

Idaho Department of Water Resources, rec'd Jan. 5, 2022

"Construction of a new well must comply with drilling permit requirements of Section 42-235, Idaho Code, and applicable Well Construction Rules. If the proposed well is intended to be used for domestic purposes as defined in Idaho Code 42-111 (for a household, no more than 13,000 gallons per day including up to a ½ acre of irrigation), the use will not require approval from IDWR. If the well will be used to irrigate more than ½ acre, use more than 13,000 gallons per day, or be shared by more than one household, the owner will need to file for and receive approval of an *Application for Permit* before a well drilling permit can be approved."

All other agencies did not reply.

J. Public Notice & Comments

One public comment was received in opposition to the file on January 13, 2022. The comment discussed the general character of the area and expressed concern over the property being subdivided below the 10-acre lot size minimum in the Agricultural/Forestry 10-acre zoning district.

Staff analysis:

Staff concluded this project **is not** consistent with Bonner County Revised Code based upon the following:

Based on the existing topography, shape, and size of the parcel, there is insufficient evidence to suggest a hardship of the property, based on its' physical features. Approving this project will result in the creation of two (2) 5-acre lot lots with one (1) dwelling unit per lot. This will create the conditions for other properties in the same zone/vicinity to develop in the future. The decision to grant this variance will have longstanding ramifications that cannot be undone, once approved.

The Chair declared the hearing adjourned at 2:38 p.m.

Respectfully submitted, this 28th day of March 2022,



Milton Ollerton, Planning Director

now and have always been taxed as two single-family dwellings, again showing that this parcel meets the criteria to be split into two 5-acre parcels.”

Staff: the applicant is requesting a lot size minimum variance, not a zone change. Thus, staff reviewed the file against the standards set forth in BCRC 12-234: Variances, Standards for review of applications. Two dwelling units being situated on the property is not the issue here; the issue is that one of dwelling units exceeds the 900ft² accessory dwelling unit dimensional specifications set forth in BCRC 12-490 (B) (1).

To that end, surrounding properties to the east, north, and south zoned Agricultural/Forestry 10-acre would similarly be eligible for an accessory dwelling unit, provided they meet BCRC 12-490 Accessory Dwelling Units standards.

Environmental Concerns:

Applicant: "While the Mills understand that there are two soil types on the property, both of which are prime farmland. You can see from the County GIS page that our property is still heavily treed and plans to remain so. Some of the adjacent parcels have opted to remove the trees and pursue agricultural activities, while we have not and have no plans to do so. The Mills enjoy the dense trees and how they allow for privacy, beauty, and the rural feel afforded to this parcel."

Staff: staff reviewed the file against the standards set forth in BCRC 12-234: Variances, Standards and found no unique environmental conditions on the property when compared to other properties in the same zone/vicinity. There are no mapped slopes, wetlands, streams or other environmental features on the property that make it unique to other properties in the same zone/vicinity, nor do environmental features (or lack thereof) provide the means to justify a lot size minimum variance to divide the property into two (2) 5-acre parcels.

Conflict of Public Interest:

Applicant: "There would not be any adverse effect on County Services or immediate neighboring parcels as there will not be any physical changes to the land itself, no increase in traffic, nor additional strain on any utilities since septic and well are already existing, and NLI is already aware of all structures on the parcel. There are also no immediate plans to build any new structures on the property. Furthermore, to prevent any further concerns from neighboring parcel owners, the Mills have elected to add a deed restriction to the proposed parcels ensuring there will never be more than one dwelling on each of the proposed lots; this deed restriction also includes any ADU's or RV type structures currently listed in the BCRC. There will still be allowances for detached structures that must meet the BCRC and not have any living space inside."

Staff: granting the variance would create the conditions for future development in the area as splitting the property would create two (2) 5-acre parcels, each with one (1) dwelling unit on them. If this variance was approved a landowner in the same zone/vicinity could apply for a zone change from Agricultural/Forestry 10-acre to Rural 5-acre and this subject property would provide, in part, a valid justification for that zone change.

H. Stormwater plan

A stormwater management plan was not required, pursuant to BCRC 12-720.3(k) because the proposal does not result in the creation of additional impervious surface, as defined.

I. Agency Review

The application was routed to agencies for comment on December 14, 2021.

Panhandle Health District	Idaho Department of Water Resources
Spirit Lake Fire	Bonner County Road Department
Northern Lights Inc.	U.S. Fish and Wildlife Service
Bonner School District #83	Idaho Department of Lands (Sandpoint)
Idaho Department of Fish and Game	U.S. Forest Service
Idaho Department of Environmental Quality	

The following agencies commented:

Panhandle Health District, rec'd Dec. 28, 2021

Note: the following represents only an excerpt from PHD's letter. See file for the complete letter.

"PHD has located one permit for the dwellings located on parcel number RP55N04W155701A (see enclosed permit number 10-09-120260). The septic permit issued on 4/13/2010 indicates that there is an existing septic system sized and approved for daily flows up to 300 gallons/day (gpd) for one 2080 square foot single family dwelling with four bedrooms. The Bonner County Planning Department Variance Application indicates that there are two dwellings located on the property..."

If there has been an increase in wastewater flows from additional structures or dwellings other than what has already been approved, the landowner must contact PHD to ensure compliance with the rules."

Idaho Department of Fish and Game, rec'd Dec. 29, 2021

"The Idaho Department of Fish and Games does not have any comments to submit for this application."

