



BOUNDARY COUNTY PLANNING AND ZONING

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STAFF REPORT
BOUNDARY COUNTY PLANNING & ZONING COMMISSION
FILE #24-0050, ADINA & LYNN FELDMANN
LOT/PARCEL SIZE MINIMUM VARIANCE

Prepared By:	Tessa Vogel, Contract Associate Planner Ruen-Yeager & Associates, Inc	
Project Description:	Requesting approval for a lot size minimum variance on a 10.1-acre parcel in the Ag/Forestry zone to allow for a 9.76-acre parcel, where 10 acres is required, to create an exempt 0.34-acre public utility facility parcel for the Cabinet Mountains Water District.	
Project Location:	A tract of land off Diamond Road	
Parcel Number:	RP61N01E235250A	
Legal Description:	Tax 15 in SEC 23 T61N R1E	
Property Zoning Designation:	Ag/Forestry	
Applicants:	Adina & Lynn Feldmann	
Date Application Complete:		02/20/2024
Hearing Dates:	Planning & Zoning Commission	03/28/2024
Legal Notice Provided:	Newspaper:	03/07/2024
	Site Posting:	03/20/2024
	Mailed to owners w/in 300', media, taxing districts:	03/06/2024
Staff Report Attachments	Legal notice, application, narrative, agency comments,	

PROJECT SUMMARY

Adina & Lynn Feldmann are requesting a lot size minimum variance on a 10.1-acre parcel in the Ag/Forestry zone to allow for a 9.76-acre parcel, where 10 acres is required, to create an exempt 0.34-acre public utility facility parcel for the Cabinet Mountains Water District. The parcel is located off Diamond Road and is identified as Assessor's Parcel RP61N01E235250A in Section 23, Township 61 North, Range 1 East, B.M. The site is currently not served by any water or sewer services but is located within the boundaries of the Paradise Valley Fire District and the Cabinet Mountains Water District.

While the creation of the 0.34-acre public utility facility parcel would be exempt, per Section 20.3.3 for parcels **created** for government services or public facilities, the reduction of the subject property to less than the zoning district minimum is not exempt, per the Boundary County Land Use Code. A portion of the water district infrastructure encroaches onto the subject property, according to the applicants. The remainder of the water district facility is located within an easement on county land to the east of the Feldmann property.

