



BEFORE THE BOARD OF ADA COUNTY COMMISSIONERS

In re:

Application of Jonathan Chu

Project No. 201601456 A

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

FINDINGS OF FACT

If any of these Findings of Fact are deemed Conclusions of Law, they are incorporated into the Conclusions of Law section.

A. The Board finds that the record is comprised of:

1. Exhibits to the Staff Report.
2. Exhibit A to the Findings of Fact, Conclusions of Law and Order.
3. All other information contained in Ada County Development Services File for Project No. 201601456 A.

B. As to procedural items, the Board finds the following:

1. On October 3, 2016, the Director denied the farm development application (Project #201601456 OA).
2. On October 18, 2016, Development Services received an application appealing the Director's decision and scheduled the appeal for public hearing before the Board of Ada County Commissioners on December 14, 2016.
3. On October 24, 2016, staff notified other agencies of this application and solicited their comments. Any comments received were incorporated into the staff report and are attached as Exhibits.
4. On November 16, 2016, property owners within 1,000 feet of the site were notified of the hearing by mail. Legal notice of the Board's hearing was published in The Idaho Statesman on November 22, 2016. Notices of the public hearing were posted on the

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Project #201601456 A

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property on November 29, 2016 and a certification sign posting was submitted to the director on November 29, 2016.

C. As to the project description, the Board finds based on the application materials found in the file for Project No. 201601456 A the following:

1. PROPOSED USES: Farm development right to divide 1.913 acres from a 57.33 acre parcel.
2. PROPOSED STRUCTURES: The applicant did not state what proposed structures might be built on the parcels.
3. PROPOSED SITE IMPROVEMENTS: None.

D. Based on the materials found in the file for Project No. 201601456 A, the Board finds the following concerning the project description:

1. PARCEL NUMBER AND LOCATION: The parcel numbers are S2306233700 and S2306223020 and they are located at 13400 S. Can Ada Road in Section of T. 1S, R. 1W, which is the east side of S. Can Ada Road and south of W. Initial Point Road.

2. OWNERSHIP: Jonathan Chu.

3. SITE CHARACTERISTICS

Property size: 57.33 acres.

Existing structures: A 3,128 square foot single family dwelling with an 868 square foot attached garage.

Existing vegetation: Agricultural crops.

Slope: The property has slopes less than 15%.

Irrigation: The property is within the jurisdiction of the Boise-Kuna Irrigation District, New York Irrigation District, and the Boise Project Board of Control.

Drainage: The property drains towards the south.

Views: The property is generally visible from all directions.

E. Based on the officially adopted Ada County land use maps, the Board finds the following concerning the current land use and zoning:

The property is agricultural with a single-family dwelling and is zoned Rural Preservation (RP).

F. Based on the officially adopted Ada County land use maps, the Board finds the following concerning the surrounding land use and zoning:

North: The site is a rural residence located in the Rural Preservation (RP) District and fallow ground and agricultural crops in the Rural Residential (RR) District. In addition, the Waldvogel Canal forms the northern boundary of the property.

South: The site is a single-family dwelling on an unplatted parcel and agricultural in the Rio Ranch Estates Subdivision located in the Rural Preservation (RP) District.

East: The site is agricultural and is located in the Rural Preservation (RP) District.

West: The site is agricultural and is located in Canyon County in their Agricultural (A) zone.

G. Based on the officially adopted Ada County land use maps and materials found in the file for Project No. 201601456 A, the Board finds the following concerning services:

Access Street and Designation: Access is off of S. Can Ada Road. S. Can Ada Road is designated as a section line street.

Fire Protection: Melba Fire District.

Sewage Disposal: Individual Septic Systems.

Water Service: Individual Wells.

Irrigation District: Boise-Kuna Irrigation District, New York Irrigation District, and Boise Project Board of Control.

Drainage District: None.

H. As to the applicable law, the Board finds the following:

This section details the comp plan goals, objectives and policies; the zoning ordinance regulations; and other applicable standards regarding development of the subject property.

1. The Board finds **Section 8-7-7 of the Ada County Code** is applicable because the appellant is appealing the Director's decision to approve a private road. The Board finds the application complies with **Section 8-7-7 of the Ada County Code**. Regarding Section 8-7-7 the Board finds the following:

A. *Application: Any decision or action may be appealed as set forth in this chapter. The appellant shall be an affected person as defined in Idaho Code section 67-6521(1)(a).*

1. *A person aggrieved by a final decision or action within the jurisdiction and authority of the Board (see subsection 8-7-2A of this chapter), the hearings examiner (see subsection 8-7-2F of this chapter), or the commission (see subsection 8-7-2D of this chapter) may appeal to the board.*

The Board finds that the appellant is Jonathan Chu. Jonathan Chu is the property owner and the applicant for the farm development right.