Idaho Department of Environmental Quality, rec'd Jan. 5, 2022

"DEQ has no environmental impact comments at this stage of the project."

County. Their 20-year-old daughter will be occupying the home in the next 12-28 months and their son in the next couple of years. Based on Ord 634 Section C-1-3. A division of unplatted land which is made for the purpose of a single gift or sale to the landowner's spouse, parent, child, sibling, grandparent or grandchild. Even with the extra requirements regarding this Ordinance the Mill's request still meets the criteria for the Family Division."

Staff: The special conditions and circumstances do result from the actions of the applicant as there is evidence to suggest that the mobile home was placed on the property, prior to when the applicants purchased the property. A letter dated October 4, 2013, indicates that an Idaho Licensed Engineer inspected the mobile home built in December 2010 for Ryan Mills residing at the same address listed on the application. This pre-dates QUITCLAIM DEED (Instrument #85835) dated November 4, 2013, when Ryan Mills and Nikole Ahner-Brown purchased the property.

- (c) **The granting of the variance is not in conflict with the public interest in that it will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity of the subject parcel or lot.**

Applicant: "There would not be any negative effect on County Services or immediate neighboring parcel as there will not be any physical changes to the land itself. To insure this does not happen Mr. and Mrs. Mills have agreed to add a deed restriction to both parcels stating that no other living structures are to be added to the property at any time including any addition ADU's or RV's per County Code. The restriction would ensure that and current services including fire safety and traffic would not be adversely affected.

The only changes to that land would be additional detached structures that meet County Code or removal of one of the current mobile homes to be replaced with a stick-built style home that would fall into setbacks and other restrictions to meet County Code. The Mill's have already begun improving the parcel by making the larger of the two manufactured homes HUD approved and transferring it to real property. Their plan is only to improve their legacy for their children so that they make own a piece of the County that the family has resided in for generations"

The proposed project conveys the right for the owners to subdivide their land and in doing so, does not deprive any current neighboring property owned of the full use and enjoyment of their property."

Staff: Granting the variance will result in long-term impacts to the area that will conflict with the public interest as it relates to public health, safety, or welfare, or materially injurious to properties in the same zone and vicinity of the subject property; approving this project will create the conditions for future development of other properties in the same zone/vicinity to one (1) dwelling unit per 5-acre density.

One public comment was received in opposition to the variance request.

G. BOCC Appeal – Staff Review

Family Division Request

Applicant: "This request is in line with BCRC Ord. 634 Section C-1-3 "A division of unplatted land which is made for the purpose of a single gift or sale to the landowner's spouse, parcen, child, sibling, grandparent or grandchild." This code is one of the most fundamental property rights a landowner is entitled to, and this zoning requirement currently in place prevents a long-held and generational dream for the Mills.

Staff: The Bonner County Revised Code (BCRC) 12-612 Additional Requirements (C) Family Division discusses "a division of unplatted land which is made for the purpose of a single gift or sale to the landowner's spouse, parent, child, sibling, grandparent or grandchild; provided that the division complies with all of the following:

4. The parcel created any remaining parcel meets the minimum zoning district requirements for the district in which the parcel is located."

The proposed lot size minimum variance would create two (2) 5-acre parcels in an Agricultural/Forestry 10-acre zoning district. Dividing the property into two (2) 5-acre lots is not, without correct zoning district, a fundamental property right for the Mills, given the lot size minimum required for the Agricultural/Forestry 10-acre zoning district.

Compliance Concerns:

Applicant: "The approval of this variance would also meet the BCRC 12-323-2, which states, "R-5 in areas designated rural residential in the comprehensive plan that is already developed at or near the one dwelling unit per five (5) acre density and/or do not meet the criteria for R-10 above (Ord. 501, 11-18-2008)." This code shows that the two homes and utilities provided meet the R-5 code more closely than the current zone of A/F-10. This property stands out from the surrounding properties in that there are more dwelling units on this parcel than other properties in the same zone.

Approval of this variance would also bring this parcel into compliance with the BCRC 12-490. The 1992 mobile home with 924 square feet, three bedrooms, and two bathrooms does not meet the BCRC 12-490. Per the Planning and Zoning office, there were several permits pulled on this parcel for the addition of the homes and outbuildings. This property has been inspected on multiple occasions by the Bonner County Assessor's Office, showing that while it may have been an oversite on the Planning and Zoning Department and is not currently considered an illegal parcel, it remains non-compliant. Both units are

C. Environmental factors:

- Site does not contain mapped slopes. (USGS)
- Site does not contain mapped wetlands. (USFWS)
- Site does not contain a river/stream/frontage on lake.
- There are two (2) soils on the property, Pend Oreille-Highfalls complex (all areas are prime farmland) and Bonner Dufort outwash terraces, complex (all areas are prime farmland)
- JRJ, 12.6.2021: Parcel is within SFHA Zone X, per FIRM Panel 16017C1125E, Effective Date 11/18/2009. No further floodplain review is required on this proposal.

