

Commissioners Minutes

March 14, 2024 - 1:30 p.m. to 4:11 p.m.

**PUBLIC HEARING: REQUEST BY DARREN GOLDBERG/LGD VENTURES, LLC, FOR A CONDITIONAL REZONE FROM AN "A" (AGRICULTURAL) ZONE TO A "CR-R-R" (CONDITIONAL REZONE - RURAL RESIDENTIAL) ZONE; PRELIMINARY PLAT FOR LEWIS HEIGHTS SUBDIVISION, CASE NO. RZ2021-0030 AND SD2021-0018**

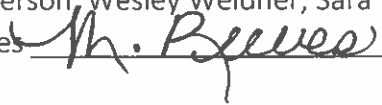
Commissioners Brad Holton, Zach Brooks and Leslie Van Beek

DSD Director Sabrina Minshall, DSD Principal Planner Michelle Barron, Deputy PA Zach Wesley,

In Favor: Becky Yzaguirre, Terry Scanlan, Zane Cradic, Josh Leonard, and Darren Goldberg,

In Opposition: Claudia Haynes, Jeannie Amen, Kim Yanecko, Ken Yanecko, Amy Weidner, Dawn Schwab, Holley Wechanowicz, Beverly Cavazos, Linda Kelso, Thomas Bratcher, Patty Martinez, Danny Martinez, Irene Leavell, Jimmy Leavell, Kerry Greenfield, Manuel Cavazos, Angela Bratcher, David Miller, Lesli Christofferson, Wesley Weidner, Sara Miller, other interested citizens

Deputy Clerk Monica Reeves



PUBLIC HEARING: REQUEST BY DARREN GOLDBERG/LGD VENTURES, LLC, FOR A CONDITIONAL REZONE FROM AN "A" (AGRICULTURAL) ZONE TO A "CR-R-R" (CONDITIONAL REZONE - RURAL RESIDENTIAL) ZONE; PRELIMINARY PLAT FOR LEWIS HEIGHTS SUBDIVISION

The Board met today at 1:30 p.m. to conduct a public hearing for Case No. RZ2021-0030 and SD2021-0018, in the matter of a request by Darren Goldberg, LGD Ventures, LLC, for a conditional rezone of parcel R30117 from an "A" (Agricultural) Zone to a "CR-R-R" (Conditional Rezone - Rural Residential) zone. Included with the conditional rezone is a development agreement. The request also includes a preliminary plat (with irrigation and drainage plan) for Lewis Heights Subdivision. Present were: Commissioners Brad Holton, Zach Brooks and Leslie Van Beek, DSD Director Sabrina Minshall, DSD Principal Planner Michelle Barron, Deputy PA Zach Wesley, In Favor: Becky Yzaguirre, Terry Scanlan, Zane Cradic, Josh Leonard, and Darren Goldberg, In Opposition: Claudia Haynes, Jeannie Amen, Kim Yanecko, Ken Yanecko, Amy Weidner, Dawn Schwab, Holley Wechanowicz, Beverly Cavazos, Linda Kelso, Thomas Bratcher, Patty Martinez, Danny Martinez, Irene Leavell, Jimmy Leavell, Kerry Greenfield, Manuel Cavazos, Angela Bratcher, David Miller, Lesli Christofferson, Wesley Weidner, Sara Miller, other interested citizens, and Deputy Clerk Monica Reeves. Commissioner Van Beek disclosed that in 2021 she was part of a previous Board that heard this case, but it will not affect her decision in this case. Neither Commissioner Holton nor Commissioner Brooks had any disclosures to make.

DSD Principal Planner Michelle Barron gave the oral staff report. The applicant is requesting a rezone for 78.5 acres. The preliminary plat proposes 31 buildable lots and 6 common lots. If approved, a new hearing would have to be held to approve a development agreement to be in substantial conformance of the concept plan which is the preliminary plat for Lewis Heights. The property is located on the south side of Lewis Lane, approximately 1300 feet east of the intersection of Sky Ranch Road and Lewis Lane, Nampa, Idaho. The parcel is south of Lake Lowell.

The original concept plan was for 34 buildable lots with individual wells, and the Lewis Heights preliminary plat. On April 4, 2022, the P&Z Commission recommended denial to the Board of Commissioners. The applicant opted to change the application and was scheduled to move forward with the Board. At the first P&Z Commission hearing, the applicant worked on an updated plan to include a public water system with a 31-buildable-lot concept plan. The applicant asked to remand the case back to the P&Z Commission so they would have an opportunity to see the information. At the November 16, 2022 hearing, the Board agreed that the applicant had a significant change and it needed to be heard by the P&Z Commission for the amended application. On December 21, 2023, the P&Z Commission recommended denial of the new plan.

