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**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF WASHINGTON**

STATE OF IDAHO ex rel. TRUE PEARCE,
WASHINGTON COUNTY PROSECUTING
ATTORNEY,

Plaintiff,

vs.

DELTON LARY WALKER,

Defendant.

CV44-25-0154

Case No. CV44-25-_____

COMPLAINT FOR USURPATION OF
OFFICE (I.C. § 6-602), DECLARATORY
JUDGMENT, WRIT OF PROHIBITION,
AND MONEY DAMAGES

Plaintiff alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff True Pearce is the duly elected Prosecuting Attorney for Washington County, State of Idaho. Plaintiff brings this action on behalf of the people of the State of Idaho, pursuant to Idaho Code § 6-602.

2. Defendant Delton Lary Walker is an individual residing in Washington County, Idaho.

3. This Court has jurisdiction over this matter pursuant to Idaho Code § 6-602 and Idaho Code § 1-705.

4. Venue is proper in Washington County pursuant to Idaho Code § 5-404 because the acts and omissions giving rise to this Complaint occurred in Washington County.

FACTUAL ALLEGATIONS

5. Defendant, Delton Lary Walker, is a licensed attorney engaged in private practice in Washington County and employed as a Civil Deputy Prosecuting Attorney in Payette County. Defendant formerly served as the elected Prosecuting Attorney for Washington County. He left office on January 13, 2025, when Plaintiff was sworn in as the newly elected Washington County Prosecuting Attorney.

6. On or about March 25, 2021, when Defendant was serving as the Washington County Prosecuting Attorney, attorney Gary G. Allen, then a partner at Givens Pursley LLP, tendered a letter (the “Allen Letter”) to the Board of Washington County Commissioners (“Board”). The Allen Letter was written on behalf of two residents of the County who took issue with what the letter calls the “Subdivision Ordinance.” A copy of the Allen Letter is attached hereto as Exhibit 1, and by this reference incorporated herein.

7. The Allen Letter does not expressly define the term “Subdivision Ordinance,” but it refers generally to the County’s historical practice regarding building permits and the division of parcels in the County’s A1 Agricultural zone. It also refers specifically to sections 5-4-1 and 6-2-2 of the Washington County Code (“the Code”).

8. On June 21, 2021, the Defendant offered legal advice to the Board regarding the Code, on the record during a public meeting of the Board. The Defendant advised the Board that section 5-4-1(B) of the Code authorizes the construction of single-family residences on A1

parcels that have twenty (20) or more acres of lot area. A copy of the minutes from the Board meeting on June 21, 2021, is attached hereto as Exhibit 2, and by this reference incorporated herein. Defendant's legal advice to the Board is set forth on page 3 of the minutes.

9. In approximately the spring and summer of 2021, the Board, based upon the Defendant's legal advice, allowed a local property investor to split land in the Gentry Lane area into multiple 20-acre parcels, and to sell said parcels to individuals who would then build homes on them. This caused significant controversy within Washington County.

10. On or about August 27, 2021, a different partner from Givens Pursley LLP, Christopher Meyer, tendered a "Memorandum of Law" (the "Meyer Memo") to the Defendant. The Meyer Memo summarizes in detail the provisions of section 5-4-1 of the Code, and how they apply to the construction of residential dwellings on divided A1 parcels. During his time in office, the Defendant paid Givens Pursley well more than \$10,000 in County funds for the advice set forth in the Meyer Memo. Most notably, the Meyer Memo misconstrues the Code and expressly contradicts the legal advice that the Defendant previously gave to the Board on June 21, 2021. A copy of the Meyer Memo is attached hereto as Exhibit 3, and by this reference incorporated herein.

11. On or about April 7, 2025, Plaintiff tendered to the Board a Memorandum (the "Plaintiff's Memorandum") addressing the issues raised by the Allen Letter, the Meyer Memo, and Plaintiff's analysis of the Code. A copy of the Plaintiff's Memorandum is not attached hereto nor incorporated herein, as it is protected by the attorney-client privilege.

12. Upon information and belief, a copy of the Plaintiff's Memorandum and/or the substantive analysis set forth therein was leaked or disclosed by an unknown County employee; however, it was not leaked or disclosed by the Board.

13. Upon information and belief, the Defendant either received a copy of the Plaintiff's Memorandum or was advised of the substantive analysis set forth therein.

14. The controversy regarding the parcel splits and construction of homes in the Gentry Lane area has now resulted in the filing of a lawsuit by several aggrieved property owners, filed as Ada County Case No. CV01-25-05641 (the "Moye Lawsuit"). The Moye Lawsuit names numerous defendants, including Washington County. It also names the Defendant, Delton Walker, in his official and individual capacities. A copy of the Moye Lawsuit is not attached hereto as it is a matter of public record. The allegations set forth in the Moye Lawsuit are **not** incorporated herein.

15. On or about April 15, 2025, the Plaintiff was served with the Moye Lawsuit.

16. Upon information and belief, the Defendant was also served with the Moye lawsuit on or about April 15, 2025.

17. Upon information and belief, the Defendant has previously participated in real estate transactions in which he stands, or believes he stands, to benefit financially from the Meyer Memo's misconstruction of the Code. At least one such transaction involved pressuring a buyer not to build on land which was legally eligible for a single-family residence.

18. On or about April 17, 2025, at approximately 9:01 p.m., the Defendant sent an unsolicited email to Washington County Commissioner Nate Marvin. Attached to the Defendant's email was a copy of the Meyer Memo. The email also contained the Defendant's formal signature line and photograph, indicating his status as a licensed attorney.

19. The Defendant's email was presented as a legal advisory document, without prior authorization from or coordination with Plaintiff, the current Prosecuting Attorney.

20. Commissioner Marvin then forwarded the Defendant's email to Plaintiff and to the County Clerk, asked the County Clerk to forward the opinion to the full Board, and indicated it would be discussed at an upcoming meeting regarding legal interpretation of the Code. A screenshot of the Defendant's email to Commissioner Marvin, and Commissioner Marvin's email to Plaintiff and the County Clerk is attached hereto as Exhibit 4, and by this reference incorporated herein.

21. Upon information and belief, the Defendant's email to Commissioner Marvin was intended to bolster his defense against the Moye lawsuit and/or to further his financial interests stemming from the Meyer Memo's misconstruction of the Code, whether such interests are real or perceived.

22. The Defendant is not the current legal advisor to Washington County and has no authority to render legal opinions to elected officials acting in their official capacity.

**FIRST CLAIM FOR RELIEF
(Usurpation of Office, I.C. § 6-602)**

23. Plaintiff realleges and incorporates paragraphs 1-22.

24. Defendant usurped and/or intruded into the Office of the Washington County Prosecuting Attorney in one or more of the following ways:

- i. By obtaining a copy of the Plaintiff's Memorandum and/or by communicating with an unknown County employee regarding the substantive legal analysis set forth therein;
- ii. By emailing Commissioner Nate Marvin to offer legal advice or opinion and to promulgate the Meyer Memo;
- iii. By relying on his standing as a licensed attorney, the former Washington County Prosecuting Attorney, and current Civil Deputy Prosecuting Attorney in Payette County, to offer legal advice and opinion to Commissioner Marvin and/or the Board and to advocate for the Meyer Memo's misconstruction of the Code.