D. Services:

- Water: existing shared well (per the application, a shared well agreement will be established for both parcels to share the costs associated with well maintenance)
- Sewage: individual septic system
- Fire: Spirit Lake Fire
- Power: Northern Lights Inc.
- School District: West Bonner School District #83

E. Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Ag/Forest Land	Agricultural/Forestry 10-acre	Rural residences (2x)
North	Ag/Forest Land	Agricultural/Forestry 10-acre	Rural residence
East	Ag/Forest Land	Agricultural/Forestry 10-acre	Rural residence
South	Ag/Forest Land	Agricultural/Forestry 10-acre	Rural residence
West	Ag/Forest Land	Agricultural/Forestry 20-acre	Currently vacant

F. Standards review

BCRC 12-234 specifies that "Staff, the commission and/or board shall review the particular facts and circumstances of each proposal submitted and shall find adequate evidence showing that:

- (a) **"Conditions apply to the property that do not apply generally to other properties in the same zone or vicinity, which conditions are a result of lot size, shape, topography, or other circumstances over which the applicant has no control."**

Applicant: "Since Mr. & Mrs. Mills purchased this property in August 2013, they have learned that their property is out of compliance with the Comprehensive Plan and the ADU does not meet County Code 12-490. The smaller of the two

homes is supposed to be classified as an ADU however, it does not now or ever has met the criteria for that standard. This home is 1072 Square feet, larger than the 900 square feet maximum for an ADU and it has three bedrooms and two bath rooms which is does not meet the ADU criteria of no more than two bedrooms in an ADU. As this home was placed prior to their purchase this was out of their control and they want to bring the property in to compliance based on code. Approving a variance to split the parcel into two five acre lots would follow the Bonner County Code 12-323-2 "R-5 in areas designated rural residential in the comprehensive plan that area already developed at or near the one dwelling unit per five (5) acre density and/or do not meet the criteria for R-10 above (Ord. 501, 11-18-2008)"

Staff: Properties situated around the subject parcel (in the Agricultural/Forestry 10-acre zoning district) do not appear to have two dwelling units as there aren't two (2) addresses, or two (2) driveways. This makes the property unique insofar as there are more dwelling units on the property, when compared to other, surrounding properties in the same zone/vicinity. That said, the shape, size, and topography of the property is not unique when compared to other properties in the same zone/vicinity. Thus, the request for the variance does not result in a hardship that is characterized by the features of the landscape and subject property in general. The request to divide the property is solely based on the existing dwelling units; the applicant's request to divide the property for the purposes of splitting it for separate ownership which would result in the creation of two (2) substandard 5-acre lots where 10-acres is required in the Agricultural/Forestry 10-acre zoning district. While the request would keep the Agricultural/Forestry 10-acre zoning district intact, it would also develop the land in a way that would also be consistent with the Rural 5-acre zoning, insofar as the R-5 zone is characterized as "areas designated rural residential in the comprehensive plan that are already developed at or near the one dwelling unit per five (5) acre density and/or do not meet the criteria for R-10 above. (Ord. 501, 11-18-2008)"

Staff concludes that granting the variance to create two (2) 5-acre lots where 10-acres is required would ultimately make two (2) lots, each with one dwelling unit; the result of this would create the conditions for other surrounding properties to argue, in the future, that there are properties near them in the same zone/vicinity developed at or near one (1) dwelling unit per five acres. Thus, the request to grant the variance would potentially have longstanding ramifications for increased future development in the area all of which are zoned Ag/Forest 10-acre and fit that zoning description.

- (b) **Special conditions and circumstances do not result from the actions of the applicant.**

Applicant: "The entire purposed of this variance request is not only to bring this parcel into compliance with Bonner County Code but it also to equally divide the land so the Mill's children are able to have their own piece of Bonner

APPLICANT REPRESENTATION: Jennifer Owens, Sewell and Associates, gave a PowerPoint presentation on the property.

PUBLIC/AGENCY TESTIMONY: The following members of the public spoke on the record: Rodney Howard; Martha Gunner; Bill O'Neill; Maureen Paterson; Doug Paterson; Larry Knutson; Tom Lewis; Maureen Paterson read a letter from Doug Terbest.

The following members of the public spoke via Zoom: Wayne Martin.

APPLICANT REPRESENTATIVE REBUTTAL: Jennifer Owens, Applicant Representative responded to public comments and discussed the proposed deed restrictions.

BOARD DELIBERATION: The Chair closed the hearing to public testimony. The Board discussed Findings and Conclusions.

STAFF REBUTTAL: Planner I Chad Chambers stated that if the Board were to reverse the decision of the Planning and Zoning Commission, Conditions of Approval could be established to ensure deed restrictions are in place.

Motion by the governing body:

BOARD OF COUNTY COMMISSIONERS

MOTION TO DENY: Commissioner Connolly moved to uphold the Planning and Zoning Commission's denial of this project FILE V0025-21, requesting to divide a 10-acre parcel into two (2) properties, approximately 5-acres in size, based upon the following conclusions: The decision is based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. Commissioner Connolly further moved to adopt the findings of fact and conclusions of law as set forth in the Staff Report (or as amended during this hearing) and direct planning staff to draft written findings and conclusions to reflect this motion, have the Chairman sign, and transmit to all interested parties. This action does not result in a taking of private property. The action that could be taken, if any, to obtain the variance is to:

- 1) File a new application with the Planning Department and meet the standards required by Bonner County Revised Code.

Commissioner McDonald stepped down from Chair to second the Motion.