The application was submitted under the 2020 comprehensive plan and the future land use designation for that plan is residential. The proposed conditional rezone aligns with 8 goals and 11 policies of the 2020 comprehensive plan. The soils are considered moderately suited for agriculture. Only 8.29% of the parcel is considered prime farmland if irrigated. The parcel is surrounded by residential site homesites even though much of the zoning is agriculture. The parcel to the south was more recently rezoned to rural residential. There are 20 subdivisions in the area with an average lot size of 3.58 acres. Within one mile of the site there have been 8 land use cases since 2016, most were rezones from agricultural to conditional/rural residential. Information was provided by the former County Engineer to help explain the recommendation to be served by a public potable water system. The concerns through testimony include unregulated drinking water quality, a largely unregulated well construction process, more preferential pathways for contaminants from at or near the surface to enter the aquifer, and subsurface wastewater disposal over an already degraded aquifer. The benefits of a public water system are that the Idaho Department of Water Resources (IDWR) appropriates the water and water quality standards are enforced, less holes in the ground equals less pathways for contaminants and less interaction with subsurface sewage disposal, and the wells are typically drilled to a greater depth than individual wells. Public roadways with right-of-way dedication will serve the properties within the subdivision. A community water system and individual septic systems are proposed.

The following people testified in support of the request:

**Becky Yzaguirre** testified Lewis Heights Subdivision is surrounded by development on all four sides making it a textbook example of where development should occur. The property has one existing irrigation well with irrigation groundwater rights. The Mora Canal splits 2.98 acres from the development, and although adjacent to the canal the property is uphill and has no surface water rights. The irrigation supply is entirely from the onsite well. They are seeking approval of a preliminary plat and development agreement with a conditional rezone from agriculture to rural residential. The project will consist of 31 buildable lots, 9 common lots with a minimum lot size of 1.6 acres, a max of 2.79 acres and an average of 2.3 acres. The lot sizes are compatible with adjacent properties which average 2.2 acres. The development will feature a community well with a community fire suppression system with each home having in-home fire sprinklers and individual septic systems. The project will consist of two phases, the first phase will contain 14 lots and 5

common lots, and the second phase will consist of 17 lots and 4 common lots. Both phases will have access to Lewis Lane. The pressurized irrigation and fire suppression system and community well will be built in phase one. They have redesigned the plat to meet the requirements of the 2022 findings of fact and the changes included a community water system instead of individual wells and they added a fire suppression system for in-home sprinklers. For the common lots south of the canal they will sell that portion to the Taylor Jene property owners but until then the Lewis Heights HOA will maintain it as stated in the proposed condition and on the plat note. The preliminary plat is in full compliance with the rural residential development requirements as outlined in the 2020 comprehensive plan and the County's code. The development aligns with the comprehensive plan for rural residential development with a focus on compatibility. Unlike many other subdivisions in the area surrounded by farmland and facing compatibility issues their infill project is set among homes promoting organized, harmonious growth. This minimizes land use conflicts and conserves resources. The project is surrounded by development on all four sides creating a clustered development, avoiding sprawl, and protecting farmland. Ms. Yzaguirre said the opposition seeks to portray the area around the property as largely agricultural and historically rural in nature, yet the evidence tells a different story, one of steady development over the past decade shifting the character of the area from agricultural to residential. This transformation underscores a broader trend moving agriculture to a more residential feel and it shows the development has expanded and less active agriculture is in the area. This is an infill development as it is consistent with its current land use patterns and is essential for coherent growth. Landscaping will feature minimal drought resistant trees and shrubs primarily along Lewis Lane serving as a screen for the northern neighbors. A pathway along the Moral Canal will link the two cul de sacs for a nice walking loop. There will be six-foot safety fence along the canal and perimeter fencing around the property. They intend to set up a community fire suppression system on common lot no. 17 delivering 500 gallons per minute to hydrants across the development. Each home will be equipped with in-home sprinklers connected to the potable water service, and each home will have a septic system. The development will have a community water system with two new wells per DEQ requirements. Only one well will be active at a time with a second serving as a backup providing domestic water to each resident. The existing onsite well will be dedicated solely to fire and pressurized irrigation. The property soil composition is primarily 92% class IV soils as defined by the USDA which severely limits the potential. The soils impose significant restrictions on crop selections and require intensive management leading to higher costs and labor. The development is projected to reduce water usage by 20 million gallons annually. Traditionally, the site's 75 acres irrigated at 3 feet per acre consume 73 million gallons from April to October. Projected water use for 31 homes total only 53 million gallons annually accounting for both household and irrigation needs across 51 acres. This shift represents a significant conservation effort lowering the development's environmental footprint by reducing the area's overall water consumption. The primary reason for the domestic wells south of Lake Lowell drying up during the peak summer months is a presence of high-capacity ag wells near the county subdivisions particularly those farther south of Lewis Heights. These deep agricultural wells operate around the clock drawing substantial water for crop irrigation. This activity creates a

