



**RUEN-YEAGER & ASSOCIATES, INC.**  
ENGINEERS ♦ PLANNERS ♦ SURVEYORS

November 12, 2024

Via email and hand-delivery

Bonner County Board of Commissioners  
Jake Gabell, Bonner County Planning Director  
Alex Feyen, Bonner County Planner

**RECEIVED**

NOV 12 2024

Bonner County  
Planning Department

RE: Reconsideration Request of BOCC Denial of File ZC0007-24, McPherson

Dear Bonner County Board of Commissioners:

Applicant Gail McPherson, through her representative, Ruen-Yeager & Associates, Inc., hereby submits this request for reconsideration of the Bonner County Board of Commissioners; (BOCC) decision to deny file ZC0007-24, pursuant to the provisions of Idaho Code §67-6535. The zone change application was denied at the public hearing on October 23, 2024. The official decision letter is dated October 28, 2024 (attached). This request for reconsideration is within the time allowance for requests for reconsideration per Bonner County Revised Code (BCRC) 12-262 and Idaho Code, and confirmation from Bonner County Planning Director Jake Gabell, who stated the last day eligible for submittal and payment is November 12, 2024, by the end of the working day.

This request for reconsideration is based on the following deficiencies in the BOCC determination to deny file ZV0007-24: That the decision was: 1) arbitrary, capricious or an abuse of discretion; 2) not supported by substantial evidence on the record as a whole; and 3) made upon unlawful procedure.

Arbitrary, Capricious or Abuse of Discretion -

1. The use of the subject parcels as agricultural lands and standards of a different zoning district were used as reasons for denial of the file.
  - a. BOCC stated they did not want the land made smaller than 10 acres as it would fragment the farming operations and impact surrounding agricultural operations. The BOCC also used standards of the Agricultural/Forest zoning districts instead of the Rural zoning districts. BCRC 12-323(A-2) for the Rural Districts states, "*allowing small scale farming and forestry activities, and tourism and recreation uses that can be supported by rural service levels and are compatible with rural character.*" This statement applies to both the Rural-10 and Rural-5 zones, meaning that parcels as small as 5 acres are considered appropriate for small scale farming. It is the Agricultural/Forestry Districts (BCRC 12-322) which states lands should be retained for efficient farming, **not** the Rural Districts. BCRC 12-322(A-1) states, "*establishing residential density limits and conservation development standards to retain areas sized for efficient farming.*" Per County Planning Director Jake Gabell during the October 23, 2024, public hearing and the standards of the BCRC, no standards of the Agricultural/Forestry zoning districts could be used, only those of the Rural zoning districts. The desire to not have agricultural lands subdivided was arbitrary because small scale farming is permitted in the Rural zoning districts down to 5 acres in size. The use of the Agricultural/Forestry zoning districts' standards was arbitrary and an abuse of discretion as these standards are not applicable to land proposed to be zoned Rural.
2. The BOCC stated in their decision for denial that if the lands have at least one characteristic of the Rural-10 zone, then the request to be changed to Rural-5 must be denied. The BOCC has in the past consistently approved zone changes where it was shown that the land had small portions of 30% or greater slopes but were not considered "characterized" as having those slopes due to the majority of the property not having them.