25. As a direct result of the Defendant's usurpation of and/or intrusion into the Office of the Washington County Prosecuting Attorney, Commissioner Marvin took explicit action to address the Defendant's unlawful and self-interested legal advice with the full Board.

**SECOND CLAIM FOR RELIEF
(Declaratory Judgment, I.C. §§ 6-602 and 10-1201)**

26. Plaintiff realleges and incorporates paragraphs 1-25.

27. Pursuant to Idaho Code §§ 6-602 and 10-1201, Plaintiff is entitled to a Judgment declaring that the Defendant has no legal right to give legal opinion or advice to any Washington County official, elected or employed, and that such rights are exclusive to Plaintiff True Pearce as the duly elected Washington County Prosecuting Attorney, consistent with Idaho Code § 31-2607, as alleged herein and as shall be proven at trial.

**THIRD CLAIM FOR RELIEF
(Writ of Prohibition, I.C. §§ 6-602, 7-401, and 1-705)**

28. Plaintiff realleges and incorporates paragraphs 1-25.

29. Pursuant to Idaho Code §§ 6-602, 7-401, and 1-705, Plaintiff is entitled to a Writ of Prohibition permanently enjoining the Defendant from offering any legal opinion or advice to any County official, elected or employed, in his capacity as a licensed attorney.

**FOURTH CLAIM FOR RELIEF
(Money Damages, I.C. §§ 6-602 and 6-606)**

30. Plaintiff realleges and incorporates paragraphs 1-25.

31. As a direct and proximate result of the Defendant's usurpation of and/or intrusion into the Office of the Washington County Prosecuting Attorney, Plaintiff has been required to procure the advice of outside counsel to obviate the confusion caused by the Defendant's unlawful legal advice and to confirm to the Board's satisfaction that the Plaintiff's Memorandum contains sound legal analysis and advice.

32. Defendant should be required to reimburse Plaintiff for the attorney fees that Plaintiff has or will incur in relation to hiring outside counsel to review the Plaintiff's Memorandum and obviate the confusion caused by the Defendant's unlawful legal advice.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. Pursuant to Idaho Code §§ 6-602 and 10-1201, for a Judgment declaring that the Defendant, Delton Lary Walker, has no legal right to give legal opinion or advice to any Washington County official, elected or employed, and that such rights are exclusive to Plaintiff True Pearce as the duly elected Washington County Prosecuting Attorney, consistent with Idaho Code § 31-2607, as alleged herein and as shall be proven at trial;
2. Pursuant to Idaho Code §§ 6-602, 7-401, and 1-705, for a Writ of Prohibition permanently enjoining the Defendant, Delton Lary Walker, from offering any legal opinion or advice to any County official, elected or employed, in his capacity as a licensed attorney;
3. For money damages as set forth in Plaintiff's Fourth Claim for Relief, in an amount to be proven at trial;
4. Pursuant to Idaho Code §§ 6-606 and 12-121, for an award of costs and attorney fees incurred by Plaintiff on behalf of the people of the State of Idaho in prosecuting this action, to be calculated at a rate and in such manner as determined by the Court;
5. For such other and further relief as the Court may deem equitable and just.

DATED this 23rd day of April, 2025.



TRUE PEARCE
Washington County Prosecuting Attorney

GIVENS PURSLEY LLP

Attorneys and Counselors at Law

EXHIBIT 1
(Page 1 of 9)

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L. Edward Miller
Judson B. Montgomery
Deborah E. Nelson
W. Hugh O'Riordan, LL.M.
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Randall A. Peterman

Michael D. Roe
Robert B. White

William C. Cole [Of Counsel]

Kenneth L. Pursley (1940-2015)
James A. McClure (1924-2011)
Raymond D. Givens (1917-2008)

March 25, 2021

VIA HAND DELIVERY

Washington County Commissioners
256 E. Court St.
Weiser, Idaho 83672

Re: Washington County Subdivision Ordinance

Dear Commissioners:

This letter is on behalf of David and Mikal Smith (the "Smiths") and other concerned property owners in Washington County regarding the agricultural split provisions of Washington County's (the "County") subdivision ordinance. The Smiths have asked me to address two issues in this letter: (1) does the County's subdivision ordinance (the "Subdivision Ordinance") comply with Idaho law regarding the restrictions it places on the division of agricultural land?; and (2) what ambiguities and problems are created by the current original parcel split provisions of the Subdivision Ordinance? The sections below discuss these issues in turn.

1. The Subdivision Ordinance may not comply with the agricultural protection provisions of the Idaho Code.

Idaho law provides strong protection of agricultural lands against both subdivision and zoning restrictions. The Right to Farm Act states, "The legislature also finds that the right to farm is a natural right and is recognized as a permitted use throughout the state of Idaho." I.C. § 22-4501. The subdivision enabling statute protects this right by specifically exempting agricultural divisions from the definition of a subdivision:

[Definition of] Subdivision: A tract of land divided into five (5) or more lots, parcels, or sites for the purpose of sale or building development, whether immediate or future; *provided that this definition shall not include a bona fide division or partition of agricultural land for agricultural purposes. A bona fide division or partition of agricultural land for agricultural purposes shall mean the division of land into lots, all of which are five (5) acres or larger, and maintained*

as agricultural lands. Cities or counties may adopt their own definition of subdivision in lieu of this definition.

I.C. § 50-1301(17) (emphasis added).

The Local Land Use Planning Act ("LLUPA"), which governs both zoning and subdivision ordinances, contains even stronger language: "No power granted hereby shall be construed to empower a board of county commissioners to enact any ordinance or resolution which deprives any owner of full and complete use of agricultural land for production of any agricultural product. Agricultural land shall be defined by local ordinance or resolution." I.C. § 67-6529(1).

The Subdivision Ordinance is on shaky ground under these provisions. The Subdivision Ordinance does nothing to exempt bona fide agricultural divisions from subdivision requirements as required by Idaho Code Section 50-1301. This places Washington County in a small minority of the counties in the state, most of which provide protections for agricultural divisions in some form. I have attached as Exhibit "A" a memorandum our firm prepared for another client to submit to the Adams County commissioners on this subject.

One may be tempted to think that the provision allowing the County to adopt its own definition of subdivision eliminates the requirement to provide an agricultural exemption from the Subdivision Ordinance. The County cannot be confident of this. The reference to "this definition" appears clearly directed at the five-lot definition of a subdivision and not at the agricultural exemption. In fact, the agricultural exemption itself points to "this definition", meaning the preceding five-lot definition of a subdivision. I would be surprised if the Idaho Legislature intended to allow a county, say Blaine County or Ada County, to override an express agricultural protection provision at its whim.