seasonal cone of depression that temporarily lowers the local water table, as a result shallow wells in the vicinity may run dry during the irrigation season. This scenario illustrates the impact of intensive agricultural groundwater usage in the area. Additionally, it's necessary for residents living close to these deep ag wells to consider the timing of their own well drilling when these large ag wells are at their peak usage to understand the potential water table fluctuations. In the fall of 2021, the IDWR began monitoring wells in the Deer Sky Ranch Subdivision after countless reports of wells going dry. Now they have accumulated two years of data from the location and the graph distinctively shows the timing of the cone of depression aligning with the hottest and driest months from July to October. Starting in November there is a noticeable replenishment of the water table which continues until it reaches its peak by the end April and this pattern repeats annually providing a clear understanding of the water table fluctuations in the area and wells drying up in the summer months. This pattern has been going on for decades in this area. The occurrence of the cone of depression from these large ag wells in the summer months is well understood as the developer of the Deer Sky Ranch Subdivision put a note on the plat stating homeowners are advised that large ag wells in the area may cause water tables to fluctuate and homeowners should take appropriate measures to compensate for this possible fluctuation with drilling their domestic wells. After reviewing the well logs for Deer Sky Ranch and nearby large agricultural operations, it's evident that the wells in Deer Sky Ranch average a depth of 400 feet versus nearby ag wells which commonly have depths of more than 600 feet. Many Deer Sky Ranch wells were drilled in the fall, winter, or spring when the groundwater levels were higher than during the summer. This oversight is leading to wells that are too shallow and temporarily drying up in the summer and early fall. This reflects an incompatibility with the long-term standing adjacent farms. Lewis Heights is situated amongst similar developments and will ensure that its water usage and infrastructure are in harmony with the surrounding area to prevent the water shortage issues faced by Deer Sky Ranch. Lewis Heights is a compatible development that adheres to the code and comprehensive plan while focusing on efficient resource use and enhanced water conservation measures.

Following her testimony, Ms. Yzaguirre responded to questions from Commissioner Van Beek.

**Terry Scanlan**, an engineer and hydrogeologist with HDR Engineering, gave testimony regarding the water supply and water rights. This property has an irrigation water right, a 1966 priority, for irrigation of 77 acres. It's the only water source that has been used for irrigation on this property and it's been used for over 50 years successfully. The well that's on the property has been there since 1978 and has persisted and continues to be productive. For domestic water they are proposing a community water system. A new water right will be needed to obtain approval of that, a process through the IDWR. The developer will have to apply for a water right permit and it will go through an administrative process. IDWR will make a decision to approve or deny based on the evidence and the statutory criteria they have to follow. IDWR has a duty to determine whether this subdivision is going to cause problems with other water users south of Lake Lowell. Aquifer conditions: problems with wells south of Lake Lowell have been going on for the last

several years and IDWR Western Regional Manager Nick Miller asked their hydrogeologist, Dennis Owsley, to investigate. He investigated in 2015 and it was updated in 2021. His report found that although seasonal fluctuations exist the overall trend of the aquifer levels in the area appear to be stable or rising on a longterm basis. This indicates the aquifer is being replenished by a volume equal to or greater than the current volume of water discharged on an annual basis. The well issues that have been brought forth to the department are likely a reflection of the low transpassivity nature of the aquifer in this area, well construction issues, and well hydraulic issues. Low transpassivity means these aren't highly productive aquifers for a given amount of water there is a lot of drawdown. It also means they are highly confined, it's a pressure response so that drawdown propagates over a long distance causing those large seasonal fluctuations, particularly further south towards dry lake where all of the irrigation is from ground water. Well construction issues: it means wells aren't drilled deep enough or they are drilled so that they don't maintain their productivity, they will sand in or plug up, and so those are issues that can be overcome with proper well construction. Lastly, is the well hydraulics, it means wells are interfering with each other - the cone of depression - from large agricultural wells causing shallow or domestic wells to seasonally dry up. Water is still there but it's deeper down. The Dennis Owsley memo shows 11 of the monitoring wells south of Lake Lowell and it shows further south toward the Snake River where lands are irrigated with high lift Snake River water, aquifer levels are rising a lot. Two wells on the southern end - in a fifteen-year period one went up 65 feet and the other came up 83 feet in response to the recharge that's been going on there for the last 50 years. Closer to the lake those increases aren't as great, in fact, near the lake the water levels are pretty stable on a year-to-year basis.

Following his testimony, Mr. Scanlan responded to questions from Commissioner Van Beek.

**Zane Cradic**, who is the civil engineer on the project, testified they have one existing irrigation well that will be used for fire suppression and pressure irrigation, and there will be two additional wells which are required by DEQ for the community system. Only one of those two wells is in use at any given time. When you have a community system DEQ requires a second well just in case something happens with the first well. They have been irrigating for the last 50 years and they are going to reduce that to 46 acres, therefore they have a net positive of water they are leaving in the aquifer that they are not pulling out every year. This subdivision is improving the aquifer level because they are not pulling out that water year over year.

**Josh Leonard** referenced an earlier question from Comm. Van Beek who questioned them coming back with five-acre lots, but Mr. Leonard cannot find that. Exhibit H is the signed findings and conclusions, and it does not mention either it for the conditional rezone or the subdivision. Commissioner Van Beek said she is looking at Exhibit E, attachment 1. Mr. Leonard said that document is the draft FCO's when the case was remanded back to the P&Z Commission, it is not the actual signed document. The signed documents from the P&Z Commission do not include that.