Roll Call Vote

Commissioner McDonald	AYE
Commissioner Connolly	AYE

Findings of Fact

1. The property is in the Ag/Forest Land Comprehensive Land Use Plan designation and is zoned Agricultural/Forestry 10-acre.
2. There are no mapped wetlands, lakes, rivers, streams, or slopes between 15-29% or 30%+ on the property.
3. The property is served by the Spirit Lake Fire District.
4. The parcel is accessed by Spirit Lake Cutoff, a County owned and maintained road.
5. The subject property, when compared to other properties in the same zone/vicinity is not unique in terms of its shape, size, topography or other circumstances over which the applicant has no control.

Conclusions of Law:

Based upon the findings of fact, the following conclusions of law are adopted:

Conclusion 1

Conditions apply to the property that **do** apply generally to other properties in the same zone or vicinity, which conditions are a result of lot size, shape, topography, or other circumstances over which the applicant has no control.

Conclusion 2

Special conditions and circumstances **do** result from the actions of the applicant.

Conclusion 3

The granting of the variance **is** in conflict with the public interest in that it **will** be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity of the subject parcel or lot. (Ord. 559, 1-4-2017)

Background:

A. Site data:

- ≈10-acre parcel
- Zone: Agricultural/Forestry 10-acre
- Land Use: Ag/Forest Land

B. Access:

- The property is accessed by Spirit Lake Cutoff, a County owned and maintained road composed of hot mix asphalt.

Yet this request for abandonment shall be accomplished pursuant to this section of the state code.

IC §40-203 (4) (b) When a county or highway district is to consider the abandonment or vacation of any highway, public street or public right-of-way that was accepted as part of a recorded platted subdivision, that has never been improved or developed, such vacation or abandonment may be approved through the dedication of a new highway, public street, or public right-of-way without compensation as set forth in subsection (1)(i) of this section.

Staff: Not applicable. Garfield Bay Road is built to County public right-of-way standards and is currently maintained by Bonner County.

IC §40-203 (4) (c) When a county is to consider the abandonment or vacation of any private right-of-way that was accepted as part of a recorded platted subdivision, said abandonment or vacation shall be accomplished pursuant to the provisions of chapter 13, title 50, Idaho Code.

Staff: Not applicable. Garfield Bay Road is a public right-of-way.

IC §40-203 (5) In any proceeding under this section or section 40-203A, Idaho Code, or in any judicial proceeding determining the public status or width of a highway or public right-of-way, a highway or public right-of-way shall be deemed abandoned if the evidence shows:

IC §40-203 (5) (a) That said highway or public right-of-way was created solely by a particular type of common law dedication, such as a dedication based upon a plat or other document that was not recorded in the official records of an Idaho county;

Staff: Not applicable. Garfield Bay Road was created through a legal instrument recorded with Bonner County through Instrument No. 34688.

IC §40-203 (5) (b) That said highway or public right-of-way is not located on land owned by the United States or the state of Idaho nor on land entirely surrounded by land owned by the United States or the state of Idaho nor does it provide the only means of access to such public lands; and

Staff: Not applicable.

i. That said highway or public right-of-way has not been used by the public and has not been maintained at the expense of the public in at least three (3) years during the previous fifteen (15) years; or

Staff: Garfield Bay Road is currently used by the public and has been maintained at the expense of the public in at least 3 years during the previous 15 years.

ii. Said highway or right-of-way was never constructed and at least twenty (20) years have elapsed since the common law dedication.

Staff: Garfield Bay Road was constructed as per the County public right-of-way standards.

IC §40-203 (6) All other highways or public rights-of-way may be abandoned and vacated only upon a formal determination by the commissioners pursuant to this section that retaining the highway or public right-of-way for use by the public is not in the public interest, and such other highways or public rights-of-way may be validated or judicially determined at any time notwithstanding any other provision of law. Provided that any abandonment under this section shall be subject to and limited by the provisions of subsections (2) and (3) of this section.

Staff: The request for the proposed vacation is in the public interest. As indicated by the Bonner County Road and Bridge Department, the proposed area of this vacation of the Garfield Bay Road is "leftover remnant that was created when the road was realigned in 2015." This portion of the right-of-way is not in line with the current configurations of the roads. Vacation of the proposed site will not impede the flow of traffic or access to any adjoining properties. However, the Bonner County Road and Bridge would like the applicant to dedicate some equivalent area for a truck turn around at the north end of their property for continued maintenance of Garfield Bay Road. See Conditions of Approval.

No other public agencies or commented or public comments were received indicating any potential harm to the interest of the public.

See Conclusions of Law.

VARIANCES

CALL FOR VISUAL, HEARING OR OTHER IMPAIRMENT REQUIRING ASSISTANCE: The Chair asked whether anyone needed special assistance to hear, see or participate in these proceedings. Hearing no response, the Chair continued with the public hearing.

File V0025-21 – Variance – Lot Size Minimum – Ryan & Nikole Mills are requesting a lot size minimum to divide the ~10-acre parcel into two 5-acre lots, separating the land among family members. The property is zoned Agricultural/Forestry-10. The project is located off Spirit Lake Cutoff in Section 15, Township 55 North, Range 4 West, Boise-Meridian, Bonner County, Idaho. On January 20, 2022, the Planning & Zoning Commission denied this project. On February 23, 2022 the Planning Department received a letter of appeal requesting this file be sent to the Board of County Commissioners to be heard de novo.