The Subdivision Ordinance may also run afoul of Section 67-6529(1). The inability to divide agricultural lands may "deprive [an] owner of full and complete use of agricultural land for production of [an] agricultural product" for any number of reasons, including transfer to family members or production entities, leasing, or simple economic reasons. The Subdivision Ordinance also does not define agricultural lands for purposes of the protections of Section 67-6529(1) as the statute requires. To the extent the County does define agricultural lands, it clearly permits residential structures on those lands. *E.g.* WCC § 5-4-1.F (permitting "farm and ranch houses", "single family dwellings", and "farm and ranch houses ... if necessary to house farm laborers for the operation of the ranch or farm...").

2. The County's original parcel split process creates numerous ambiguities and problems.

The County's current approach to rural subdivisions creates many difficulties. Essentially, I understand the county only allows splitting an original parcel of land as of 1979 into four total parcels (three of which must be one-acre parcels as I read Section 5-4-1). Otherwise, apart from exceptions not applicable to this discussion, the landowner has to go through a standard subdivision process that includes expensive requirements that are inappropriate and infeasible in an agricultural setting and may run \$10,000 to \$20,000 for a split.

The first problem is that the County's interpretation of the split provisions is it is inconsistent with the Subdivision Ordinance, which only applies to a division into "more than four (4) parts". WCC § 6-2-2. Thus, a property owner has the right to divide and sell four parcels as a matter of right as long as they comply with the applicable minimum lot sizes in the Zoning Ordinance. The County has substantial legal exposure if it denies a building permit for a divided parcel that does not require subdivision approval.

The second problem is that the County is apparently taking the position that any subdivision in the A1 zone requires a rezone to A2 before a building permit can be approved. This is contrary to the plain language of the Zoning Ordinance which states that "farm and ranch houses" and "single family dwellings" are "permitted in all A1 zones." I see no basis in the code for the County's position, and the County has legal exposure for imposing a rezone requirement on an applicant under these circumstances.

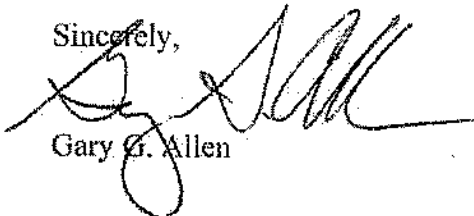
The third problem with the County's approach is it is unfair to owners of large tracts of land. It is one thing to allow splitting a 40-acre original parcel into four parcels. It is entirely another to allow only four parcels to be created from a 1,000- or 10,000-acre parcel. The U.S. and Idaho constitutions forbid land use regulations that deprive an owner of "all economically beneficial uses of land". *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). The Supreme Court has expressly held the property owner's rights extend beyond agricultural use of the land to development potential. In other words, the County cannot say that allowing only agricultural uses on large parcels satisfies the Constitution. One can easily imagine a situation in Washington County where creating a standard subdivision is plainly infeasible and allowing only four splits does not satisfy the requirements of *Lucas*.

Another problem is the original split regulations may not in many cases protect prime agricultural land as intended. My understanding is much of the prime agricultural land in Washington County has already been divided into smaller parcels, so the four split parcels unintentionally facilitate conversion of an agricultural area into a rural residential area. A good example would be the Weiser area. At the same time, the four splits rule frustrates legitimate agricultural and other divisions in areas like Midvale where many larger parcels exist.

The final problem is the administrative headaches and expense of determining the availability of splits and processing them. Under the County's recently adopted policy, this regulation requires the applicant to perform a complex forensic title search that allows for ambiguity and unfair special treatment. The County has a number of alternatives that are simpler and more transparent and do not impose these unnecessary costs on property owners.

Thank you for your consideration of these concerns. My clients and other concerned citizens would welcome public hearings in which a full range of options could be discussed. The County has many options that would mitigate the legal risks discussed above and create a better development policy for the County.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Allen", written over the printed name.

Gary G. Allen

GGA

cc: Delton Walker, Esq.
David and Mikal Smith

EXHIBIT A

GIVENS PURSLEY LLP
Attorneys and Counselors at Law

MEMORANDUM

To: Adams County Commissioners
From: Gary Allen and Samuel Parry
Re: Possible approaches for agricultural exemption in Adams County
Date: April 1, 2020

Executive Summary

- Adams County is considering changes to its subdivision ordinance to provide an agricultural exemption for lots in the agricultural, timber, and grazing ("ATG") zone.
- We researched every Idaho county to determine the approaches taken to agricultural exemptions ("Ag Exemptions"). In every case where a county has adopted an exemption, it has adopted a single minimum lot size for all agricultural uses.
- Forty acres is a common minimum lot size for Ag Exemptions in Idaho:
 - No county with an Ag Exemption requires more than a 40-acre minimum lot size and most require a 20-acre minimum lot size or less.
 - 40 acres lots do not have a significant impact on public services, roads, and utilities.
 - Timber, grazing, and crop production can all practically occur on 40 acres.
- A novel approach would adopt different minimum lot sizes for different types of agricultural use, e.g.: (1) timber, (2) grazing, and (3) crop production (the "Tiered Approach").
- The benefit of a Tiered Approach is uncertain. Classifying individual properties as either timber, grazing, or crop production would be challenging; and different agricultural uses commonly overlap on one parcel.
- Three counties exempt parcels of 160 acres or more from subdivision requirements based solely on minimum lot size with no agricultural use required. However, those counties also provide for simple land divisions with small minimum lot sizes without extensive subdivision requirements.
- Other counties provide specific rural or primitive subdivisions for division of unimproved land in remote areas where urban style subdivisions and improvements are not appropriate. This approach is functionally similar to subdivision exemptions which allow for primitive, unimproved parcels for agricultural uses or even recreation and hunting. The lack of lot improvements are disclosed on the deed. Additional improvements necessary for residential use could be conditions for obtaining a building permit rather than a condition of the land division.

Discussion

Adams County is considering the addition of an agricultural exemption to its subdivision ordinance. This memorandum summarizes information on the approaches taken in each of Idaho's 44 counties. Thirty-one counties provide exemptions to their subdivision ordinance based on agricultural use, a minimum lot size, or both. None of the counties with Ag Exemptions require more than a 40-acre minimum lot size (see Table 1). Most require between 5 and 20 acres.¹ As discussed below, agricultural uses of all kinds are practical on 40 acres.