Regarding the 1.5 irrigable acres, in Mr. Scanlan's report and subsequent letter he made clear that it's pretty unlikely that that 1.5 acres per lot would actually be irrigated. That is a maximum number, not a likely number. He reviewed the original P&Z Commission's findings and conclusions where they found the applicant complied with all but one of these, and the one they said they did not comply with was character of the area; they felt the proposed plan would affect that negatively. On April 21, 2022, the P&Z Commission concluded that the proposed conditional rezone *may* have a negative effect and then they correctly note that the property is identified as residential on the County's future land use map. On January 4, 2024, they said it *will* have a negative impact, but they don't mention that the property is still within the area designated as residential on the future land use map. The reasons they give are: it will affect productive agriculture, including aerial spraying but that's incorrect because of the closeness of single-family residential in this area this plot of land cannot be sprayed aerially today. They mentioned a concern for agricultural vehicle traffic, but there is no evidence that it will negatively affect agricultural vehicle traffic which is on the road today. They discussed concerns about water availability and the impact of increased traffic, but he noted there were no concerns from the highway district about the increased traffic. This is not super dense single-family or multi-family residential, this is respectful development of 1.5 to 2.5 acre lots and it is in keeping with the area. It is surrounded on all 4 sides by existing single-family residences. It is not historically agricultural. It has been owned by a developer for 15 years. The character of the area has been moving to residential steadily for the past 20 years as reflected on the County's future land use map and comprehensive plan. Mr. Leonard wants to dispel the myth that this is "prime farmland." The property is not on the fringes of the area designated residential, it is close to the exact center of where it's designated residential by the County. There are no dairy farms within 2 miles, but there are a lot of gravel pits, and why are gravel pits in this area? It's not because it's prime farmland, it's because there is gravel there which does not make for prime soils. The City of Nampa has eased off on wanting to annex south of the lake, and in their initial comments to the County they mentioned it would be compatible with the proposed rezoning and associated development.

**Darren Goldberg** testified he is the managing member of LGD Ventures, the applicant and owner of the subject property. They are a small family business with roots in Idaho since the 1990's. He provided a history of the property and its farming operations. He purchase the land in November of 2005 and the land was fallow and not being farmed. Over the next three years they could not find a farmer to take on the land due to its difficult soil and grades so at that time they put the water into a water bank. The land continued to be fallow until 2011. Currently the irrigated property is 92% class IV soils which is defined by the USDA as having very severe limitations. While it is currently farmed it has gone in and out of cultivation over the years. The current farmer has fought to get suitable yields all the while using the maximum amount of water for the water right. He shifted crop rotations but still produced marginal yields of crops like sugar beets. In 2021 sugar beet yields on his farm were approximately 30 tons per acres while the average in Idaho is 40.5 per acre. Today he has found the only suitable crop to be silage corn. Current farm operations are difficult due to the property being surrounded on all four sides by homes. Aerial spraying is

not allowed. While he understands the County's position of protecting agriculture, the development of this property does not impact that position, in fact it aligns with that position more than any other proposed development in the area by providing rural residential homes in a well-suited location, homes that will support farming operations south of Lake Lowell. We all want sustainable responsible developments that fall in line with the needs of the community and this development provides that. They have no intentions of negatively impacting the nature of the area.

The following people testified in opposition to the request:

*Kim Yanecko asked if the Chairman was going to ask if there are any group representatives in the audience, but Commissioner Holton said the rules state those wishing to speak on behalf of a group need to indicate that on the sign-in sheet prior to the start of the hearing.*

**Claudia Haynes** offered testimony on behalf of the Canyon County Alliance for Responsible Growth which includes 65 families. Ms. Haynes wanted to provide a map and a list of the laws that she considers to be very important, and she said the map, which she recently obtained from Nick Miller from IDWR, has to do with wells in the area. Under Idaho law the Board has to accept the document. Commissioner Holton said the Board set a policy that you have the 20-day notice to submit any written testimony. He said she can describe it if she wants. Ms. Haynes wanted the Commissioners to have the evidence in front of them and she did not mean to quote the law disrespectfully. She was asked to look it up and the law says in a hearing proceeding the presentation of evidence in writing can be submitted. Commissioner Brooks asked if the information is a different map than what is included in the case packet. Ms. Haynes said she just received the information from Nick Miller who had responded to her request about how many applications there are south of Lake Lowell that are applying for water rights and the map he sent consolidates the area and at this time there are 69 applications being asked for directly south of Lake Lowell which affects her subdivision and all of the area south of the lake all the way to the Snake River. Ms. Haynes has not had a chance to share the information with the applicant. Commissioner Holton said that's the reason the Board has had made rules about submitting evidence at the last minute because it produces an unfair hearing and so the Board set a policy to have a 20-day period to lock it in so the applicant and the public can review the information. Ms. Haynes said she has presented to hearing bodies in Canyon County for 23 years and she was not aware of the new policy. She received the information from IDWR after the 20-day deadline. Commissioner Holton said he's not making a judgement call about the material, he is making judgement on the timeliness of the material. Ms. Haynes responded to questions from Commissioner Van Beek. Director Sabrina Minshall also responded to questions from Commissioner Van Beek and said DSD is very aware of the IDWR website but in terms of the relativity of how many applications, there are all sorts of different types of applications so it's apples and oranges.