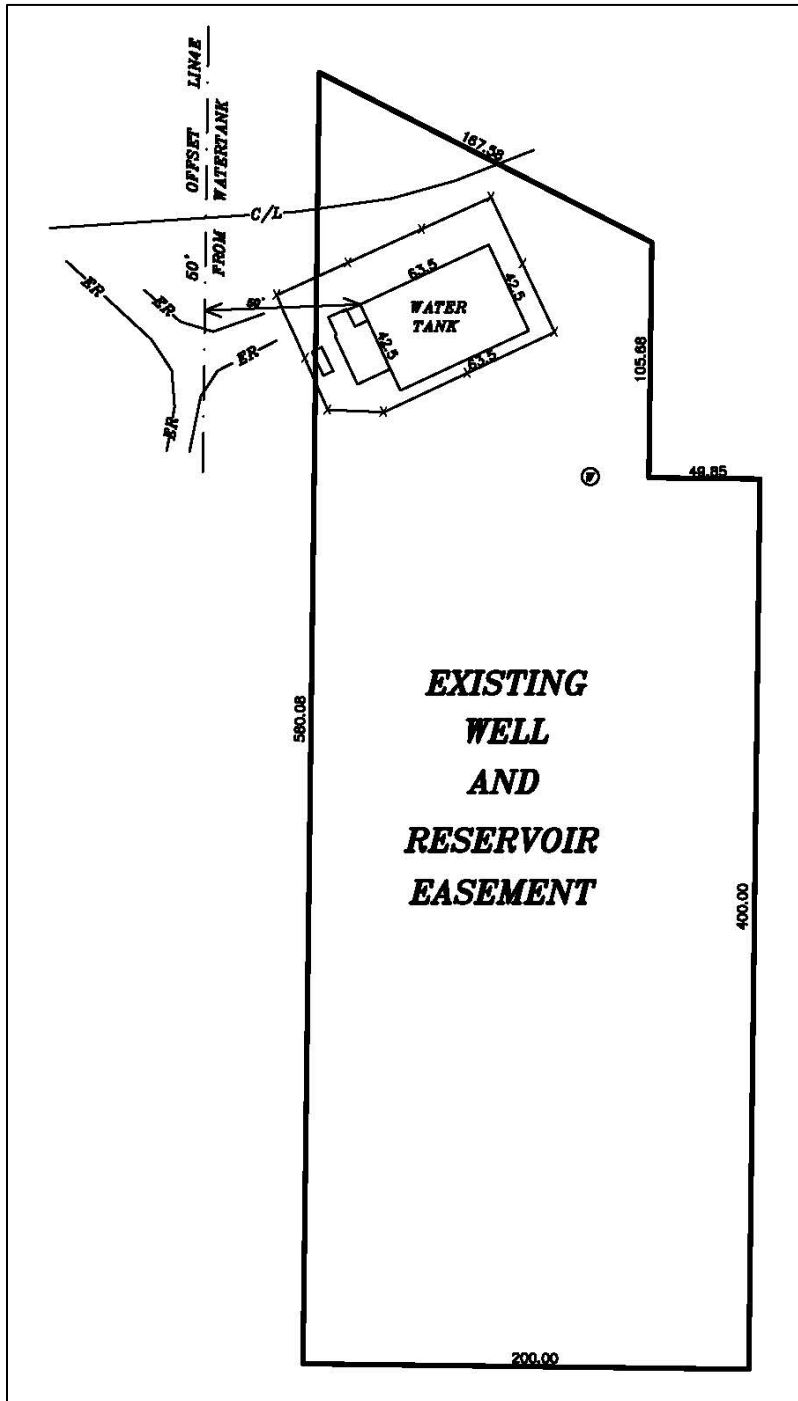
Sections 11.2. and 20.3. Exemptions: Provisions of this section do not apply when all new parcels created are not platted and equal or exceed 20 acres or 1/32nd aliquot portion of a section size, nor will these provisions or minimum parcel size requirements apply when:

Sections 11.2.3. and 20.3.3.: Parcels are created for the placement of government services, public utilities or rights-of-way.