Timber, grazing, and crop production are all practical on 40 acres. According to our research, timber production, for instance, is practical on 40 acres if the land is modestly timbered.² Across Idaho, over 36,000 non-industrial, private landowners own approximately 1.7 million acres of forest land.³ Of that group, however, nearly 13,000 own less than 50 acres and the average is only 66 acres.⁴ Forty-acres of well managed timber can be valuable and, depending on the age and size distribution, could be selectively harvested periodically with a measurable benefit to the landowner.⁵

Grazing is also practical on 40 acres. On non-irrigated rangelands averaging approximately 1,200 pounds per acre of annual forage production, 40 acres is plenty to graze up to ten head during the grazing season without feeding hay.⁶ By feeding hay, that number can be increased substantially. Where annual

Table 1. Idaho Counties with Ag Exemptions listed by min. lot size

Acres	County
0	Camas, Clearwater, Caribou
5	Bingham, Butte, Cassia, Gem, Oneida
10	Boise, Borneville
16	Madison
20	Gooding, Idaho, Lewis, Teton
40	Bannock, Bear Lake, Blaine, Canyon, Fremont

¹ Three counties with Ag Exemptions do not require a minimum lot size; five require a minimum lot size of at least 5 acres; two require at least 10 acres; one requires 16 acres; four require at least 20; and five require at least 40. Gem, Canyon, and Blaine Counties do not allow residential dwellings on a parcel created under their Ag Exemption.

² Christopher Steiner, *Buying Woodland for Fun and Profit*, FORBES, (December 14, 2009) <https://www.forbes.com/forbes/2009/1214/investment-guide-10-forestry-real-estate-buying-woodland-for-fun-profit.html#6d2b2271709a> (last visited March 18, 2020). An Oregon forest owner with only 40 acres averages \$11,000 in revenue from timber sales each year.

³ Philip S. Cook, Dennis R. Becker, and Michelle Benedum, IDAHO'S FAMILY FOREST OWNERS: 2016 SURVEY RESULTS, University of Idaho Policy Analysis Group, Report No. 38, p. 1 (April 2018) (hereinafter "Idaho Forest Owners Survey") <https://www.uidaho.edu/-/media/UIDaho-Responsive/Files/cnr/research/PAG/Research/PAGreport38.pdf?la=en&hash=7AD2AAE9200EFFB28590F0434BA91747E774C671> (last visited March 18, 2020).

⁴ Idaho Forest Owners Survey at 7, 9.

⁵ See generally, Christopher Steiner, *supra* note 2; USDA Forest Service, *Backyard Woods* pp. 38-39 (January 2005) <https://www.fs.usda.gov/naspr/publications/backyard-woods-bring-your-vision-life> (last visited March 18, 2020).

⁶ Dan Ogle and Brendan Brazee, USDA - Natural Resources Conservation Service, ESTIMATING INITIAL STOCKING RATES IN IDAHO, Technical Note, TN Range No.3 (June 2009)

forage production is higher, in meadows or irrigated pasture, the stocking rate can be increased.

Irrigated crop production is perhaps the least dependent on large tracts of land. Where water is available, 40 acres is more than enough to grow crops common to Adams County.⁷

A novel alternative to a single Ag Exemption lot size is the Tiered Approach. This is an Ag Exemption with specific minimum lot sizes tied to each of three types of agricultural uses: (1) timber, (2) grazing, and (3) crop production. Under the Tiered Approach, each type of agricultural use would correspond to a different minimum lot size. This approach is not employed in any Idaho county and its advantages are uncertain. The initial classification of each lot would be especially challenging. Often, agricultural parcels support two or more agricultural uses since they are inherently complimentary. For instance, cattle are commonly grazed on crop residues after harvest and through the winter. This provides off-season feed, and fertilizer for the next crop year. Cattle are also grazed on timber land. In fact, given the right 40-acre parcel, all three uses could likely overlap.

Although no Idaho counties require minimum lot sizes greater than 40 acres under Ag Exemptions, Lemhi, Twin Falls, and Fremont Counties require 160 acres for exemptions based solely on minimum lot size with no agricultural use required.⁸ Those counties also provide for simple land divisions with small minimum lot sizes without extensive subdivision requirements.

Lemhi County, for instance, allows exemptions to its subdivision ordinance for lots at least 160 acres in size.⁹ Minimum lot sizes under a subdivision plat, however, can be as small as a 1/4 acre in some zones and 2 1/2 acres in other zones.¹⁰ The improvements required by the Lemhi County subdivision ordinance include electrical and telephone connections (except in remote or primitive areas), drained and graded gravel roads, and either connection to central sewer and water, or a well and septic on-site.¹¹

Twin Falls County requires a minimum lot size of 160 acres in its Agricultural Range Preservation Zone and 40 acres in the Agricultural zone;¹² however, in both zones, lots as small as 1 acre are available conditionally.¹³ Twin Falls County requires subdivisions and

https://www.nrcs.usda.gov/Internet/FSE_PLANTMATERIALS/publications/ldpmstn9390.pdf (last visited March 18, 2020).

⁷ See generally, Iris Mayes, et al., Sustainable Small Acreage Farming in Idaho: Finding and Evaluating Land, University of Idaho Extension (May 2019) www.extension.uidaho.edu/publishing/pdf/BUL/BUL932.pdf (last visited March 18, 2020); A. Garrett, et al., What Can I Do With My Small Farm: Selecting an Enterprise for Small Acreage, Oregon State University Extension (February 2016) <https://catalog.extension.oregonstate.edu/ec1529> (last visited March 18, 2020).

⁸ Twin Falls and Fremont Counties have separate Ag Exemptions requiring an agricultural purpose and a 40-acre minimum lot size.

⁹ Lemhi County Development Code § 3.1.5.9.

¹⁰ Lemhi County Development Code, Table 6.5.

¹¹ Lemhi County Development Code §§ 8.5.5; 6.2.

¹² Twin Falls County Code § 10.1.2.

¹³ Twin Falls County Code §§ 8-6A-3, 8-6B-3.

planned unit developments to provide utilities, roads based on the standards of the highway district, and walkways where essential for public convenience.¹⁴

In Fremont County, exemptions to the subdivision ordinance are provided for lots over 160 acres,¹⁵ but lots as small as 1 acre are available under the subdivision ordinance.¹⁶ Regular subdivisions are required to have an adequate and continuous supply of safe drinking water, capacity for wastewater disposal with centralized sewer or individual septic, and underground power.¹⁷ In rural areas, off-street pathways are required but do not require pavement or cement.¹⁸ Gravel roads are encouraged in rural areas.¹⁹ Additional improvements are required in special overlay districts.²⁰

Other counties have made provisions for division of unimproved land where urban style subdivisions and improvements are not only unnecessary, but undesirable. For instance, Boundary County has a primitive subdivision ordinance that allows development via short plat process with maximum densities based on the underlying zone and do not require construction or installation of basic utilities including roads, water, septic or electrical service. The level of services, or lack thereof, are accurately disclosed on the face of the plat.²¹

Primitive subdivisions are functionally similar to exemptions to subdivision ordinances by not requiring lot improvements. Many landowners desire primitive, unimproved property for agricultural uses, or recreation and hunting. For these uses, wells, septic systems, or electricity are not appropriate. Any improvements necessary for residential development (i.e., well and septic) could be required as conditions for receiving a building permit rather than conditions for making the land division.