Not Supported by Substantial Evidence on the Record as a Whole -

1. The Zoning Commission unanimous recommendation to approve this file was not discussed nor the reasoning for the recommendation for approval of the file (Zoning Commission letter of recommendation attached).
2. The slopes of 30% or greater located on the top of the ridge along the eastern boundary of the southernmost subject parcel was used as a reason for denial as the BOCC stated the presence of the slopes characterizes the property as having slopes of 30% or greater.
  - a. The BCRC does not define “characterized” so the dictionary definition is defaulted to which states it is “*to describe the character or quality of.*” This definition does not indicate that one feature or character/quality, such as a small area of the subject parcels having slopes of 30% or greater, found on the subject parcels characterize the lands as a whole in that manner. Per Mr. Gabell during the October 23, 2024, public hearing, it has been the history of the BOCC to interpret “characterized” as the majority of the land being covered in slopes of 30% or greater. Using this interpretation for the approval of past zone changes also sets a precedence for future zone changes.
  - b. Of the total 79.5 acres (3,463,020 square feet) being requested for the zone change, approximately 4 acres (174,240 square feet) of that total land area has slopes of 30% or greater. Less than 5% of the land has slopes of 30% or greater and they are located on a single ridge which is an extension from the main ridge located south of the subject sites on Rural-5 zoned parcels.
3. The BOCC used the presence of Mission Silt Loam soils as a reason to deny the file, stating that due to the soil being described as, “*considered farmland of statewide importance, only if drained.*” however, Mr. Gabell, at the October 23, 2024, public hearing, stated that through work with the Planning Commission “farmland of statewide importance” was separated from “prime agriculture soils” and is different from prime agriculture soils. Mr. Gabell also noted that there is no definition for “farmland of statewide importance” and the BOCC cannot consider it as prime agriculture soils. There are only seven soils that are classified as prime farmland soils when irrigated and less than 6% slopes, per the Soil Survey of Bonner County Area, Idaho. Mission Silt Loam is not one of the seven. In fact, the Soil Survey for #32, Mission Silt Loam, 2% to 12% slopes states this soil unit is somewhat poorly drained with very slow permeability. While suited to non-irrigated crops, the soil is limited by its depth to hard pan and its slow permeability. Grazing has to be avoided until the soils have drained sufficiently. It is not a prime ag soil. There are no drainage districts in the area as well and a majority of the already Rural-5 zoned parcels adjacent to and in the vicinity of the subject parcels for the file include the Mission Silt Loam soil. The soils of the subject site should have never been a reason for denial but instead a reason for approval of the zone change request.

Made Upon Unlawful Procedure -

1. After the County Planner Alex Feyen presented the staff report but before the applicant’s representative or the public could speak, the BOCC began deliberations on the file, not limiting themselves to only questions being directed to Mr. Feyen regarding the staff report. Decision making dialogue occurred prior to the close of the public comment period and opening of deliberations. The BOCC discussion revealed a bias toward their eventual decision.
2. New information was introduced during deliberations, which neither the applicant’s representative nor the public were allowed to address. The new information included:
  - a. Standards of the Agricultural/Forestry zoning districts;
  - b. Agricultural uses on surrounding parcels and how the proposed zone change would impact them; and
  - c. Parcels adjacent to and within the vicinity of the subject parcels already zoned Rural-5 not being at 5 acres but only as small as 8 acres in size.

*McPherson Reconsideration Request for ZC0007-24*

November 12, 2024

Page 3

3. Proper procedural rules were not followed during the first motion during voting when Commissioner Korn made the motion to approve the zone change request. Commissioner Williams, without stepping down as the Chair, seconded the motion to move to discussion where she asked him to ask if that was the motion he meant to make which Commissioner Korn stated he did not know if it was. During the vote, Commissioner Korn voted against the motion and Commissioner Williams, while never stating that she was stepping down as the Chair to vote, which is required, voted against the motion as well.

Based upon the above-mentioned reasons, the applicant requests a reconsideration of the BOCC decision to deny file ZC0007-24 as noted in the October 28, 2024, dated decision letter. The applicant requests the denial decision be reversed and file ZC0007-24 be approved to allow the zone change from Rural-10 to Rural-5. The applicant also asks that all three (3) acting Commissioners be present at the public hearing for the reconsideration as only two (2) Commissioners were present at the October 23, 2024, hearing.

Thank you and if you have any questions, please feel free to contact me.



Tess Vogel, Associate Planner  
Project Representative for McPherson  
Ruen-Yeager & Associates, Inc.



Gail McPherson, Applicant

Cc: Bill Wilson, Bonner County Civil Deputy Prosecutor

Attachments: Zoning Commission Letter of Recommendation Dated September 23, 2024; BOCC Decision Letter Dated October 28, 2024