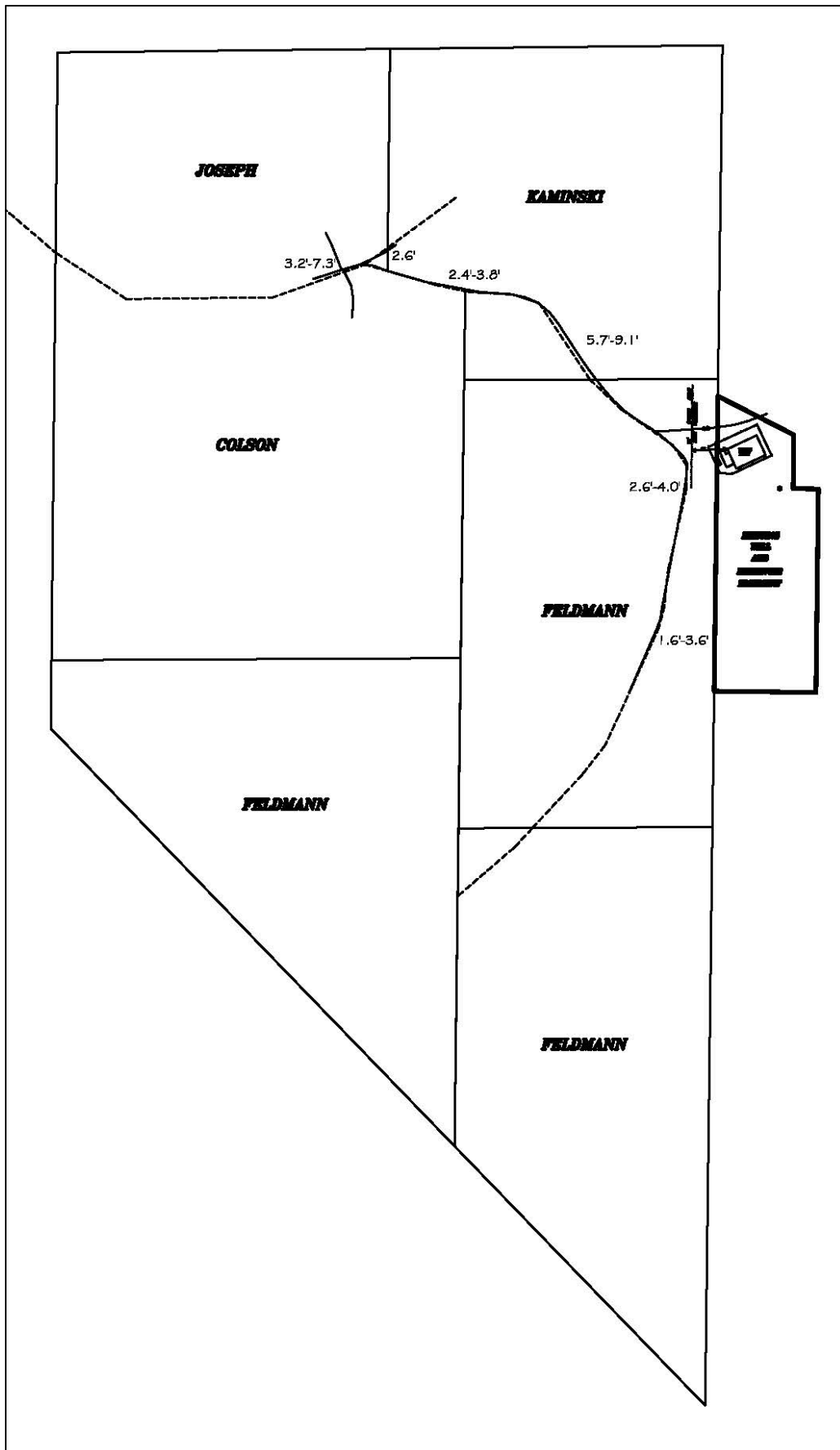


AERIAL OF SITE

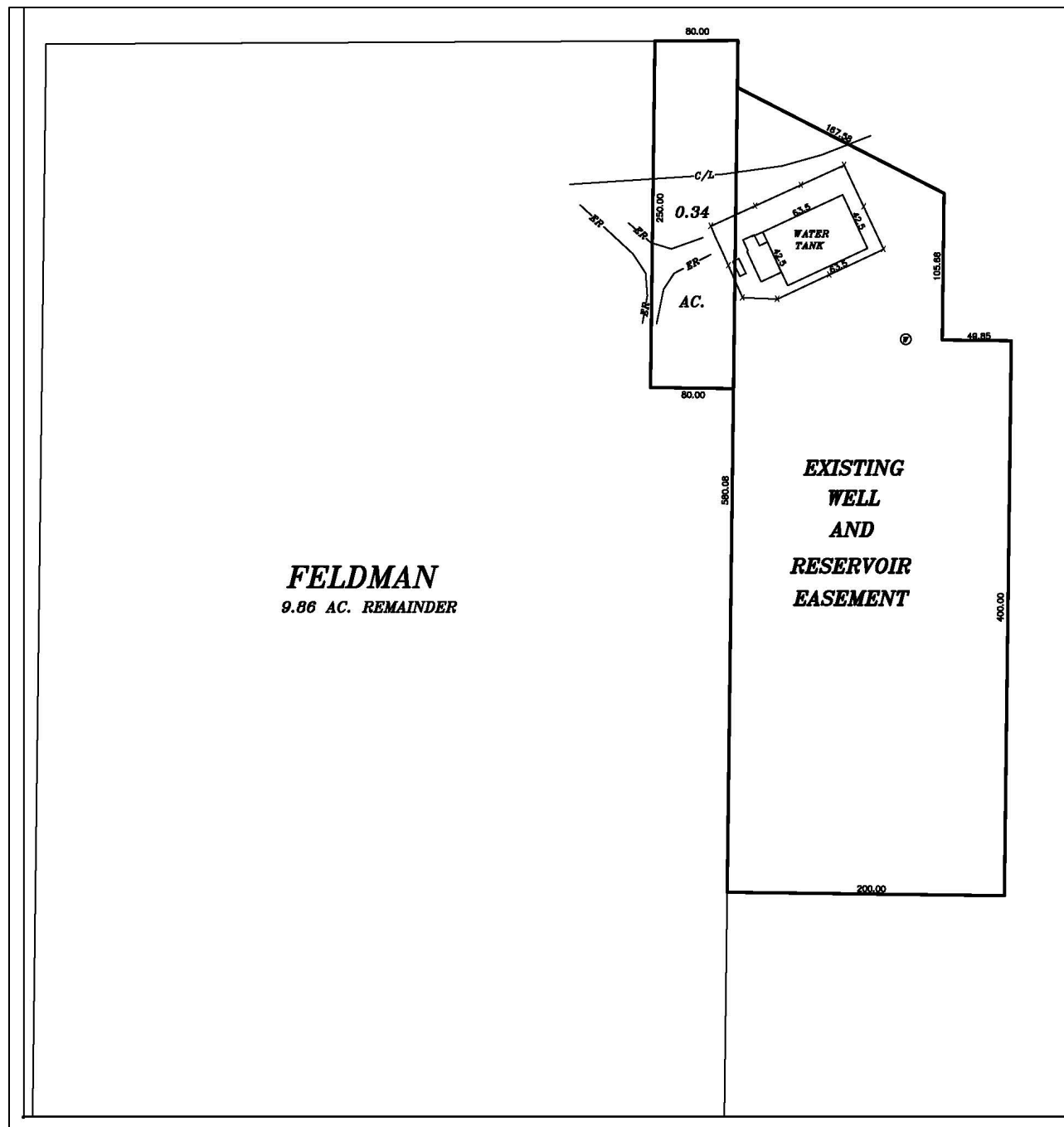
PROJECT SETTING	
Access	Diamond Road (private)
Current & proposed uses	Vacant
Hazardous Areas	No special flood hazard areas, Zone X, Panel 1602070735B, no floodplain/floodway
Zoning overlays or special areas	None
Comp Plan designation & Zoning of site	Ag/Forestry
Surrounding Comp Plan designations & Zoning	Ag/Forestry
Surrounding uses	Residential; Vacant; Agriculture; Timber land, County land