B. *Appeal Procedures:*

1. *Appeals of written decisions shall be filed with the director within fifteen (15) days after the date of the written decision, or it shall not be accepted. An application and fees, as set forth in article A of this chapter, shall be submitted to the director on forms provided by the development services department.*

The Board finds that Jonathan Chu filed the appeal with the Director on October 18, 2016, which is within fifteen (15) days after the date of the written decision made on October 3, 2016 to deny Project #201601456 A.

2. *The director shall schedule and the board shall hold a public hearing and make a decision pursuant to the procedures as set forth in section 8-7A-8 of this chapter.*

The Board finds that the Director scheduled a public hearing in front of the Board on December 14, 2016 and that the Board held a public hearing. The Board has made a decision pursuant to the procedures as set forth in Section 8-7A-8.

3. *At the public hearing, the board shall consider the order, requirements, permit, decision, or determination of the commission, and any attached conditions thereto. The board shall also consider any additional evidence that may be offered by the public, applicant, director, and/or commission.*

The Board finds that they have at their December 14, 2016 public hearing considered the order, decision, determination, and supporting materials from the Director's decision made on October 3, 2016 as well as evidence submitted to the Board at the Board's December 14, 2016 public hearing.

The Board finds that the appellant has submitted a detailed letter (Exhibit #3) illustrating why the Board should overturn the Director's decision to deny the farm development right. The appellant states that prior to his ownership of the property a 'one-acre split' occurred north of the Waldvogel Irrigation Lateral in 1991 and that the Waldvogel Irrigation Lateral separated this northern acreage from the main portion of farm land. The appellant contends that the 1991 'farm development right' really belongs to the 'useful' farm land portion south of the Waldvogel Irrigation Lateral, which is the land he purchased in 1996. He contends that the 1991 split should not have been characterized as a farm development right as that section is not contiguous to the useful farm land and the physical landscape prevented its use as farm land as the irrigation canal runs through the crop land per Section 8-4A-8: Contiguous Parcels. Per Section 8-4A-8 of the Ada County Code abutting parcels held in the same ownership shall be considered one property for development purposes unless the owner can address one of the following:

- A. The parcels comply with the regulations of this title that were in effect at the time such parcels were recorded, and the parcels were originally

conveyed and recorded under a single deed identifying each as a separate parcel;

- B. The parcels comply with the regulations of this title that were in effect at the time such parcels were recorded, and the parcels were originally conveyed and recorded under separate deeds;
- C. Each of the abutting parcels is a conforming or nonconforming property as defined in subsection 8-1B-2B of this title; or
- D. Physical characteristics of the property prevent its use as one unit, the properties are separated by a fee simple ownership and/or the properties are separated by a public right of way or public street.

The appellant argues that the Waldvogel Canal is a physical characteristic of the parent parcel (property prior to the one-acre split) that prevented its use as one unit.

The Board finds that the ‘one-acre split’ is the predecessor to today’s ‘farm development right’. Thus, back in 1991 a split of one acre from a parcel in the Rural Preservation (RP) would have been processed through a one-acre split application. The one-acre split application mentioned in the appellant’s detailed letter is File #91-01-OA.

The Board finds that the subject property is not eligible for a farm development right as it does not comply with the applicability requirements in Subsection 8-2A-5B of the Ada County Code because the subject property is not a “property of record” as the boundaries of the subject property have changed since January 1, 1985. A one acre split (File #91-01-OA) was approved on the property in 1991. The resulting one acre split parcel (Parcel #S2306223080) was conveyed from Mary Mueller and Peggy Goodwin to the Melba Community Baptist Church on January 23, 1991 and the deed was recorded in the Ada County Recorder’s Office on February 5, 1991.

4. *The board may affirm, reverse, modify, in whole or in part the order, requirement, permit, decision, or determination appealed from, or make or substitute any additional conditions that in its deliberations it may find warranted.*

The Board finds that they have at their December 14, 2016 public hearing considered the order, decision, determination, and supporting materials from the Director’s decision made on October 3, 2016 as well as evidence submitted to the Board at the Board’s December 14, 2016 public hearing.