**Kim Yanecko** testified that Commissioner Holton had said this area is the pit of no recharge, and it's unfortunate we do not have adequate data on this and she wanted him to know that

tomorrow she will meet with Boise State University who was given a grant to do some water studies and potentially it could be covered to be able to do accurate aquifer levels during the summer months which is what we are lacking. She referenced a graph which said it takes 6 ½ months for the aquifer to recharge. Mr. Scanlan references the monitoring wells and he said they are stable or increasing but he fails to mention they are actually lower than the canal so they are not really pertinent to the area in which they are located. This is the only monitoring well that's on the hill and somebody else commented that the wells would have to be pretty deep otherwise the shallow wells do not get property recharge. She said they have two community wells, one is at 460 feet and the other is at 530 feet and two summers ago she had no water coming from her tap. She referenced a map and mentioned it is what Claudia Haynes was trying to reference with the materials she wanted to submit, and if those water rights are granted that Ms. Haynes referred to, it will impact the entire area. It's an internal map prepared by IDWR as a reminder that the wells located within the green-shaded area will be impacted or could be impacted and no data has yet been provided from Noble Farms as had been requested by IDWR. Ms. Yanecko said multiple County departments have made inquiries, and Kate Dahl (a former DSD employee) indicated to a developer that there were problems south of Lake Lowell and referenced a Boise feasibility study. GIS employee Tony Almeida has asked IDWR and the Bureau of Reclamation about the water issues south of Lake Lowell. In an email Nick Miller from IDWR talks about areas of concern and this is one of them and she doesn't know if that information was shared with anybody else. She said Nick Miller testified during the Taylor Jene hearing before the previous Board and he said you could pump your well dry very easily because the well just doesn't produce enough water and it's a recharge issue. We have transmissivity issues in the area and there is lacking data on whether we have recharge available to the amount that's being drawn during the summer months. IDWR responded in a water right application and called it the SOUTH CANYON COUNTY AREA OF CONCERN. That is concerning to her, is there a report or did they actually identify this area as a problem? The applicant's representatives claim the homes will pull less from the groundwater for residential, but it does not recharge at the deeper aquifer levels, it will only be recharging at the shallow areas, and agriculture is only pulling part of the year not year-round and when they irrigate they provide more of a heavy recharge which is potentially going to reach the deeper aquifers. There is a letter in the file that says there will be 500 gallons per minute required on a hydrant. Because our recharge is so lacking there are no studies as to what that impact will be on a cone of depression, the size of that cone of depression, the width of the cone of depression, and how long it will take the aquifer to recharge and how much will that impact the surrounding wells. The monitoring well is 1.5 miles from the development and IDWR is indicating that is big enough for them to understand the concern. It's either going to be a really big cone of depression or they don't have adequate data for the area where we are specifically talking about. While the comprehensive plan says this area is okay for residential, there is a huge conflict with farming going on out there and is it right for us to add more conflict by increased residential traffic? There is a lack of infrastructure. The applicant is saying the people who drill new wells just need to be aware there are problems and so they are leaving an onus on an unsuspecting person as to when to drill that well. We do not have adequate data to protect the existing homeowners. We might

be able to drill/build wells now that are great and will help those that are coming new but that is not helping those who are already there and there is a responsibility for the Board to consider that when it could potentially impact people. She said it has been testified that a half million dollars has already been spent on deepening wells, and re-drilling wells. There are gravel pits in the area, there is a lot of dry land and there are no monitoring wells because it couldn't be farmed, water wasn't adequate and so the next best use is a gravel pit, not a residential use.

**Amy Weidner** lives south of the subject property. She graduates in May with a Master's Degree in Agricultural Science, integrated resource management. Water and soil are resources. IDWR said that the aquifer is already degraded. The right to farm law is about preservation of farmland. Traditional farming practices where you till the soil every year is a very degrading destructive process. She is learning about regenerative agriculture and how this type of farmland can be turned into extremely productive farmland through regenerative agricultural practices where you can repair the soil. She has prepared a plan she would like to present to the developer, and if the Board denies the case she wants to volunteer her time to help the developer produce a regenerative agricultural plan in order to be financially sound. She said these subdivisions promote city slickers who complain about agriculture, and it creates a cumulative effect of conflict and that is something the right to farm law covers. She wants to see the complaints resolved through regenerative agricultural practices and keeping farmland as it is and maintaining it through county government. She spoke of farmland in east Boise that was converted into subdivisions, and everything went dry. Agricultural land is not the problem, it's the subdivisions that come in and create conflict. Her property was produced in 2001 through a conditional use permit and all the documents talked about how bad the aquifer was, it was not about the wells; it was about the aquifer. They had a right to farm market disclosure and an acknowledgment on the plat as well as a right to farm restriction on the plat map, and deed restrictions on all 30 lots, and yet she has to meet with an attorney on Monday because people do not stop challenging agriculture. More subdivisions will create more conflict with people complaining about farming.