EXISTING CONDITIONS OF SITE ENCROACHMENT



VICINITY LAYOUT OF SUBJECT SITE AND ENCROACHMENT LOCATION



PROPOSED LAND DIVISION SHOWING ENCROACHMENT AREA

AUTHORITY

- Idaho Code §67-6516, Variances
- Boundary County Land Use Ordinance, Section 12, Variances
- Boundary County Land Use Ordinance, Section 15.9., Ag/Forestry Zone
- Boundary County Land Use Ordinance, Section 11.2., Exemptions
- Boundary County Land Use Ordinance, Section 11, Subdivisions
- Boundary County Land Use Ordinance, Section 20.3., Exemptions
- Boundary County Land Use Ordinance, Section 20, Parcel Divisions

AGENCY/STAFF COMMENTS:

The following agencies were routed for comment on February 20, 2024, and March 06, 2024: Boundary County Addressing (R&B), Ambulance, Assessor, Commissioners, Library, Road & Bridge, Boundary School #101, Cabinet Mountains Water District, Idaho Department of Environmental Quality, Panhandle Health District, and Paradise Valley Fire District.

Boundary Co. Addressing: *I found no issues on the plat.*

Boundary Co. Assessor: *Upon the parcel line adjustment approval, the parcel map will be updated and new parcel numbers assigned subsequent to conveyances being recorded with new property descriptions for each parcel, inclusive of any remainder parcels. Processing may be delayed if conveyance documents aren't recorded simultaneously. For parcel line adjustments, recorded deed work must define the intended final parcel configuration for both/all parcels.*

Staff Note: The proposal is for a land division, not a parcel line adjustment.

Idaho Dept. of Environmental Quality: *DEQ has no environmental impact comments for the project at this stage of development.*

Panhandle Health District: *No comment.*

PUBLIC COMMENTS

Landowners within 300' of the subject property were notified of the proposal on March 06, 2024, and notice was published in the Bonners Ferry Herald on March 07, 2024. No public comments were received at the completion of this staff report.