STAFF PRESENTATION: Planner I Chad Chambers presented a summary of the project and previously circulated staff report, concluding this project is not consistent with Bonner County Revised Code.

the portion of the highway or public right-of-way proposed to be abandoned and vacated at their addresses as shown on the county assessor's tax rolls and shall publish notice of the hearing at least two (2) times if in a weekly newspaper or three (3) times if in a daily newspaper, the last notice to be published at least five (5) days and not more than twenty-one (21) days before the hearing.

Staff: A notice was mailed to owners of record of land abutting the portion of the Garfield Bay Road proposed to be vacated on February 04, 2022. The notice was also published in a daily newspaper on February 08, 2022, February 15, 2022, February 22, 2022 and March 15, 2022.

IC §40-203 (1) (g) At the hearing, the commissioners shall accept all information relating to the proceedings. Any person, including the state of Idaho or any of its subdivisions, or any agency of the federal government, may appear and give testimony for or against abandonment.

Staff: During the testimony, any person or entity may appear and relay information relating to the proceedings of this petition.

IC §40-203 (1) (h) After completion of the proceedings and consideration of all related information, the commissioners shall decide whether the abandonment and vacation of the highway or public right-of-way is in the public interest of the highway jurisdiction affected by the abandonment or vacation. The decision whether or not to abandon and vacate the highway or public right-of-way shall be written and shall be supported by findings of fact and conclusions of law.

Staff: The Commissioners may present their decision pursuant to this section of the code.

IC §40-203 (1) (i) If the commissioners determine that a highway or public right-of-way parcel to be abandoned and vacated in accordance with the provisions of this section has a fair market value of two thousand five hundred dollars (\$2,500) or more, a charge may be imposed upon the acquiring entity, not in excess of the fair market value of the parcel, as a condition of the abandonment and vacation; provided, however, no such charge shall be imposed on the landowner who originally dedicated such parcel to the public for use as a highway or public right-of-way; and provided further, that if the highway or public right-of-way was originally a federal land right-of-way, said highway or public right-of-way shall revert to a federal land right-of-way.

Staff: As per the conversation with the Bonner County Assessor's office, value assessment is not made for public right-of-ways. Vacating this portion of Garfield Bay Road to be included in the petitioner's parcel may not increase the existing value of the parcel as its value is mostly driven by waterside frontage. However, if this 1,505 square feet of vacated land were to exist as a parcel on its own, it is likely to be assessed at an approximate rate of \$1.00 per square feet of land area, totaling an amount of \$1,505.00. It is important to note that this is an approximate value as the assessment of a piece of a land is driven by market value.

Since the assessed fair market value of the right-of-way proposed to be vacated is less than \$2,500.00 a charge may not be imposed on the acquiring entity pursuant to this section of the code.

IC §40-203 (1) (j) The commissioners shall cause any order or resolution to be recorded in the county records and the official map of the highway system to be amended as affected by the abandonment and vacation.

Staff: The petition, if approved, will require a resolution to be recorded in the county records.

IC §40-203 (1) (k) From any such decision, a resident or property holder within the county or highway district system, including the state of Idaho or any of its subdivisions, or any agency of the federal government, may appeal to the district court of the county in which the highway or public right-of-way is located pursuant to section 40-208, Idaho Code.

Staff: A decision made on this petition can be appealed by any resident or property holder within the County or other entities, pursuant to this section of the code.

IC §40-203 (2) No highway or public right-of-way or parts thereof shall be abandoned and vacated so as to leave any real property adjoining the highway or public right-of-way without access to an established highway or public right-of-way. The burden of proof shall be on the impacted property owner to establish this fact.

Staff: The proposed vacation does not leave any real property adjoining the highway or public right-of-way without access to an established highway or public right-of-way. No public comments were received establishing any impacts from the proposed vacation.

IC §40-203 (3) In the event of abandonment and vacation, rights-of-way or easements shall be reserved for the continued use of existing sewer, gas, water, or similar pipelines and appurtenances, or other underground facilities as defined in section 55-2202, Idaho Code, for ditches or canals and appurtenances, and for electric, telephone and similar lines and appurtenances.

Staff: If this request for vacation were to be approved, the Encroachment Permit 1-96-S-199D, recorded through Instrument No. 493648 in records of Bonner County shall continue being effective and the pertinent underlying easements in the vacated right-of-way shall be reserved pursuant to this section of the state code.

IC §40-203 (4)

IC §40-203 (4) (a) When a county or highway district is to consider the abandonment or vacation of any highway, public street or public right-of-way that was accepted as part of a recorded platted subdivision, such abandonment shall be accomplished pursuant to the provisions of this section.

Staff: Garfield Bay Road was dedicated to the public through a Right-of-Way Deed, Instrument No. 34688. It was not accepted as part of a recorded platted subdivision.

2. The triangle of right of way proposed for vacation is a leftover remnant that was created when the road was re-aligned in 2015. The road used to go through the Applicants lot, and in an effort to increase their usable space, the owners at the time (Harbor Marina Partners LLC) worked with the Road and Bridge Department to obtain an encroachment permit #3496 and build Hoffman Avenue (a privately maintained public road) into its current configuration on the east side of the Applicant's lot, including a retaining wall to support the road. With this in mind, the Road & Bridge Department is not opposed to vacating this triangle of right of way which is no longer in line with the current configuration of the road.

3. The application mentions that there may be water lines through this area, and easements for any water lines should be granted to the utilities. If the exact locations of the lines cannot be determined, perhaps the entire area should remain as a utility easement if vacated."