In sum, while a few counties have unique approaches to regulating subdivisions in rural areas, the most common approach in Idaho are Ag Exemptions to the subdivision ordinance for parcels at least 40 acres in size and used for agriculture production. This approach provides simple land divisions without improvements that would take away from the remote and rural nature of the land.

¹⁴ Twin Falls County Code §§ 10-2-7(K); 10-2-8; 10-3-12. Four highway districts operate in Twin Falls County.

¹⁵ Fremont County Development Code § 3.03.040.

¹⁶ Fremont County Development Code §§ 4.13, 4.14.

¹⁷ Fremont County Development Code §§ 5.35, 5.36, 5.37.

¹⁸ Fremont County Development Code § 5.43.010.

¹⁹ Fremont County Development Code § 5.40.010(f).

²⁰ See Fremont County Development Code § 4.17.010.

²¹ Boundary County Zoning Ordinance § 11.3.6.

June 21, 2021

The Board of County Commissioners of Washington County, Idaho, does hereby meet this 21st day of June 2021.

IN THE MATTER OF ROLL CALL)

Debbie Warren, Deputy Clerk, called roll call: Kirk Chandler, present; Lyndon Haines, present; and Nate Marvin, present.

Nate Marvin opened the meeting and led the Pledge of Allegiance. Lyndon Haines gave the invocation.

IN THE MATTER OF CORRESPONDENCE/MEETINGS AND REPORTS)

Correspondence received by the Board was reviewed and disseminated as required.

Kirk Chandler moved, seconded by Lyndon Haines to approve a Catering Permit Application submitted by the Copper Lounge to be used June 25 and 26, 2021 at the Weiser Biker Rodeo. Motion carried unanimous.

Haines reported he attended the Southwest Health District Board meeting last week.

The Board discussed the recently declared Juneteenth holiday.

IN THE MATTER OF MINUTES)

The minutes of the Board not heretofore approved of June 14, 2021 were approved as written.

The minutes of the Board not heretofore approved of June 15, 2021 were approved as written.

The minutes of the Board not heretofore approved of June 16, 2021 were approved as written.

IN THE MATTER OF OPERATION IN FUNDS/STATEMENT OF TREASURER'S CASH)

Lyndon Haines moved, seconded by Kirk Chandler to approve May 2021 Operation in Funds/Treasurer's Cash in the amount of \$12,105,907.13. Motion carried unanimous.

IN THE MATTER OF PROSECUTING ATTORNEY)

Delton Walker, Prosecuting Attorney, met with the Board.

June 21, 2021

Walker informed the Board that he had further discussions with Chris Meyer regarding County Code. Walker inquired if the Board is in favor of having a compliance officer.

Chandler stated he believed that the Prosecuting Attorney should be the one to issue a letter to persons who are in violation of County Code.

Marvin stated that the compliance officer could assist with the workload on the Prosecutor.

Haines clarified that the Planning & Zoning Department currently issues a letter, then the Prosecuting Attorney issues a letter, the Sheriff's Office serves a complaint, then the landowner may need to go to court.

Walker stated that whenever there are code changes, a public hearing would be required.

Haines stated that issuing a citation should be the last step. The County is not trying to be heavy handed, but there needs to be a balance.

Nate Marvin moved, seconded by Kirk Chandler to go into executive session at 9:20 a.m. in accordance with I.C. 74-206(1) (a & b) to consider hiring a public officer, employee, staff member or individual agent. This paragraph does not apply to filling a vacancy in an elective office, (b) to consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student, and I.C. 74-206(1)(f) to communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement. Motion carried unanimous. Kirk Chandler, Aye; Lyndon Haines, Aye; Nate Marvin, Aye.

Nate Marvin stated they were out of executive session at 10:02 a.m.

IN THE MATTER OF PLANNING AND ZONING)

Bonnie Brent, Planning and Zoning Administrator, met with the Board. Members of the public present were Marv Williams, Stacy Walker, _____ Walker, Lisa Collini, Diana Noe, Gene Shiver, Gene Wyss, Kay Wyss, Nancy Williams, Sam and Stefanie Lancaster, and Tanya Moya.

Marvin inquired if the members of the Board wanted to approve or deny the Lancaster Rezone request from A1 to A2.

Kirk Chandler moved, seconded by Lyndon Haines to deny the rezone based on 20 acres to be interpreted by County Code that 20 acres or more does not need to be rezoned and a

June 21, 2021

single-family dwelling can be built on 20 acres. Kirk Chandler, Aye. Lyndon Haines, Aye. Nate Marvin, Aye.

Prosecuting Attorney, Delton Walker, stated the County has not received very many requests for a rezone when the parcels are 20 acres or larger. Walker stated that Lancaster has applied for divisions of 20 acres or greater and under County Code, section 5-4-1, states that "in Zone A1 no dwelling shall be sold, transferred or built with less than 20 acres of lot area except as provided in Section C." Walker stated that the proposed lots are 20 acres or greater, that is allowed per code, but only one house would be allowed per 20 acres. Walker stated it is not Lancaster's intent to have more than one home on each 20-acre parcel. Walker stated Lancaster would still have to meet the requirements of the Fire Code and Southwest District Health regulations. A building permit will need to be required on each 20-acre or larger parcel.

Chandler stated that if a new well dries up an existing well, the injured party could sue the new landowner. Chandler stated persons need to work with the Department of Water Resources to monitor wells for changes.

IN THE MATTER OF AMBULANCE)

Nate Marvin moved, seconded by Lyndon Haines to recess as the Board of Washington County Commissioners and convene as the Board of the Weiser Ambulance District. Motion carried unanimous.

Debbie Warren, Deputy Clerk, called roll call: Kirk Chandler, present; Lyndon Haines, present; and Nate Marvin, present.

Luke Smith, Ambulance District Director, met with the Board. Smith reported the Ambulance District had thirty-one calls for service last week, which included eleven transfers and seven public assists/refusals for care. Order No. 21-30 for general expenses in the amount of \$434.34 and Order No. 20-0019 for payroll expenses in the amount of \$26,875.23 were presented to the Board for review.

Smith stated he is working on the budget with hopes of presenting a draft to the Board in the near future. Smith informed the Board that the District is accepting applications and has received a few completed applications.

Lyndon Haines moved, seconded by Kirk Chandler to approve Order No. 21-19 for payroll expenses in the amount of \$26,875.23. Motion carried unanimous.

Kirk Chandler moved, seconded by Lyndon Haines to approve Order No. 21-30 for general expenses in the amount of \$434.34. Motion carried unanimous.

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Lyndon Haines moved, seconded by Kirk Chandler to approve Order No. 21-19VAC in the amount of \$1,668.23. Motion carried unanimous.

Nate Marvin moved, seconded by Lyndon Haines to recess as the Board of the Weiser Ambulance District and reconvene as Board of Washington County Commissioners. Motion carried unanimous.