<u>STANDARDS ANALYSIS & EVIDENCE OF APPLICABLE CODES AND COMPREHENSIVE PLAN</u>	
Idaho Code, §67-6516 <i>Variances may be granted upon showing of undue hardship because of site characteristics. The variance shall not be in conflict with the public interest.</i>	
Boundary County Land Use Ordinance, Section 12.4.4.1. <i>Is the parcel unsuited for uses that would otherwise be allowed in the zone district because of special circumstances of the property, such as its dimensions, topography or features?</i>	
Applicant: <i>Cabinet Mountains Water District (CMWD) has requested I sell them 0.34 acres in order to allow for required utility setback from installed infrastructure. Selling them 0.34 acres would bring my 10.1-acre parcel below the 10 [acre] minimum (9.76 acres).</i>	Staff: <i>The Cabinet Mountains Water District station is encroaching into the Feldmann property. CMWD has noted that they have setback regulations they are held to for their utility stations and property lines and are needed the additional acreage to fix the encroachment issue. The encroachment was created by CMWD, not the applicants.</i>
Boundary County Land Use Ordinance, Section 12.4.4.2. <i>Could denial of the variance infringe on the rights of the property owner, or could it constitute a taking of private property rights?</i>	
Applicant: <i>CMWD's installed infrastructure is prohibiting me from using 0.34 acres of my property.</i>	Staff: <i>The denial of the variance request would not infringe on the rights of the property owners as they would be able to use the property as permitted within the Ag/Forestry zone. The applicants also have the option to do a parcel line adjustment between the subject property, Boundary County property and additional properties owned by the applicants to keep all parcels at the 10-acre minimum.</i>
Boundary County Land Use Ordinance, Section 12.4.4.3. <i>Would the variance infringe on the property rights of neighboring property owners?</i>	
Applicant: <i>No.</i>	Staff: <i>Approval of the variance request would allow a 0.34-acre parcel to be created along with a 9.76-acre remainder parcel where 10 acres is required for the remainder parcel. The 0.34-acre parcel would be classified as an exemption due to being for a public utility facility (Sections 11.2.3. and 20.3.3.). The 0.34-</i>

	acre parcel would not be permitted to be used for anything other than the public utility facility so no additional residential/commercial/industrial parcels are being created.
Boundary County Land Use Ordinance, Section 12.4.4.4. <i>Is the need for the variance the result of the actions of the applicant?</i>	
	Applicant: No. Staff: The applicants did not place the CMWD utility station in its current location.
Boundary County Land Use Ordinance, Section 12.4.4.5. <i>Is the variance the minimum accommodation needed to provide the requested use?</i>	
	Applicant: Yes. Staff: The applicant and CMWD notes that 0.34 acres is the minimum necessary to meet the needs for the encroachment issue.
Boundary County Land Use Ordinance, Section 12.4.4.6. <i>Would granting the variance confer special privilege to the property owner?</i>	
	Applicant: No, this variance is being requested to satisfy a CMWD utility requirement. Staff: Per IC§67-6516, a variance shall not be considered a right or special privilege but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest.
Boundary County Land Use Ordinance, Section 12.4.4.7. <i>Would the variance confer on the property conditions that have been granted to other properties similarly situated?</i>	
	Applicant: No. Staff: All properties adjacent to the subject parcel are 10 acres or greater in size. One parcel ~620 feet from the subject site is 4 acres in size but created in 1998 and considered legal non-conforming so no variance would have been required.
Boundary County Land Use Ordinance, Section 12.4.4.8. <i>Will the variance alter the character of the zone district? (Refer to Comp Plan & 1.9. of the ordinance)</i>	
	Applicant: No. Staff: The subject parcel is located in the Ag/Forestry zone, which has a minimum density of 10 acres. Parcels/lots created for public utility facilities or rights-of-way are exempt from any zoning density minimums per Sections 11.2.3. and 20.3.3. The applicants are proposing to divide their 10.1-acre parcel to create an exempt 0.34-acre public utility facility parcel and a 9.76-acre remainder parcel. The proposed parcels would be the only sub-10-acre parcels in the immediate vicinity.
Boundary County Land Use Ordinance, Section 12.4.4.9. <i>Is the variance in harmony with the general purpose and intent of this ordinance and the Comprehensive Plan? (Refer to Comp Plan & 1.3. of the ordinance)</i>	
	Applicant: Yes. Staff: The review of every variance request is looked at individually so as to provide applicants with fair, equitable and consistent land use regulations and guidelines.
Boundary County Land Use Ordinance, Section 12.4.5. <i>In considering approval of an application to establish a variance, the planning and zoning commission may consider the imposition of terms and conditions as a means of eliminating or mitigating potential adverse effects or to provide for public safety. Such terms and conditions may be, but are not limited to:</i>	
	<ul style="list-style-type: none"> • Establish time frame(s) for development/completion. • Change the value of the measurement for which the variance seeks relief.
	Staff: Draft conditions of approval are listed at the end of this staff report for review, discussion, and adoption/amendment by the Boundary County Planning & Zoning Commission.

DECISION OF THE PLANNING & ZONING COMMISSION	
MOTION TO APPROVE	I move to approve the request for a lot/parcel size minimum variance to allow for a future land division to create a 0.34-acre exempt public utilities facility parcel and a 9.76-acre remainder parcel, File 24-0050, finding that the proposal IS in accord with the comprehensive plan and the criteria of Section 12 of the Boundary County Land Use Ordinance, based upon the findings, conclusions, and conditions as written [<i>or amended</i>]. This action does not result in a taking of private property.
MOTION TO TABLE	I move to table or continue the hearing to [<i>insert date, time, and place</i>] to allow further consideration of the proposed variance or to allow review and approval of written findings and decision.
MOTION TO DENY	I move to deny the request for a lot/parcel size minimum variance to allow for a future land division to create a 0.34-acre exempt public utilities facility parcel and a 9.76-acre remainder parcel, File 24-0050, finding that the proposal IS NOT in accord with the comprehensive plan and the criteria of Section 12 of the Boundary County Land Use Ordinance, based upon the findings and conclusions as written [<i>or amended</i>]. [<i>state which findings/conclusions do not meet the standards</i>]. This action does not result in a taking of private property.

DRAFT FINDINGS AND CONCLUSIONS FOR DISCUSSION/ADOPTION:

1. The applicants are requesting a lot/parcel size minimum variance for a 10.1-acre parcel in the Ag/Forestry zone to allow for a 9.76-acre parcel, where 10 acres is required, to create an exempt 0.34-acre public utility facility parcel for the Cabinet Mountains Water District.
2. An application for the land division has not been submitted to Boundary County Planning Department because the proposed division would be exempt, pursuant to Section 20.3.3.
3. The site has a comprehensive plan land use and zoning designation of Ag/Forestry, which has a density size minimum of 10 acres (**15.9.**).
4. The site is accessed off Diamond Road, a private road.
5. The site has no special flood hazard areas or mapped wetlands present on site.
6. The site is located outside any area of city impact of any city and the Airport Overlay Area.
7. The site is located within the boundaries of the Cabinet Mountains Water District.
8. The site is within the coverage area of the Paradise Valley Fire District.
9. The site is not currently served by any water or sewer services.
10. The subject parcel was first described in 2003 per Inst. #209684.
11. The land division is proposed to rectify encroachments onto the subject parcel by the water district utilities and to achieve required facility setbacks, according to the application.
12. The facility encroachments were not created by the applicant.

DRAFT CONDITIONS FOR DISCUSSION/ADOPTION:

1. The variance will run with the land to which it is attached and continue in effect for the life of the variance established. The variance is granted for the express purpose of allowing the creation of a parcel of land for the Cabinet Mountains Water District, pursuant to Section 20.3.3 of Boundary County land use codes. The variance does not permit the use of the land for any other purpose than the water district public utility uses.
2. The applicants shall obtain approval for a land division in accord with the subdivision and parcel division requirements of the Boundary County Land Use Ordinance and shall complete the conditions of permit approval within two (2) years of the written approval of this variance, or the variance shall no longer be valid. An extension of the variance may be granted by the Planning and Zoning Commission provided the request is made prior to the expiration date and the Commission finds there is just cause for the extension.
3. This variance file, #24-0050, shall be noted on the face of the plat or record of survey for the future land division.