- **Idaho Department of Environmental Quality, February 04, 2022**
"DEQ has no environmental impact comments at this stage of the project."
- **Idaho Department of Fish and Game, February 28, 2022**
"DEQ has no environmental impact comments at this stage of the project."

Following agencies replied with "no comments."

- **Panhandle Health District, March 01, 2022**

All other agencies notified did not respond.

E. Public Notice & Comments

One public comment received regarding potential presence of easement in the right-of-way proposed to be vacated.

Staff Analysis:

Staff concluded this project is consistent with Idaho Code, based upon conformance with the procedures set forth in IC §40-203.

IC §40-203 (1) A board of county or highway district commissioners, whichever shall have jurisdiction of the highway system, shall use the following procedure to abandon and vacate any highway or public right-of-way in the county or highway district system including those which furnish public access to state and federal public lands and waters:

IC §40-203 (1) (a) The commissioners may by resolution declare their intention to abandon and vacate any highway or public right-of-way or to reclassify a public highway as a public right-of-way, where doing so is in the public interest.

Staff: The request for vacating a portion of Garfield Bay Road has been brought the County Commissioners in a public hearing in accordance with this section of the state code.

IC §40-203 (1) (b) Any resident, or property holder, within a county or highway district system including the state of Idaho, any of its subdivisions, or any agency of the federal government may petition the respective commissioners for abandonment and vacation of any highway or public right-of-way within their highway system. The petitioner shall pay a reasonable fee as determined by the commissioners to cover the cost of the proceedings.

Staff: The petitioner, ABCD Homebuilders, LLC is a property holder of parcel number RP56N01W225211A, located within Bonner County. The petitioner has paid the fee/will pay the fee to cover the cost of the legal proceedings for this petition.

IC §40-203 (1) (c) The commissioners shall establish a hearing date or dates on the proposed abandonment and vacation.

Staff: The Commissioners established a hearing date of March 23, 2022 to consider the request for this proposed vacation.

IC §40-203 (1) (d) The commissioners shall prepare a public notice stating their intention to hold a public hearing to consider the proposed abandonment and vacation of a highway or public right-of-way, which shall be made available to the public not later than thirty (30) days prior to any hearing and mailed to any person requesting a copy not more than three (3) working days after any such request.

Staff: A public notice stating the intent of to hold a public hearing to consider the proposed vacation of Garfield Bay Road was made available to the public on February 04, 2022, at least 30 days prior to the hearing.

IC §40-203 (1) (e) At least thirty (30) days prior to any hearing scheduled by the commissioners to consider abandonment and vacation of any highway or public right-of-way, the commissioners shall mail notice by United States mail to known owners and operators of an underground facility, as defined in section 55-2202, Idaho Code, that lies within the highway or public right-of-way.

Staff: The portion of the public right-of-way proposed to be vacated seems to contain a 2 inch pipe water intake system with 2 hp submersible pump, extending 310' waterward as per Encroachment Permit 1-96-S-199D, recorded through Instrument No. 493648 in records of Bonner County. However, neither the grantee of the encroachment permit, TPM Holdings (Harbor Marina), nor their known address of 6710 Garfield Bay Road, Sagle, ID 83860 could be located for the purpose of notification of this proposed vacation. It is to be noted that the notice for this proposed vacation was posted on the subject site on February 02, 2022.

IC §40-203 (1) (f) At least thirty (30) days prior to any hearing scheduled by the commissioners to consider abandonment and vacation of any highway or public right-of-way, the commissioners shall mail notice to owners of record of land abutting

right-of-way. No public comments were received establishing any impacts from the proposed vacation.

Conditions of Approval:

1. The vacation of the above-described right-of-way shall be effective upon the recording of a resolution by the Bonner County Commissioners granting the vacation.
2. The costs for legal advertisements and recording fees shall be borne by the applicant and shall be paid prior to the recording of the resolution vacating the easement.
3. With the approval of this request for vacation, the Encroachment Permit 1-96-S-199D, recorded through Instrument No. 493648 in records of Bonner County shall continue being effective and the pertinent underlying easements in the vacated right-of-way shall be reserved pursuant to Idaho Code §40-203 (3). Any other known or unknown rights-of-way or easements too, shall be reserved for the continued use of existing sewer, gas, water, or similar pipelines and appurtenances, or other underground facilities as defined in section 55-2202, Idaho Code, for ditches or canals and appurtenances, and for electric, telephone and similar lines and appurtenances.
4. As per the comments from Bonner County Road and Bridge Department, the applicant shall dedicate an area for a truck turn-around equivalent to the proposed area of vacation, to the satisfaction of Bonner County Road and Bridge Department. This condition may be modified by the agency upon further considerations or discussions with the petitioner to facilitate continued maintenance of the Garfield Bay Road.

Background:

A. Site Data:

- Approximately 0.035 acres of 50 feet wide public right of way, recorded in Instrument No. 34688, on page 355 of Book 80 of Deeds of Bonner County.
- Streams and Rivers: Area to be vacated shows no presence streams, rivers of other waterbodies on or around the site. (NHD)
- Flood Hazard Zone: Area to be vacated, is within SFHA Zone D, as per FIRM Panel 16017C0975E, effective November 18, 2009. No further floodplain review is required on this proposal.
- Wetlands: Area to be vacated shows presence of "Lake" type wetlands L1UBH. (USGS)
- Slope: Site does not show presence of slopes greater than 15% grade.