Debbie Warren, Deputy Clerk, called roll call: Kirk Chandler, present; Lyndon Haines, present; and Nate Marvin, present.

IN THE MATTER OF WEED SPRAY SIGNS)

Karl Greshover, 1232 Mann Creek Road, met with the Board. Also present was Washington County Weed Superintendent, Bonnie Davis.

Greshover requested approval of an Owner Responsibility and Maintenance Agreement of Noxious Weeds/Vegetation on Washington County Roadside Right of Way.

Marvin requested that Greshover provide a map with the Agreement.

Mr. Greshover was able to obtain a map and returned to the meeting. Greshover stated he was requesting the County to not spray a portion of the roadside in front of his property.

Nate Marvin moved, seconded by Lyndon Haines to approve the Owner Responsibility and Maintenance Agreement of Noxious Weeds/Vegetation on Washington County Roadside Right of Way. Motion carried.

IN THE MATTER OF IMPACT AREA DISCUSSION)

Sandra McKee, City of Cambridge Clerk, and Cambridge City Council met with the Board. Members of Cambridge City Council present were Corey Morgan, Levi Harrison, Mark Loveland, Jack Toothman and Delray Platt.

Sandra McKee presented copies of the current County Code relating to the Cambridge Area of City Impact. McKee reviewed 4-3-4 regarding jurisdiction with the Board. McKee discussed recent issue that had come before Cambridge City Council. McKee also discussed the boundaries of the area of impact as addressed in the Local Land Use Planning Act.

Haines clarified that the County could adopt the City's code for the impact area. The County could also adopt the City's Comprehensive Plan.

McKee stated that was correct, but the County would still have jurisdiction.

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McKee read from the Idaho Association of Cities Handbook, which states, “Because cities lack jurisdiction outside their corporate limits, if a county wants to enforce a city’s

comprehensive plan, zoning ordinance and/or subdivision ordinance in the area of impact, the county commissioners must formally adopt the city’s policies for the area of impact.” McKee continued reading “once enacted the area of city impact map, regulations remain in place until both city, and county governing boards agree to renegotiate. Prior to renegotiation, the city and county governing boards must submit the issue to the respective planning and zoning commissions for recommendations, renegotiation must begin not more than 30 days after a request by the city or county governing board”. McKee stated she was not aware if this has happened in the past. McKee discussed areas of city impact as stated in chapter 10 of County Code and areas that need to be addressed. McKee provided a Future Land Use Map of the City of Cambridge. McKee stated the map indicates four defined zones.

Haines inquired about some of the major differences that are between the city and county ordinances.

McKee stated the intent of both the City and County Comprehensive Plan is to protect agriculture. McKee informed the Board that in order for the city to expand, a developer’s agreement would need to be in place so infrastructure can be put in place for the development. Neighboring cities are requiring a development agreement.

Haines discussed the designation of zones within the City of Cambridge code.

Chandler discussed zoning, the Comprehensive Plan, and the need for the two to “mirror” each other.

Jack Toothman, Mayor, Levi Harrison, Mark Loveland, and Delray Platt, Councilmen, addressed the Board.

Loveland inquired of the Board what concerns they have. The group agreed that City Council needs to meet with the County Planning and Zoning to address areas that need to be changed or updated.

Chandler stated private property rights need to be protected. Chandler discussed the Land Use Planning Act and what can be regulated through the Act. Chandler stated that it could be spelled out in the development agreement.

Chandler stated the County had previously met with the City of Cambridge regarding these issues.

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Haines stated that it is a balancing act. How do we preserve agricultural land and balance property rights? Haines stated he believes a development agreement is the best idea. Haines stated growth needs to pay for itself.

McKee stated that the City is between 60 to 70 percent of capacity for water and sewer.

Marvin discussed ideas of what would need to be done to allow for additional growth.

IN THE MATTER OF ROAD & BRIDGE/SOLID WASTE)

Jerod Odoms, Road and Bridge/Solid Waste Supervisor, met with the Board. Also present was Justin Walker from Keller Associates as the Project Manager for Unity Bridge, and Nathan Cleaver, Transportation Division Manager. Members of the public present were Tim Wrightman, Cheri Clausen, Dennis Lance and Tony Edmondson.

Walker addressed the Board and discussed the preliminary design for Unity Bridge. Walker discussed funding that may be available to assist with the project. Walker stated it would be between five to ten years before the bridge could be constructed with funding from the State.

Marvin stated he believed the County needed to move forward with a plan and a design.

Walker discussed compliance with ITD (Idaho Transportation Department).

Chandler discussed the size of the bridge. Chandler stated it would have to clear ice during spring runoff. Chandler inquired if the bridge could be shortened.

Nathan Cleaver addressed the Board. Cleaver discussed funding and other projects within the State. Cleaver also discussed requirements for Federal funding including archeological, biological species of concern, public involvement, including a public hearing.

Haines discussed the current weight restriction to the bridge. Haines inquired if the design would allow eliminating the width and loading restrictions.

There was discussion of a one-lane bridge. Walker stated Federal Highways is not allowing one-lane bridges.

Marvin inquired when a public hearing would be needed.

The Historical Preservation Committee is interested in retaining the bridge. It was questioned if the bridge could be donated to a private group or individual.

Wrightman discussed moving the bridge and the maintenance of the bridge.

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Cleaver addressed the rules and procedures of maintaining the bridge and the possible move of a portion of or all of the bridge.

Road and Bridge Supervisor, Jerod Odoms, met with the Board. Also present was Assessor, Debbie Moxley-Potter. Odoms stated he had hired two new seasonal workers.

Odoms discussed the condition of Loafer Lane.

Odoms discussed the Juneteenth holiday. The Board stated it was not budgeted for and has not been adopted or included in the Personnel Policy.

Odoms presented documentation on the Special Assessment fees for Solid Waste. Odoms stated a 4% increase would generate an approximately \$11,000.00 in additional revenue. An increase of 7.1% increase or approximately \$4.00 would generate approximately \$21,000.00 revenue. Odoms stated there has not been an increase to the Special Assessment since 2000. Odoms informed the Board that an increase of \$21.00, or one dollar per year since the last increase, would generate approximately \$111,000.00 in revenue for Solid Waste. Odoms stated an increase of over 5% would require a public hearing to be held. Odoms discussed the need to fund the 2022 proposed budget.

Chandler inquired as to what amount would be needed in order for Solid Waste to pay for itself.

Odoms stated he estimated revenue for the 2021 year to be approximately \$552,000.00. This includes the amount levied, Special Assessment fees and User fees charged at the site. Odoms stated the 2022 proposed budget is \$608,000.00.

The Board inquired if the current levy limit is for Solid Waste.

Treasurer, Sabrina Young, stated the State levy limit rate is .0004 and the County is currently at a .000245 levy rate. Young reminded the Board they would also have to take into account the overall budget increase allowed to be funded by tax dollars.

The Board requested that Odoms to report back with additional information before deciding to hold a public hearing to increase the assessed fee.