**Jeannie Amen** lives one mile south of the subject property. Her husband has been a crop duster for 40 years and they have owned their business since 2012. They lost over 300 acres, and it has cost them \$5,000 to \$30,000 a year in lost revenue just because of subdivisions. Canyon County has a footprint in the world market for seed crops which she is really proud of. They fly for farmers who are seed farmers and 67% of their flight time is at night, part of that is to avoid the pollinators, and to avoid joggers and cars. Two seasons ago they lost their well on July 31. The water was gone, the pump overheated and they had to replace it briefly but could only sustain the house in little bump increments on the pump until they could everything replaced. The farmers brought them water for 3 weeks. They apply at max rate, 10 gallons per acre, so it isn't that much water, but it could have put them out if the farmers hadn't been able to bring water. The roadways are a major concern for safety and for the farmers. The developments in the area have affected farmers adversely. There have been some major issues with the Lewis pivots to the west because of the travel up the hill. There is a lack of adequate infrastructure. She spoke with Nick Miller at IDWR about offering an online well reporting system to fill in the data that's missing because

homeowners don't have any place to report their well problems and as far as IDWR is concerned it doesn't exist if they don't have it. There is no record of repairs or problems in the area due to a lack of information, so Mr. Miller is willing to offer that in a portal. Yesterday the legislature passed a law that will charge people with a misdemeanor for willingly turning in false complaints against ag operations. Their business has been spotlighted and shot at, things where the FBI had to get involved. Ms. Amen said we are looking at an ambulance district override levy which was \$10 per \$100,000 and it will bump to \$31 per \$100,000 in value. The Ambulance District Director Michael Stowell has said they are so far behind because of the influx of the number of houses, subdivisions, apartments that are coming in. Sky Ranch Road is ripped up into gravel and the big rollers are shaking her house. There are only two access points around this side of the lake, Highway 55 on the dam road and Highway 45 and Lake Shore, and the highway district is going to meet with ITD about getting that fast-tracked so they can add a stoplight which is something Ms. Amen believes should occur more houses are added. If the developer requests 31 household acre new water rights that is the difference between potable water and non-potable water for irrigation. Is that going to be 15.5 acres that they're requesting new? There is a peninsula on the map that comes up from the south and she heard they may be purchasing that. If that was purchased and pulled out of this plat would that change the lot sizes, average sizes? Pilot safety was a huge concern on the days they lost water because her husband needs to have his head in the cockpit not wondering if they will have water. Water is a huge issue and it remains unanswered.

**Beverly Cavazos** lives on Deer Flat Road and she said the neighbors do not mean any disrespect to anyone in the room, they are fighting for their homes and it's a very emotional situation. The developers build homes and leave with tons of money in their pockets, but they do not leave any for repair and rejuvenation of the infrastructure. We don't have enough police; we have two-lane roads and there are areas where the roads cannot be widened so the amount of traffic that 30 homes bring in is estimated to be around 90 trips per day. The developer should be charged a fee for each home they put in to add to the infrastructure. She attended a meeting with IDWR and staff told them developers are saying they are going to irrigate a  $\frac{1}{4}$  acre or  $\frac{1}{2}$  acre of land up to five acre lots. IDWR has no authority to monitor that, and people can put in swimming pools, or irrigate five acres of grass if they want. It is unlimited use of the water once you get a water right. Because the area is noted as residential does not mean it's appropriate for homes. We all know there is a serious water issue. The water in her home fluctuates between morning, afternoon, and evening and adding more homes will not make the problem go away. The fire district is a volunteer district, and there was an application for fire coverage for a 100-home area at Farner Road and Lewis Lane and it was denied coverage by the fire district because it's a volunteer department and it takes them 17 minutes to respond to a fire. She questions if her fire district will be able to cover the developments that are proposed.

Commissioner Holton said he is interested in updated information from IDWR and he asked if the Board would consider a 30-day continuance and an open period for 20 days to submit new information and reconvene. Commissioner Brooks said he has a question for Mr. Scanlan. Upon the motion of Commissioner Brooks and the second by Commissioner Van Beek, the Board voted

unanimously to take a 5-minute recess. (The Board went off the record at 3:19 p.m. and went back on the record at 3:25 p.m.)

Josh Leonard said if the Board is going to continue the hearing to get information from IDWR the applicant wants to defer their rebuttal until after that information comes in so they can speak to it. Commissioner Brooks said he wants to revisit the water right issue that Terry Scanlan brought up and the applicant can decide after that if they want to address the different opinion on water data that is or is not in existence. He asked Mr. Scanlan to revisit his comments on the water right that the applicant would have to apply for if the Board were to approve the application. Commissioner Holton clarified that this will be a point of clarification for a Commissioner, it is not time for rebuttal.