B. Access:

- Garfield Bay Road, a 50 feet wide public right-of-way, recorded through Instrument No. 34688, in Book 80 of Deeds, Page 355, records of Bonner County, Idaho, being in Section 22, Township 56 North, Range 1 West, Boise Meridian, Idaho.
- Hoffman Avenue, a 40 feet wide public right-of-way, recorded through Instrument No. 886500, in Book 1 of Plats, Page 181, records of Bonner County, Idaho, being in Section 22, Township 56 North, Range 1 West, Boise Meridian, Idaho.

C. Standards Review:

The project has been reviewed for conformance with Idaho Code §40-203, Abandonment and Vacation of County and Highway District System or Public Rights-of-way.

- The commissioners may by resolution declare their intention to abandon and vacate any highway or public right of way, or to reclassify a public highway as a public right of way, where doing so is in the public interest.

D. Agency Review:

The application was routed to agencies for comment on February 04, 2022.

Panhandle Health District	Selkirk Fire District
Garfield Bay Water and Sewer District	Idaho Department of Water Resources
Lake Pend Oreille School District#84	Idaho Department of Fish and Game
Bonner County Schools – Transportation	U.S. Fish and Wildlife Service
Bonner County Road & Bridge Dept.	U.S. Forest Service
Idaho Dept. of Lands and Navigable Waters	U.S. Army Corps (Coeur d’Alene)
Idaho Department of Environmental Quality	

The following agencies responded:

- **Bonner County Road & Bridge Department, February 04, 2022**

"The Road & Bridge Department has the following comments:

1. A turn-around for County maintenance of Garfield Bay Road is needed in this area. The Road & Bridge Department used to turn around on the private property that makes up the north end of this Applicant's lot, but at some point the lot owners fenced in the property, eliminating the area where the County turned around. As a result, the County now turns snow plows around near The Captain's Table restaurant, well short of the end of Garfield Bay Road. There have been comments from the public asking for the County to resume plowing to the end of our maintenance where Garfield Bay Road veers off into Hoffman Avenue at this proposed vacation, but we've since adopted policies to reduce the amount of backing up that our heavy trucks do on their plow routes, to limit accidents and the liability from backing up heavy trucks with large blind spots. It may be worth considering a trade with the Applicant; a dedication of some equivalent area for a truck turn around at the north end of their property in exchange for a vacation of this triangle of right of way in the middle of their lot.

Conclusion 1: This proposal was reviewed for and is found to be in compliance with the vacation criteria and standards set forth at Idaho Code, Title 40, Chapter 2, Highways and Bridges, General Provisions.

Finding: The request for vacating a portion of Garfield Bay Road has been brought to the County Commissioners in a public hearing in accordance with this section 40-203 of the state code.

Finding: The petitioner, ABCD Homebuilders, LLC is a property holder of parcel number RP56N01W225211A, located within Bonner County. The petitioner has paid the fee to cover the cost of the legal proceedings for this petition.

Finding: The Commissioners established a hearing date of March 23, 2022 to consider the request for this proposed vacation.

Finding: A public notice stating the intent of to hold a public hearing to consider the proposed vacation of Garfield Bay Road was made available to the public on February 04, 2022, at least 30 days prior to the hearing.

Finding: The portion of the public right-of-way proposed to be vacated seems to contain a 2 inch pipe water intake system with 2 hp submersible pump, extending 310' waterward as per Encroachment Permit 1-96-S-199D, recorded through Instrument No. 493648 in records of Bonner County. However, neither the grantee of the encroachment permit, TPM Holdings (Harbor Marina), nor their known address of 6710 Garfield Bay Road, Sagle, ID 83860 could be located for the purpose of notification of this proposed vacation. It is to be noted that the notice for this proposed vacation was posted on the subject site on February 02, 2022.

If this request for vacation were to be approved, the Encroachment Permit 1-96-S-199D, recorded through Instrument No. 493648 in records of Bonner County shall continue being effective and the pertinent underlying easements in the vacated right-of-way shall be reserved pursuant to the state code.

Finding: A notice was mailed to owners of record of land abutting the portion of the Garfield Bay Road proposed to be vacated on February 04, 2022. The notice was also published in a daily newspaper on February 08, 2022, February 15, 2022, February 22, 2022 and March 15, 2022.

Finding: During the testimony, any person or entity could appear and relay information relating to the proceedings of this petition.

Finding: As per the conversation with the Bonner County Assessor's office, value assessment is not made for public right-of-ways. Vacating this portion of Garfield Bay Road to be included in the petitioner's parcel may not increase the existing value of the parcel as its value is mostly driven by waterside frontage. However, if this 1,505 square feet of vacated land were to exist as a parcel on its own, it is likely to be assessed at an approximate rate of \$1.00 per square feet of land area, totaling an amount of \$1,505.00. It is important to note that this is an approximate value as the assessment of a piece of a land is driven by market value.

Since the assessed fair market value of the right-of-way proposed to be vacated is less than \$2,500.00 a charge may not be imposed on the acquiring entity pursuant to this section of the code.

Finding: The proposed vacation does not leave any real property adjoining the highway or public right-of-way without access to an established highway or public right-of-way. No public comments were received establishing any impacts from the proposed vacation.