Odoms discussed the cost of fuel for Solid Waste. Moving forward, Solid Waste will be fueling at Road and Bridge and will reimburse Road and Bridge for the cost of the fuel. This would be a savings of .45 per gallon.

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Motion by Nate Marvin, seconded by Kirk Chandler and unanimously carried to recess at 2:33 p.m. until June 28, 2021 at 8:45 a.m.

Chairman, Board of County Commissioners

ATTEST:

Clerk

A full audio recording of the Commissioner Meeting is available at the Clerk's Office upon request.

GIVENS PURSLEY LLP
Attorneys and Counselors at Law

MEMORANDUM OF LAW

TO: Delton L. Walker, Washington County Prosecuting Attorney

FROM: Christopher H. Meyer *CHM*

RE: Analysis of Washington County Code provisions dealing with the division and residential development of A1-zoned land

DATE: August 27, 2021

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EXECUTIVE SUMMARY

This memorandum is provided in response to your request for my legal opinion and analysis of the provisions in the Washington County Code (“WCC”) dealing with the division and residential development of A1-zoned land.

Specifically, you inquired whether WCC §§ 5-4-1(B)(1) and 5-4-1(B)(3) allow a landowner to divide A1-zoned agricultural property into an unlimited number of 20-acre lots, which may contain one single-family residence per approved lot. I conclude that this is not permissible under the County’s zoning ordinance.

This is because the referenced provisions must be read in conjunction with WCC § 5-1-2(C)(8) (which allows the creation of no more than four lots on an “original parcel” existing as of 1979) and WCC § 5-4-1(B)(2) (which bars “residential subdivisions” and hence prohibits any new dwellings on divided A1 land. The only exception is WCC § 5-4-1(C), which allows A1 lots to be divided into up to four lots, each of which may contain one dwelling.

DISCUSSION

I. THE A1 ZONE IS ONE OF SEVEN ZONES.

Section 5-4-1 of the Zoning Ordinance addresses the “A1” agricultural zone. Most of unincorporated Washington County is zoned A1. The only other zones are “A2” (Agriculture Transition Zone), “C1” and “C2” (Commercial Zones), “D1” and “D2” (Industrial Zones), and “R” (Recreation Zone). There is no designated residential zone (although residences are allowed to some extent within some zones).

A1 land may be rezoned to another use if it can be shown that the land is not prime agricultural land. WCC § 5-4-1(H).¹

II. THERE ARE THREE WAYS TO DIVIDE PROPERTY FOR SALE OR DEVELOPMENT:

Washington County provides for three ways that property may be divided for purposes of sale or development.

Subsection B of Title 5 (the zoning ordinance) provides two ways of dividing land. The WCC does not assign a name to them, but I use the labels “dwelling splits” and

¹ The ordinance does not define “prime agricultural land.” Instead, the ordinance lists six factors to be weighed by the County Commissioners in considering whether A1 land can be rezoned. WCC §§ 5-4-1(H)(1)(a) through (e) and 5-4-1(H)(2). Subsection H is not the focus of this memorandum. That subsection may be addressed in another memorandum, if you so direct.

“non-dwelling splits” to distinguish them. The third is under Title 6. (Non-dwelling splits are also sometimes referred to as administrative splits.)

A. Non-dwelling splits under WCC § 5-1-2(C)(8)

I use the term “non-dwelling splits” for those authorized under WCC § 5-1-2(C)(8), which allows an original parcel or lot to be divided into up to 4 parts without going through the subdivision process set out in Title 6. These lots are subject to the prohibition on “residential subdivisions” in WCC § 5-4-1(B)(2). Hence new dwellings may not be placed on these lots. This is why I refer to these as non-dwelling splits.

B. Dwelling splits under WCC § 5-4-1(C).

I use the term “dwelling splits” for those authorized under section 5-4-1(C). They are also limited to 4 lots, but new dwellings may be placed on them. In a nutshell, subsection C allows, as a matter of right, the division of A1 zoned property into up to four lots, three of which are one-acre² and the fourth is whatever is left of the original lot.

C. Subdivision under Title 6

A third form of land division is “subdivision” under Title 6. Subdivision is a formal process that entails considerable up-front planning as well as extensive coordination and oversight by the County. It is typically used for larger scale developments. But residential subdivisions are not allowed in the A1 zone (WCC § 5-4-1(B)(2)). Thus, subdivision is not an option for A1 land (except for a non-residential subdivision such as the dedication of a road or cemetery).

III. THE 20-ACRE MINIMUM LOT SIZE APPLIES ONLY TO LOTS THAT WILL HAVE DWELLINGS; NON-DWELLING SPLITS MAY BE SMALLER.

Many Idaho county ordinances establish a minimum lot size for land zoned for agricultural use. Forty acres is common. In contrast, section 5-4-1 does not establish an across-the-board minimum lot size for A1 land. The closest it comes to doing so is subsection 5-4-1(B)(1), which provides that “no dwelling shall be sold, transferred or built with less than twenty (20) acres of lot area.”³

² The one-acre size limit for a dwelling split could be increased through a special use permit. WCC § 5-4-1(G).

³ Section 5-4-1(B)(1) speaks in terms of selling, transferring, or building a dwelling. This should be understood to refer to selling or transferring land containing a dwelling or land on

In other words, if a landowner wishes to convey A1 land that has or will have a dwelling,⁴ the lot must be at least 20 acres. But an original parcel or lot⁵ in the A1 zone may be divided into as many as four parts⁶ and conveyed in any lot size (as small as an acre) if it does not and will not contain a dwelling.

This provision is subject to an exception: “except as provided in subsection C of this section.” WCC § 5-4-1(B)(1). (Subsection C is one authorizing up to three one-acre “splits,” which I discuss below.) Thus, the minimum 20-acre lot size does not apply to subsection C splits, even if a new dwelling will be placed on them.

This is a sensible distinction. By way of example, it would allow Farmer Jones to sell three acres of his 40-acre farm to neighboring Farmer Smith who can add it to her 40-acre parcel and farm it more efficiently than Farmer Jones can. But if Farmer Smith later seeks a building permit on the 3-acre lot, the permit will be denied. In other words, the Zoning Ordinance says landowners are free to divide an original lot in zone A1 up to three times so long as no new home is constructed on any of the resulting lots. Indeed, this may be done under the existing ordinance without any notice to or approval by the County.

IV. RESIDENTIAL SUBDIVISIONS ARE PROHIBITED, EXCEPT FOR DWELLING SPLITS UNDER WCC § 5-4-1(C).

Subsection 5-4-1(B)(2) prohibits any and all “residential subdivisions” within zone A1. The term “residential subdivision” is defined broadly.⁷ It applies to any

which a dwelling will be built. Except for condominiums and mobile homes, one does not ordinarily sell just the dwelling itself.

⁴ Dwelling is a defined term. “DWELLING: Any building or portion thereof which is used as a private residence or sleeping place of one or more human beings, but not including hotels, motels, tourist courts, resort cabins, clubs, hospitals or similar uses.” WCC § 5-2-1.