Terry Scanlan said the property has had an existing water right for irrigation from groundwater for 77 acres. The water right has been exercised over the last 10 years for irrigating the property with two center pivot sprinklers. The property does not have a water right for in-home domestic use so the developer will have to apply for a new water right that will seek water for in-home domestic use, the potable use. The right will be to support the 300 gallons per day, per home, and it will be high enough to meet the peak hourly demand of the system which will likely be in the 50-75 gallon per minute range and the average day demand will probably be less than 10 gallons per minute. It will be an application for permit and if it's approved it can go forward, but if it's denied this will be over because they cannot develop a community well system without an approved water right.

Josh Leonard said that would also require the applicant to demonstrate a sufficient amount of water that's there before they can get a new water right for the property. The community well system was not what was originally proposed, the reason it was proposed was to mitigate the fears and concerns of there not being enough water. It's not typically a developer's first choice because it adds significant expense and maintenance, but it does provide more certainty with regard to the water levels.

Commissioner Brooks asked him to restate what the plan is for the use of the irrigation water right if the application were to be approved and they are not pumping to run two pivots. What is that water use going to be? Mr. Leonard said the use will be for watering lawns and gardens and for fire suppression.

There was discussion regarding the late exhibits, specifically the information referenced by the applicant which was part of prior records. Deputy PA Zach Wesley said that is acceptable as a demonstrative illustration, so maybe we don't accept it as a fact exhibit, but as a demonstrative presentation. Mr. Leonard said he has seen cases in which the court wants to see what the Board saw in the record and because that was presented in a visual form as well as being read in, they are going to want to see that and if the case were to go to court he would make a motion to augment to add it.

Commissioner Holton made a motion to add it as a demonstrative presentation of what they were verbally telling the Board. The motion was seconded by Commissioner Van Beek. Planner Barron

said the applicant's PowerPoint presentation will be Exhibit #7, and Mr. Leonard's presentation will be Exhibit #8. Commissioner Holton made a motion to label it as Exhibit #7 and #8. The motion was seconded by Commissioner Van Beek and carried unanimously. Commissioner Holton said the Board needs to decide if it was compelled with the earlier evidence that there is new information that was not submitted in a timely fashion. His concern is to make it fair for everyone, the applicant included, that they have time to review the information if the Board is going to consider a method and means to include it. If not, we can exclude it and just go with the verbal testimony and move forward. He referenced the new information Claudia Haynes received from IDWR and said in his opinion the information is without prejudice, it's just the information the state has collected and put into a report. Commissioner Brooks asked if he wants to accept it just as part of her public testimony? Commissioner Holton said yes, but to do that he would like a continuance to give the public and the applicant time to look at it and continue the hearing for 30 days. He is not comfortable accepting the information today and going into deliberation. Commissioner Brooks said he doesn't feel it's necessary to delay this for one document. Commissioner Van Beek said it still seems unclear what the position is for some of those water resources. Looking at the written testimony, which was a verbatim transcript of the audio testimony, it's difficult to know where to land on that because they conflict. Deputy PA Wesley said if the Board is considering a delay it may be worthwhile to give the applicant a few minutes to look at it now since their professional staff may be able to say whether they need time to look at it and rebut. They could get a copy of it before we continue. Commissioner Brooks believes this will be null and void if IDWR does not find a water permit is acceptable so he would be interested in knowing if that could just be a condition of approval. He doesn't believe we need a 30-day continuance for information the Board could just condition for approval that the applicant has to obtain approval from IDWR for a water right. Commissioner Van Beek said she we are trying to help mitigate for water and infrastructure and we are supposed to locate in the goals and policies areas where that can coexist but there is no teeth in the right to farm act and it doesn't exclude complaining and farmers having to stop operations. She said we have more damning evidence against the water than we do for it. Discussion ensued regarding whether the Board had enough information to proceed with the hearing today. Commissioner Holton made a motion to proceed with rebuttal testimony. The motion was seconded by Commissioner Brooks and carried unanimously.

Rebuttal testimony was as follows:

Josh Leonard said Commissioner Van Beek made a comment that the Board is trying to put something together and ensure these uses can coexist out there; but that has already happened. A prior Board already decided these uses can coexist in that area when it identified this area as residential on the future land use. That's what everybody relies on, what's written down. Otherwise it's a case-by-case basis without standards and in this instance the standard there is residential. You have to assume the prior Board knew that agriculture existed around this area, although not necessarily on this exact parcel. It is important to call out the lot sizes and how they reflect against either immediately adjacent lot sizes or those that are within a stone's throw of the