The Board denies the appeal and denies the farm development right application.

2. The Board finds **Subsection 8-2A-5C2 of the Ada County Code** is applicable because the applicant has applied for a farm development right. The Board finds that the application does not comply with **Subsection 8-2A-5C2 of the Ada County Code** as the

property was not of record in the Ada County Recorder's Office since the boundaries of the property have changed since 1985. Regarding Subsection 8-2A-5C2 of the Ada County Code the Director finds the following:

a. *The proposed farm development right meets the applicability requirements of subsection B of this section; and*

1. *The property is within the rural preservation district;*

The Board finds as evidenced in the record that the property is located within the Rural Preservation (RP) District.

2. *The property is a minimum of forty (40) acres of contiguous land;*

The Director finds as evidenced in the record that the property consists of 57.33 acres, which is greater than the minimum of forty (40) acres of contiguous land that is necessary for a farm development right.

3. *The property was of record in the Ada County recorder's office as of January 1, 1985 (hereinafter referred to as the "property of record"), the boundaries of which shall not have changed except as the result of governmental action.*

The Board finds as evidenced in the record that the subject property is not a "property of record" as the boundaries of the subject property have changed since January 1, 1985. A one acre split (File #91-01-OA) was approved on the property in 1991. The resulting one acre split parcel (Parcel #S2306223080) was conveyed from Mary Mueller and Peggy Goodwin to the Melba Community Baptist Church on January 23, 1991 and the deed was recorded in the Ada County Recorder's Office on February 5, 1991.

b. *The proposed farm development right meets the applicability requirements of subsection D of this section.*

1. *The farm development right parcel shall meet the dimensional standards for a rural residence as established by section 8-2A-4, table 8-2A-2 of this article.*

The Board finds that the farm development right meets the dimensional standards for a rural residence as established by Section 8-2A-4, Table 8-2A-2 because the applicant has illustrated this on the site plan. The street frontage for the farm development right is 100 feet, which meets the required minimum street frontage of 100 feet.

2. *Access and frontage shall be required by section 8-4A-3 of this title.*

The Board finds as evidenced in the record that both the farm development right parcel and the remainder parcel have street frontage onto S. Can Ada Road. The farm development right has 100 feet of street frontage and the remainder parcel has 1,996.04 feet of street frontage.

3. *If the qualifying property has more than one permanent dwelling, the farm development right parcel shall contain one of the extra dwellings. This standard shall not apply to temporary living quarters.*

The Board finds as evidenced in the record that there is only one (1) permanent dwelling on the property. The permanent dwelling will be located on the farm development right parcel. The existing dwelling is in compliance with required setbacks for a rural residence in the RP District as the dwelling exceeds the setback of 50 feet for a property line on a section line street and exceeds the 25 foot setback for a property line not fronting a roadway.

4. *The proposed farm development right division shall minimize to the greatest extent possible the preservation of prime agricultural soils.*

The Board finds that the farm development right division maximizes to the greatest extent possible the preservation of prime agricultural soils as the farm development is centered around the existing single-family dwelling allowing the surrounding agricultural cropland on the property to remain in agricultural production.

5. *The farm development right parcel shall be located on the portion of the property that causes the least disruption of agriculture on the remainder of the qualifying property while still meeting the standards of this section.*

The Board finds that the farm development right parcel is located on the portion of the property that causes the least disruption of agriculture on the remainder of the qualifying property while still meeting the standards of Subsection 8-2A-5D. The farm development right parcel is centered around the existing single-family dwelling allowing the surrounding agricultural cropland on the property to remain in agricultural production.

CONCLUSIONS OF LAW

If any of these Conclusions of Law are deemed to be Findings of Fact they are incorporated into the Findings of Fact section.

1. The Board concludes that Project No. 201601456 A complies with Section 8-7-7 of the Ada County Code.
2. The Board concludes that Project No. 201601456 OA does not comply with Subsection 8-2A-5C of the Ada County Code.

ORDER

Based upon the Findings of Fact and Conclusions of Law contained herein and the testimony from the public hearing, the Board denies Project #201601456 A and denies Project #201601456 OA.

DATED this _____ day of _____, 20__.

Board of Ada County Commissioners

By: Jim Tibbs, Commissioner

By: Rick Yzaguirre, Commissioner

By: David L. Case, Commissioner

ATTEST:

Christopher D. Rich, Ada County Clerk

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