⁵ An original parcel or lot is defined as one in existence on April 9, 1979. WCC § 5-2-1. An original parcel or lot may be divided into up to four parts without going through the subdivision process set out in Title 6. WCC § 5-1-2(C)(8).

⁶ The limit of three divisions into four parts is found in WCC § 5-1-2(C)(8).

⁷ “Residential subdivision” is a defined term: “RESIDENTIAL SUBDIVISION: Any division or subdivision of real property with a residence or residential use attached to, or associated with, any of the resulting parcels.” WCC § 5-2-1. There is ambiguity as to how this applies to the division of a parcel containing an existing residence. A very strict reading would be that it prohibits any division of a parcel with an existing residence (because one of the resulting parcels will contain that residence). That is not a reasonable interpretation, because it would render unlawful virtually all divisions of A1 land (other than under subsection C). I

division (into two or more parcels⁸) of land in which the resulting parcels will be used for a new residence.⁹ For example, if someone owned 1,000 acres of A1 land and divided it into two 500-acre parcels, a new residence could not be built on either of the resulting parcels. This is because doing so would constitute a “residential subdivision.”

This reads as an absolute prohibition with no exceptions. However, WCC § 5-4-1(C) must be read to operate as an exception to the prohibition on residential subdivisions. This is for two reasons. First, if new dwellings were not allowed on subsection C splits, subsection C would be a nullity. It would add nothing to the authority already available to divide land into four non-dwelling lots under WCC § 5-1-2(C)(8). Second, there is an express exception in WCC § 5-4-1(B)(1) allowing dwellings to be placed on one-acre lots created under WCC § 5-4-1(C).

In sum, the only provision allowing new dwellings to be placed on divided A1 land is WCC § 5-4-1(C).

V. WCC §§ 5-4-1(B)(1) AND 5-4-1(B)(3) DO NOT AUTHORIZE A LANDOWNER TO DIVIDE A1 LAND INTO 20-ACRE PARCELS AND PLACE A NEW RESIDENCE ON EACH ONE.

Subsection 5-4-1(B)(3) provides: “Only one single-family residence allowed per approved lot.”¹⁰ Some have construed this provision, along with the minimum 20-acre lot provision in WCC § 5-4-1(B)(1), to authorize a landowner to divide A1 land into multiple 20-acre lots, each of which may hold a new residence. This is incorrect, because these subsections must be read in conjunction with the rest of Title 5.

WCC § 5-4-1(B)(1) (which sets a 20-acre minimum lot size for lots that will have dwellings) contains an exception for subsection C. As noted above, this has the effect of implicitly overriding the prohibition on “residential subdivisions” in WCC § 5-4-1(B)(2).

believe it is more reasonable to read this definition as prohibiting any new residence being placed on any of the resulting parcels.

⁸ As shown in footnote 7, the definition of “residential subdivision” refers to “any division or subdivision.” WCC § 5-2-1. If it said only “subdivision,” that would have tied into the definition of “subdivision” and made it applicable only to subdivisions creating five or more parcels. WCC § 6-2-2. But the definition also says “any division.” Thus, the ordinance unambiguously applies to any division no matter the number of parcels.

⁹ The term “residence” is not defined. I understand it to mean the same as “dwelling,” which is a defined term.

¹⁰ The term “lot” is defined (WCC § 5-2-1 and WCC § 6-2-2), but the term “approved lot” is not. I read the provision as simply referring to any lawfully created lot.

Thus, one-acre dwelling splits created under WCC § 5-4-1(C) are allowed to have one single-family residence on each of the resulting four lots. But this exception is limited to WCC § 5-4-1(C) splits.

WCC § 5-4-1(B)(1) and 5-4-1(B)(3) do not allow a landowner to divide his or her property into an unlimited number of 20-acre parcels and then place a house on each one. First, WCC § 5-1-2(C)(8) allows division of an original parcel into no more than 4 lots. Second, there is no exception (outside of subsection C) to the “residential subdivision” prohibition in WCC § 5-4-1(B)(2). Thus, new dwellings may not be placed on the four lots authorized by WCC § 5-1-2(C)(8).

In sum, the “one residence per lot” allowed by WCC § 5-4-1(B)(3) allows a new dwelling to be placed only on (1) an “original parcel” of 20 acres or more that does not already have a dwelling on it, or (2) each lot created under subsection C that does not already have a dwelling on it.

VI. THE DECISION IN *WOODCOCK V. WASHINGTON COUNTY* IS NOT APPLICABLE DUE TO THE 2012 AMENDMENT OF THE COUNTY’S ZONING ORDINANCE.

In the 2008 case *Woodcock v. Washington County*, the district court concluded that the Woodcocks were entitled to subdivide their A1-zoned land into lots of 20 acres or more and that a residence could be placed on each lot. That holding was premised expressly on the fact that, at the time, the County’s zoning ordinance did not define the term “residential subdivision.” *Woodcock* at 6-7. Accordingly, the district court rejected the County’s finding that Woodcocks’ application was barred by the prohibition on residential subdivisions in the A1 zone.

In response to that decision, the County amended its zoning ordinance to add the definition of residential subdivision discussed above. The new definition expressly prohibits any division of A1-zoned property into lots “with a residence or residential use attached to, or associated with, any of the resulting parcels.” WCC § 5-2-1. This amendment renders the *Woodcock* decision obsolete and inapplicable.

The *Woodcock* decision also relied on the statutory definition of subdivision, which is now codified to Idaho Code § 50-1301(17). (The court referred to subsection 15.) Any concern about that definition is mooted by the County’s new definition of residential subdivision. The statute expressly provides: “Cities or counties may adopt their own definition of subdivision in lieu of this definition.” Idaho Code § 50-1301(17).

Chris Meyer Decision on 20-Acre Splits General\All Employees (unrestricted)



 Chris ...Splits.pdf

NM

Nate Marvin

To: True Pearce

Cc: Donna J. White



Chris Meyer Opinion on 20-A...
188 KB

Please forward this to other Commissioners Donna.

I think we should talk about this on Monday . May affect our discussion to allow dwellings on 20 acre parcels.

 Reply

 Reply all

 Forward

From: n.marvin@mtecom.net <n.marvin@mtecom.net>

Sent: Thursday, April 17, 2025 9:01 PM

To: Nate Marvin <nmarvin@co.washington.id.us>

Subject: FW: Chris Meyer Decision on 20-Acre Splits

Caution: This is an external email and may be malicious. Please take care when clicking links or opening attachments.

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

From: "Delton Walker" <deltonw@gmail.com>

Sent: Thursday, April 17, 2025 10:50pm

To: n.marvin@mtecom.net

Subject: Chris Meyer Decision on 20-Acre Splits

I wanted to send this document to you just in case you don't have a copy of it.

Delton

--



DELTON WALKER
Attorney at Law

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