find. I don't see any downside with this project as I read it and I hope you will support it.

Sincerely,
Kevin Clary

BOCC HRG: RZ 780
Applicant: BGB LLC
Exhibit No. 95
Date: March 31, 2009