subject property. Within the notification distance of 600 feet, the median parcel size is 2.16 acres. This is not prime farm ground, it is gravel, soils are not prime, and it is on slight uphill without surface irrigation. It has to pump from a well to make it as productive as it is. It is tough to say the character of the area is agricultural; it is rural, but agriculture is the secondary use to residential in this area. He reviewed highlights from Terry Scanlan's updated report based on the community well arrangement to mitigate the concerns of neighbors: even with individual wells for homes in the area, the subdivision will not have an adverse impact on local groundwater conditions. Residential development at Lewis Heights will not increase groundwater use at the property. Water level monitoring in the area shows no annual declines, although water levels in the vicinity of Lewis Heights may fluctuate on a seasonal basis they are stable in the long-term with no annual declines since the 1970's. There will be no net impact on local groundwater conditions and Lewis Heights will not have a negative impact on local groundwater conditions. To Mr. Leonard's knowledge none of the homes in the area have fire suppression, or at least it wasn't required as a condition of construction. The project adds fire suppression which not only benefits the applicant's homes, but those that are around it. The opposition admitted earlier that the soils on the property would need to be fixed to make the property agriculturally viable, and in this instance the developer has chosen rather than investing the money required to make it agriculturally viable, to develop it. He spoke about the balance of property rights. The applicants rights are natural rights and everyone else's rights are created by statute or by ordinance. The person who owns the property has a greater right over their property. The natural rights are greater and supersede those of the adjacent property owners. There are statutory rights the adjacent landowners have and one of those is that the property won't be a nuisance to them and that they are able to enjoy the use of their own property. Here, the neighbors are asking the Board to give their statutory rights greater weight than those of the applicant who owns the subject property. This proposal meets all of the required findings and conclusions. This property is generally consistent with the comprehensive plan which labels this a residential, and it is more appropriate than the current zoning designation because it's labeled as residential on the future land use map and it makes sense that a residential use would be compatible with existing residential uses.

Upon the motion of Commissioner Brooks and the second by Commissioner Van Beek, the Board voted unanimously to close public testimony with the possibility it will have to be reopened. Commissioner Holton said he wants a continuance so he can study what he's heard and try to connect it to what he has in the packet and then meet with legal to start formulating some findings and conditions. Director Minshall said if after deliberation the Board is interested in approving the application, a recommendation is to set it for hearing to come back with some specific direction or specific discussion on conditions or the development agreement. If the Board wants to deny the case they can beef up some of the findings and come back at a later date. If it wants to consider a development agreement or conditions we should do that at another hearing. Deputy PA Wesley proposes that he and staff work with the developer to get a proposed draft development agreement that can be posted on the website before the next hearing so there can be public comment on the potential conditions. Commissioner Brooks said he wants to scrap the FCO's the

P&Z Commission sent to the Board because he thinks there is a legal liability if the Board was go to along with them. There are at least two draft FCO's, and there may be a third because this case has been going on for so long where the FCO's prepared by staff were much more well developed and went through all 8 criteria and he would be more comfortable with those and either saying he agrees or disagrees with each one of them. He is ready to make a decision today. Commissioner Van Beek wants the help of legal and staff to help craft the FCO's. The Board was given a poor set of findings and they failed at some level to provide something that is defensible for either approving or denying the application. She wants more time to craft FCO's. Director Minshall said on page 285 of the report is the staff's recommended draft FCO's for the P&Z Commission in December of 2023 (*Exhibit A under the P&Z staff report addendum*). Staff just needs to know the Board's general decision and which of the criteria are affirmative or negative and then they can bring it back for discussion. Commissioner Brooks said he would be in favor of using those FCO's if the Board continues to a decision today. Commissioner Holton said if the Board wants to approve the request and using those older FCO's we would need to have an updated development agreement as part of the package and that's not in completeness. Planner Barron said on that set of the draft P&Z Commission FCO's there is an attachment "A" that has proposed conditions of a development agreement and she just needs to make sure that it was still noticed as having a development agreement. Commissioner Van Beek said one of the documents says that it will not conform to the Nampa Highway District so how did we get from not conforming to having it conform? Director Minshall said the highway district's last writing said it would have to comply with their standards and conditions for both approaches and it would be a public road system. Commissioner Brooks said it should be enumerated that we are aware that this is a no-go unless IDWR gives a new water right. Deputy PA Zach Wesley said the version of the development agreement predates the idea of the community well so we'll need to add those community conditions including the IDWR approval requirement. Commissioner Holton said this is a change in direction from the P&Z Commission's decision and the Board feels unsupported in their FCO's and so we are going to ask to staff and legal to draft the FCO's and the development agreement over what we have heard and then we will reconvene. Director Minshall said it was noticed was a potential development agreement and if we set it to a date certain we might not need to re-notice the hearing. If the Board does that it could also table the discussion of the preliminary plat to that same day because that wasn't included because the P&Z Commission denied the plat because there was no rezone so both need to be tabled to a date certain. Commissioner Holton made a motion to continue the hearing to May 1, 2024 at 1:30 p.m. and assign staff and legal to draft the FCO's with the development agreement, and to continue the preliminary plat as well as the zone change. The motion was seconded by Commissioner Brooks and carried unanimously. The hearing concluded at 4:11 p.m. An audio recording is on file in the Commissioners' Office.