Finding: Garfield Bay Road was dedicated to the public through a Right-of-Way Deed, Instrument No. 34688.

Finding: Garfield Bay Road is currently used by the public and has been maintained at the expense of the public in at least 3 years during the previous 15 years.

Finding: Garfield Bay Road was constructed as per the County public right-of-way standards.

Finding: The request for the proposed vacation is in the public interest. As indicated by the Bonner County Road and Bridge Department, the proposed area of this vacation of the Garfield Bay Road is "leftover remnant that was created when the road was realigned in 2015." This portion of the right-of-way is not in line with the current configurations of the roads. Vacation of the proposed site will not impede the flow of traffic or access to any adjoining properties. However, the Bonner County Road and Bridge would like the applicant to dedicate some equivalent area for a truck turn around at the north end of their property for continued maintenance of Garfield Bay Road.

Conclusion 2: The abandonment of the public right of way is in the public interest.

Finding: The request was found to be in public interest. In exchange for the requested vacation the petitioner will dedicate an easement for plow and emergency vehicles to turn around on their property, for the continued maintenance of Garfield Bay Road. The Board noted that the County, currently, does not have a legal turn-around at the intersection of Garfield Bay Road and Hoffman Avenue. Approval of this vacation with Conditions of Approval would provide the County with a legal and safe turn-around which will be a benefit to the public.

No other public agencies commented or public comments were received indicating any potential harm to the interest of the public.

Conclusion 3: By granting this petition for vacation of public right of way, real property adjoining the subject highway or public right of way will not be left without access to an established highway or public right of way.

Finding: The proposed vacation does not leave any real property adjoining the highway or public right-of-way without access to an established highway or public

**PLANNING DEPARTMENT
PUBLIC HEARING DECISION MINUTES
MARCH 23, 2022**

CALL TO ORDER: Chair McDonald called the Bonner County Commissioners' hearing to order at 1:30 p.m. in the 3rd floor meeting room, Suite 338 of the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho, via Zoom webinar, and YouTube live streaming.

PRESENT: Commissioners Chair Dan McDonald and Jeff Connolly

ABSENT: Vice Chair Steve Bradshaw

ALSO PRESENT: Planning Director Milton Ollerton; Assistant Planning Director Jacob Gabell; Planner I Swati Rastogi; Planner I Chad Chambers and Hearing Coordinator Jenna Crone

PUBLIC HEARINGS:

VACATION

CALL FOR VISUAL, HEARING OR OTHER IMPAIRMENT REQUIRING ASSISTANCE: The Chair asked whether anyone needed special assistance to hear, see or participate in these proceedings. Hearing no response, the Chair continued with the public hearing.

File VS0012-21 – Title 40 Road Vacation – ABCD Homebuilders, LLC are requesting to vacate a 1,505 square foot portion of Garfield Bay Road, a County owned public right-of-way, adjacent to Parcel No. RP56N01W225211A. The subject site is located at the intersection of Garfield Bay Road and Hoffman Avenue in Section 22, Township 56 North, Range 1 West, Boise-Meridian, Bonner County, Idaho.

CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS: The Chair requested the Commissioners declare any conflicts of interest or disclosures. The Chair noted that there were no disclosures or conflicts.

STAFF PRESENTATION: Planner I Swati Rastogi presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code.

APPLICANT PRESENTATION: Brandon Chartrey, ABCD Homebuilders, addressed the comment from Road and Bridge and stated it has been resolved.

PUBLIC/AGENCY TESTIMONY: The following members of the public spoke on the record: Doug Paterson; Hugh Slater; Jason Topp, and Monica Gunnar

Public Comments via Zoom: Reg Crawford

APPLICANT REBUTTAL: None

BOARD DELIBERATION: The Chair closed the hearing to public testimony. The Board discussed Findings and Conclusions.

Motion by the Governing Body:

BOARD OF COUNTY COMMISSIONERS

MOTION TO APPROVE: Commissioner Connolly moved to approve this petition, FILE #VS0012-21 requesting to vacate a 1,505 square feet portion of the 50 feet wide public right-of-way known as Garfield Bay Road located in Section 22, Township 56 North, Range 1 West, Boise Meridian, Bonner County, Idaho, and recorded in Book 80 of Deeds, Page 355, records of Bonner County, Idaho through Instrument #34688 on May 24, 1950, finding that it is in accord with Idaho Code §40 as enumerated in the foregoing conclusions of law, and based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. Commissioner Connolly further moved to adopt the findings of fact and conclusions of law as set forth in the Staff Report (or as amended during this hearing) and direct planning staff to draft written findings and conclusions to reflect this motion, have the chairman sign, record, and transmit to all interested parties. This action does not result in a taking of private property. The action that could be taken to obtain the vacation is to complete the Conditions of Approval as adopted.

This action does not result in a taking of private property.

Commissioner McDonald stepped down from Chair to second the Motion.

Roll Call Vote

Commissioner McDonald	AYE
Commissioner Connolly	AYE

RESOLUTION ADOPTION: Commissioner Connolly moved to approve resolution #2022-21 vacating a portion of Garfield Bay Road as shown on the submitted site plan.

Commissioner McDonald stepped down from Chair to second the Motion.

Roll Call Vote

Commissioner McDonald	AYE
Commissioner Connolly	AYE

Conclusions of Law:

Based upon the findings of fact, the following conclusions of law are adopted: