



Planning and Zoning Commission Staff Report
Doris Fuentes – Variance – ZV2019-0002

Hearing Date: June 20, 2019

Development Services Department

<p><u>Owner/Applicant:</u> Doris Fuentes</p> <p><u>Staff:</u> Randall Falkner, Planner II (208) 454-7459 rfalkner@canyonco.org</p> <p><u>Tax ID:</u> R30718</p> <p><u>Current Zone:</u> "AG" (Agricultural)</p> <p><u>2020 Comprehensive Plan:</u> Agricultural</p> <p><u>City Impact Area:</u> City of Nampa</p> <p><u>Parcel Size:</u> 1.44 acres</p> <p><u>Current Uses:</u> Agricultural</p> <p><u>Applicable Regulations:</u> §07-10-21:(1) Setback Regulations §07-08-03: Variance Criteria</p> <p><u>Notification:</u></p> <ul style="list-style-type: none"> • 4/25/19 Agencies/JEPA • 5/15/19 Property Owners • 6/4/19 Publication • 6/7/19 Posting <p><u>Exhibits:</u></p> <ol style="list-style-type: none"> 1. FCO's 2. Letter of Intent 3. Site Plan 4. Neighborhood Meeting 5. Small Air Photo 6. Small Vicinity 7. Zoning & Classification Map 8. Future Land Use Map 9. Nampa & Meridian Irrigation District Agency Comment 10. City of Nampa Agency Comment 11. Tyree Legal 	<p><u>Request</u> Doris Fuentes is requesting a <u>Variance</u> of 17 feet and six inches to the rear setback requirement in the Agricultural zone, to allow an existing structure to remain two feet and six inches from the rear property line. The subject property, R30718 is approximately 1.44 acres in size and is located at 7004 Lake Hazel Rd., Nampa, Idaho, in a portion of the SW ¼ of section 32, T3N, R1W, BM, Canyon County, Idaho.</p> <p><u>Background</u> The subject parcel was created by a lot split in 2012 which resulted in a parcel of 1.46 acres (R30718) and a parcel of 8.52 acres (R30718010). The applicant built a shop (which has been removed), then added a home without a permit, and built the home within two feet and six inches of the rear property line. A code enforcement case was initiated as a result of a complaint.</p> <p>The property is located within Nampa's Area of City Impact. The City of Nampa designates the property as "Medium Residential" on their Future Land Use Map.</p> <p><u>Analysis</u> To approve a variance, Canyon County Code §07-08-03(2) requires the Commission to make the following findings:</p> <ol style="list-style-type: none"> A. <i>Will granting the variance be consistent with the comprehensive plan;</i> B. <i>Do characteristics of the site create an undue hardship; and</i> C. <i>Is the variance in conflict with the public interest?</i> <p><u>§07-10-21 SETBACKS</u> Pursuant to §07-10-21 of the Canyon County Zoning Ordinance, structures on agriculturally-zoned properties require a 20 foot rear yard setback measured from the property line. Section 07-02-03 of the Canyon County Code defines the rear yard setback as "the open space extending across the full width of the lot and lying between the rear line of the lot and the nearest line of a structure." The applicant is seeking a variance to reduce the rear-yard setback to two feet and six inches in order to keep the residential addition (Exhibit 3).</p> <p><u>Variance Criteria - §07-08-03(2)(A) CONSISTENCY WITH COMPREHENSIVE PLAN:</u> The subject property is currently zoned "Agricultural" and has a designation of "Agricultural" on the Canyon County Comprehensive Plan Future Land Use Map (Exhibits 7 & 8).</p> <p>The request is consistent with the following Comprehensive Plan Goals and Policies:</p> <ul style="list-style-type: none"> • <u>Property Rights Policy No. 1-</u> <i>"No person shall be deprived of private property without due process of law."</i> The proposed variance does not deprive adjacent property owners of private property rights.
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| | <ul style="list-style-type: none">• <u>Property Rights Policy No. 11</u>- "<i>Property owners shall not use their property in a manner that negatively impacts upon the surrounding neighbors or neighborhoods.</i>" There is no evidence on the record that a variance for a rear-yard setback reduction will negatively impact surrounding neighbors or neighborhoods. |
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§07-08-03(2)(B) UNDUE HARDSHIP AND IDAHO CODE 67-6516 VARIANCE

Canyon County Code or Idaho Code does not define undue hardship for the purposes of a variance. However, undue hardship can be deduced from the criteria for a variance listed in Idaho Code §67-6516. Section 67-6516 allows the county to grant a variance if the characteristics of the site create a hardship that prevents an applicant from complying with a portion of county code eligible for a variance.

In the applicant's letter of intent (Exhibit 2), the following undue hardships are stated:

- There is not another location on the property where the house could be moved.
- Cost of removing the existing structure and restoring the dwelling would be a financial hardship. Applicant is still paying the loans they took out to build the house.

The parcel is limited due to the location of septic system, drainage field, the existing residence and other structures on the subject site. There does not appear to be any other location on the subject site that the building could be moved to without further violating setback requirements. As a result, the parcel is limited by site characteristics. The 1.44 acre triangle shaped parcel fronts Lake Hazel Road to the south and west and cannot expand to the north or east with the abutting parcel R-30718010 on both sides. A secondary residence is allowed as long as the owner of the lot or parcel containing the secondary residence lives on site. The owner does live on site. The secondary residence must have its own address and address numbers shall be placed on the home for emergency purposes (§07-14-25).

§07-08-03(2) (C) CONFLICTS WITH THE PUBLIC INTEREST

Staff defines the public interest to be the welfare or well-being of the public. Staff finds no evidence that the placement of the structure two feet and six inches from the rear property line would create conditions that conflict with the welfare or well-being of the public. The property to the north (parcel R30718010) is 8.6 acres of vacant farm land with no buildings (Exhibit 5) and would not be negatively affected by the structure that is two and half feet from the rear property line.

Staff finds no evidence the variance would deprive adjacent property owners of property rights. The variance does not appear to create material injury or unsafe conditions to adjacent property owners or deprive them from the use of their property.

Comments

Property owners within 300 feet from the exterior boundaries of the subject parcel were notified on May 15, 2019. Affected agencies and the City of Nampa were notified on April 25, 2019. Agency responses were received from Nampa and Meridian Irrigation District and the City of Nampa, and those comments are attached as Exhibits 9-10. There were no comments or concerns by any agencies concerning the request. A letter of opposition was received on June 7, 2019 from Tyree Legal (Exhibit 11).

Options

The Commission has the following options in this case:

- 1) The Planning and Zoning Commission may approve the variance;
- 2) The Planning and Zoning Commission may deny the variance and direct staff to make findings of fact to support this decision; or
- 3) The Planning and Zoning Commission may continue the discussion and request additional information on specific items.

Recommendation

Staff recommends the Planning and Zoning Commission open a public hearing and discuss the proposed variance. Staff is recommending **approval** of variance application and has provided findings of fact, conclusions of law and decision for the Planning and Zoning Commission's consideration (Exhibit 1).



Canyon County Planning & Zoning Commission

Doris Fuentes–Variance- ZV2019-0002

Development Services Department

Findings of Fact, Conclusions of Law, & Order

1. Doris Fuentes is requesting a **Variance** of 17 feet and six inches to the rear setback requirement in the Agricultural zone, to allow an existing structure to remain two feet and six inches from the rear property line.
2. The subject property, R30718 is approximately 1.44 acres in size and is located at 7004 Lake Hazel Rd., Nampa, Idaho, in a portion of the SW ¼ of section 32, T3N, R1W, BM, Canyon County, Idaho.
3. The property is currently zoned “A” (Agricultural). The subject property is designated as “Agricultural” on the 2020 Canyon County Future Land Use Map.
4. The subject properties are located within Nampa Highway District No. 1, Nampa Fire District, and Nampa School District #131.
5. The properties are located within Nampa’s Area of City Impact. The City of Nampa was adequately notified on 4/25/19. The City of Nampa stated that the Engineering Division had no concerns with Canyon County granting the applicant’s request.
6. The neighborhood meeting was held on 3/23/19 in accordance with CCZO §07-01-15.
7. Notice of the public hearing was provided in accordance with CCZO §07-05-01. Agency notice was provided on 4/25/19, newspaper notice was provided on 6/4/19, property owners within 300’ were notified by mail on 5/15/19, and the property was posted on 6/7/19.
8. The record herein consists of exhibits provided as part of the public hearing staff report, exhibits submitted during the public hearing on 6/20/19 and all information in case file ZV2019-0002.
9. A secondary residence is allowed as long the owner of the lot or parcel containing the secondary residence lives on site. The owner does live on site. The secondary residence must have its own address and address numbers shall be placed on the home for emergency purposes (§07-14-25).

Conclusions of Law:

Variance Criteria - §07-08-03(2)(A) CONSISTENCY WITH COMPREHENSIVE PLAN:

The request is consistent with the following Comprehensive Plan Goals and Policies:

Property Rights Policy No. 1- “No person shall be deprived of private property without due process of law.” The proposed variance does not deprive property owners of private property rights.

Property Rights Policy No. 11- “Property owners shall not use their property in a manner that negatively impacts upon the surrounding neighbors or neighborhoods.” There is no evidence on the record that a variance for a rear yard setback reduction will negatively impact surrounding neighbors or neighborhoods.

§07-08-03(2)(B) UNDUE HARDSHIP AND IDAHO CODE 67-6516 VARIANCE

Canyon County Code or Idaho Code does not define undue hardship for the purposes of a variance. However, undue hardship can be deduced from the criteria for a variance listed in Idaho Code §67-6516. Section 67-6516 allows the county to grant a variance if the characteristics of the site create a hardship that prevents an applicant from complying with a portion of county code eligible for a variance.

The parcel is limited due to the location of septic system, drainage field, the existing residence and other structures on the subject site. There does not appear to be any other location on the subject site that the building could be moved to without violating setback requirements. As a result, the parcel is limited by site characteristics.

§07-08-03(2) (C) CONFLICTS WITH THE PUBLIC INTEREST

Staff finds no evidence the variance would deprive adjacent property owners of property rights. The variance does not appear to create material injury or unsafe conditions to adjacent property owners or deprive them from the use of their property.

Order:

Based on the Findings of Fact and Conclusions of Law contained herein, The Planning & Zoning Commission **approves** Case # ZV2019-0002, a request for a Variance of 17 feet and six inches to the rear setback requirement in the Agricultural zone, to allow an existing structure to remain two feet and six inches from the rear property line, which is subject to the following condition:

1. Applicant must apply for a building permit prior to occupancy, and within 30 days of approval of variance.

APPROVED this _____ day of _____, 2019

PLANNING AND ZONING COMMISSION
CANYON COUNTY, IDAHO

Richard Hall, Chairman

State of Idaho)

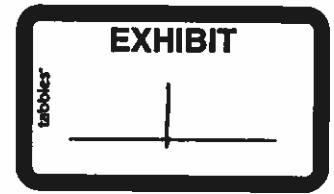
SS

County of Canyon County)

On this _____ day of _____, in the year 2018 before me _____, a notary public, personally appeared _____, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same.

Notary: _____

My Commission Expires: _____



Canyon County Planning & Zoning Commission

Doris Fuentes–Variance- ZV2019-0002

Development Services Department

Findings of Fact, Conclusions of Law, & Order

1. Doris Fuentes is requesting a **Variance** of 17 feet and six inches to the rear setback requirement in the Agricultural zone, to allow an existing structure to remain two feet and six inches from the rear property line.
2. The subject property, R30718000 is approximately 1.44 acres in size and is located at 7004 Lake Hazel Rd., Nampa, Idaho, in a portion of the SW ¼ of section 32, T3N, R1W, BM, Canyon County, Idaho.
3. The property is currently zoned “A” (Agricultural). The subject property is designated as “Agricultural” on the 2020 Canyon County Future Land Use Map.
4. The subject properties are located within Nampa Highway District No. 1, Nampa Fire District, and Nampa School District #131.
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9. A secondary residence is allowed as long the owner of the lot or parcel containing the secondary residence lives on site. The owner does live on site. The secondary residence must have its own address and address numbers shall be placed on the home for emergency purposes (§07-14-25).

Conclusions of Law:

Variance Criteria - §07-08-03(2)(A) CONSISTENCY WITH COMPREHENSIVE PLAN:

The request is consistent with the following Comprehensive Plan Goals and Policies:

Property Rights Policy No. 1- “No person shall be deprived of private property without due process of law.” The proposed variance does not deprive property owners of private property rights.

Property Rights Policy No. 11- “Property owners shall not use their property in a manner that negatively impacts upon the surrounding neighbors or neighborhoods.” There is no evidence on the record that a variance for a rear yard setback reduction will negatively impact surrounding neighbors or neighborhoods.

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The parcel is limited due to the location of septic system, drainage field, and the existing residence and other structures on the subject site. There does not appear to be any other location on the subject site that the building could be moved to without violating setback requirements. As a result, the parcel is limited by site characteristics.

§07-08-03(2) (C) CONFLICTS WITH THE PUBLIC INTEREST

Staff finds no evidence the variance would deprive adjacent property owners of property rights. The variance does not appear to create material injury or unsafe conditions to adjacent property owners or deprive them from the use of their property.

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1. Applicant must apply for a building permit prior to occupancy, and within 30 days of approval of variance.

APPROVED this _____ day of _____, 2019

PLANNING AND ZONING COMMISSION
CANYON COUNTY, IDAHO

Richard Hall, Chairman

State of Idaho)

SS

County of Canyon County)

On this _____ day of _____, in the year 2018 before me _____, a notary public, personally appeared _____, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same.

Notary: _____

My Commission Expires: _____

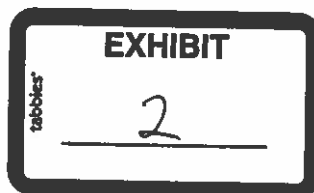
Doris Fuentes
7004 Lake Hazel Rd
Nampa ID 83687

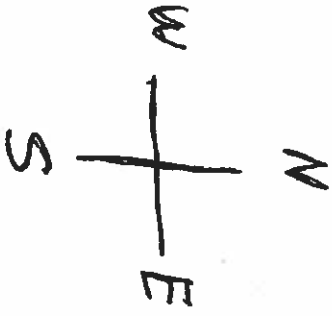
We are requesting a Variance to reduce the rear property setback from 20' to 2.5'. We built a two room house without asking permission. The reason we did not ask for a permit was because we live out in the county and we did not know we still had to ask permission. That was our mistake and now we are trying to fix it the right way. It was built to close to the limit property. The building is already completed and it will be hard to remove it. We do not have another location in the property to move it and that is the reason we are requesting a Variance permit. In case if we have to move the house, we do not have any more budgets to destroy and rebuilt. We are still paying the loans that we took out to build the two bedroom house.

The reason we built the house was because we had family in need of a place. We are the only family they have in town and they need a place to live. That was the reason why we decided to build the house was to help our family.

Sincerely,

Doris Fuentes





LAKE HAZEL RD

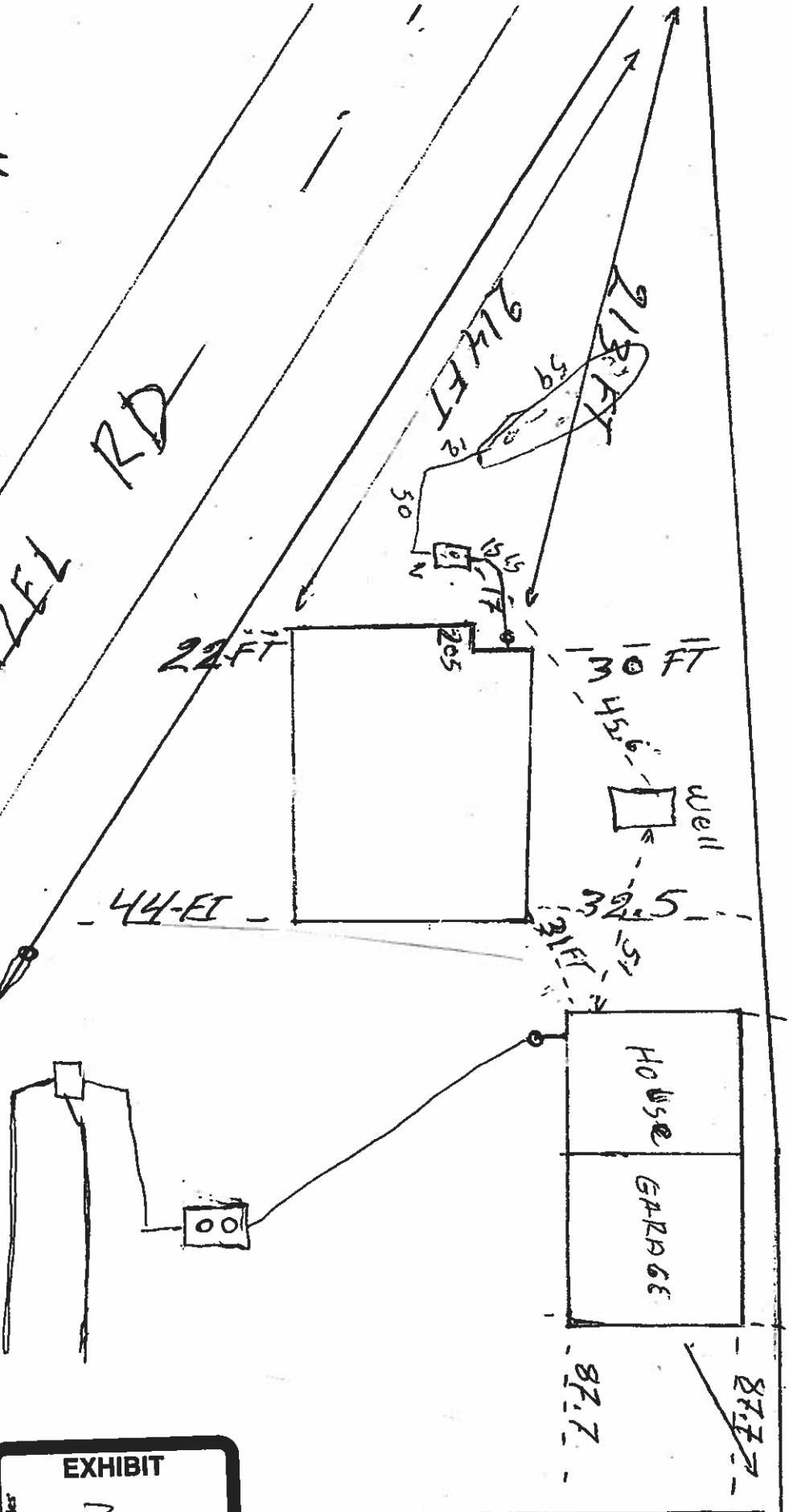


EXHIBIT
3



NEIGHBORHOOD MEETING SIGN UP SHEET

CANYON COUNTY DEVELOPMENT SERVICES DEPARTMENT

1115 Albany Street, Caldwell, ID 83605 www.canyoncounty.org/dsd.aspx

Phone: 208-454-7458 Fax: 208-454-6633

CANYON COUNTY ZONING ORDINANCE 08-026, 07-01-15 (1)

Applicants shall conduct a neighborhood meeting for any proposed variance, conditional use, zoning ordinance map amendment, expansion, or extension of nonconforming uses requiring a public hearing.

APPLICANT/REPRESENTATIVE NAME: Danetrio Zelayandia

STREET ADDRESS: 7004 Lake Hazel Rd CITY: Nampa ZIP 83682

TELEPHONE: 208-880-8024 FAX: _____ EMAIL: _____

DESCRIPTION OF THE REQUEST: _____

PARCEL NO. _____ ACREAGE: _____ CURRENT ZONING: _____

NOTICE OF NEIGHBORHOOD MEETING MAILED TO NEIGHBORS ON: / /

MEETING DATE: 3/23/19 TIME: 8:00am LOCATION: 7004 Lake Hazel Rd Nampa

START TIME OF MEETING: 8:00 am END TIME OF MEETING: 9:00 am

ATTENDEES: 208-941-1279 Mike Berardinelli - 208 985 3161

NAME: (print)	SIGNATURE:	ADDRESS:
1. <u>Jill Kowdeika</u>	<u>[Signature]</u>	<u>7100 Lake Hazel Rd.</u>
2. <u>John Kowdeika</u>		<u>7103 Lake Hazel Rd.</u>
3. _____		
4. _____		
5. _____		
6. _____		
7. _____		
8. _____		
9. _____		
10. _____		
11. _____		
12. _____		
13. _____		



- 14. _____
- 15. _____
- 16. _____
- 17. _____
- 18. _____
- 19. _____
- 20. _____
- 21. _____
- 22. _____
- 23. _____
- 24. _____
- 25. _____
- 26. _____
- 27. _____
- 28. _____
- 29. _____
- 30. _____

NEIGHBORHOOD MEETING CERTIFICATION:

APPLICANT/REP. (print):

Denetrio Zelayandia

(MEETING)
3/23-19

APPLICANT/REP. (signature):

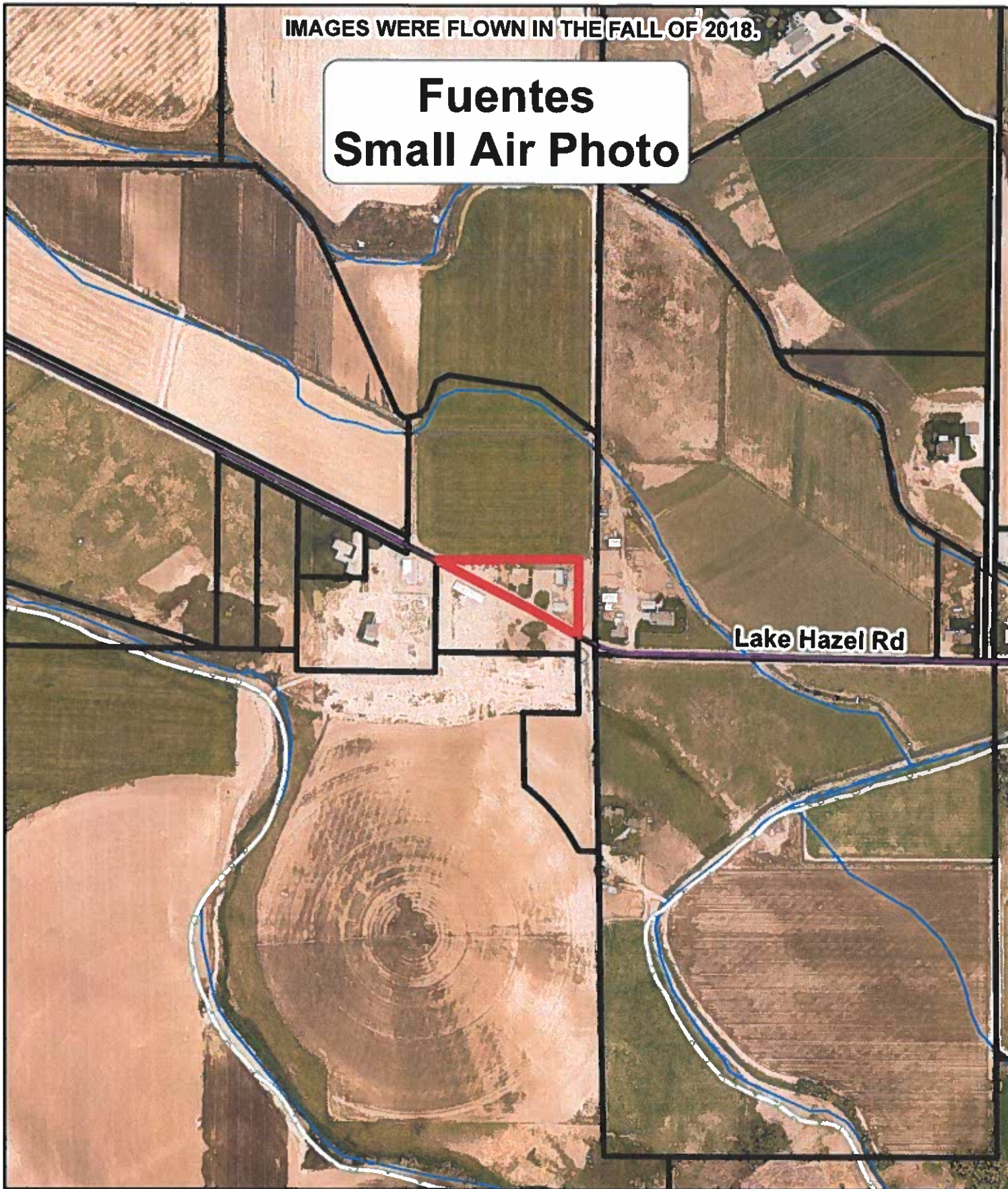


DATE: 3/25/19

I CERTIFY THAT A NEIGHBORHOOD MEETING WAS CONDUCTED AT THE TIME AND LOCATION NOTED ON THIS FORM AND IN ACCORDANCE WITH CANYON COUNTY ZONING ORDINANCE 08-026, 07-01-15.

IMAGES WERE FLOWN IN THE FALL OF 2018.

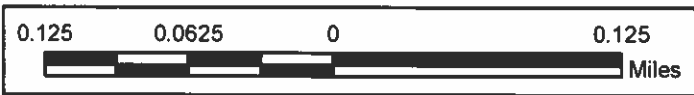
Fuentes Small Air Photo



Lake Hazel Rd



EXHIBIT
tabbles
5



Fuentes Small Vicinity Map

V AND L RANCHES LLC @@
AC 30.38

V AND L RANCHES LLC
AC 8.63

KOUELKA
AC 29.56

PLINE
AC 1.11

SUBJECT PROPERTY

COE
AC 4.04

V AND L RANCHES LLC
AC 2.11

Lake Hazel Rd

PLINE
AC 2.49

V AND L RANCHES LLC
AC 162.55

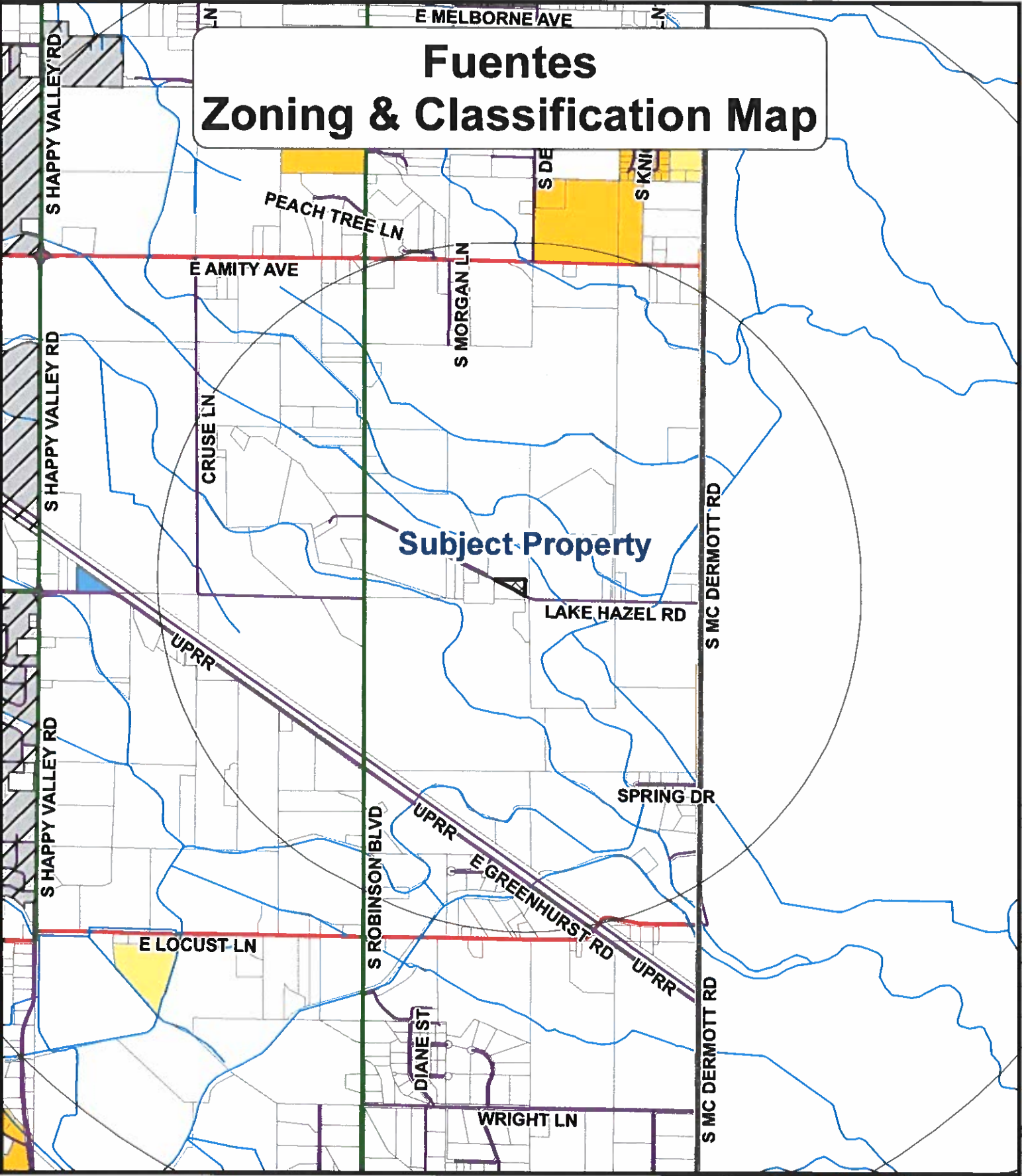
KOUELKA LIVING TRUST
AC 52.34



EXHIBIT
tabbles
6

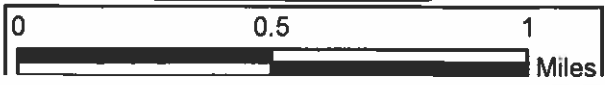


Fuentes Zoning & Classification Map

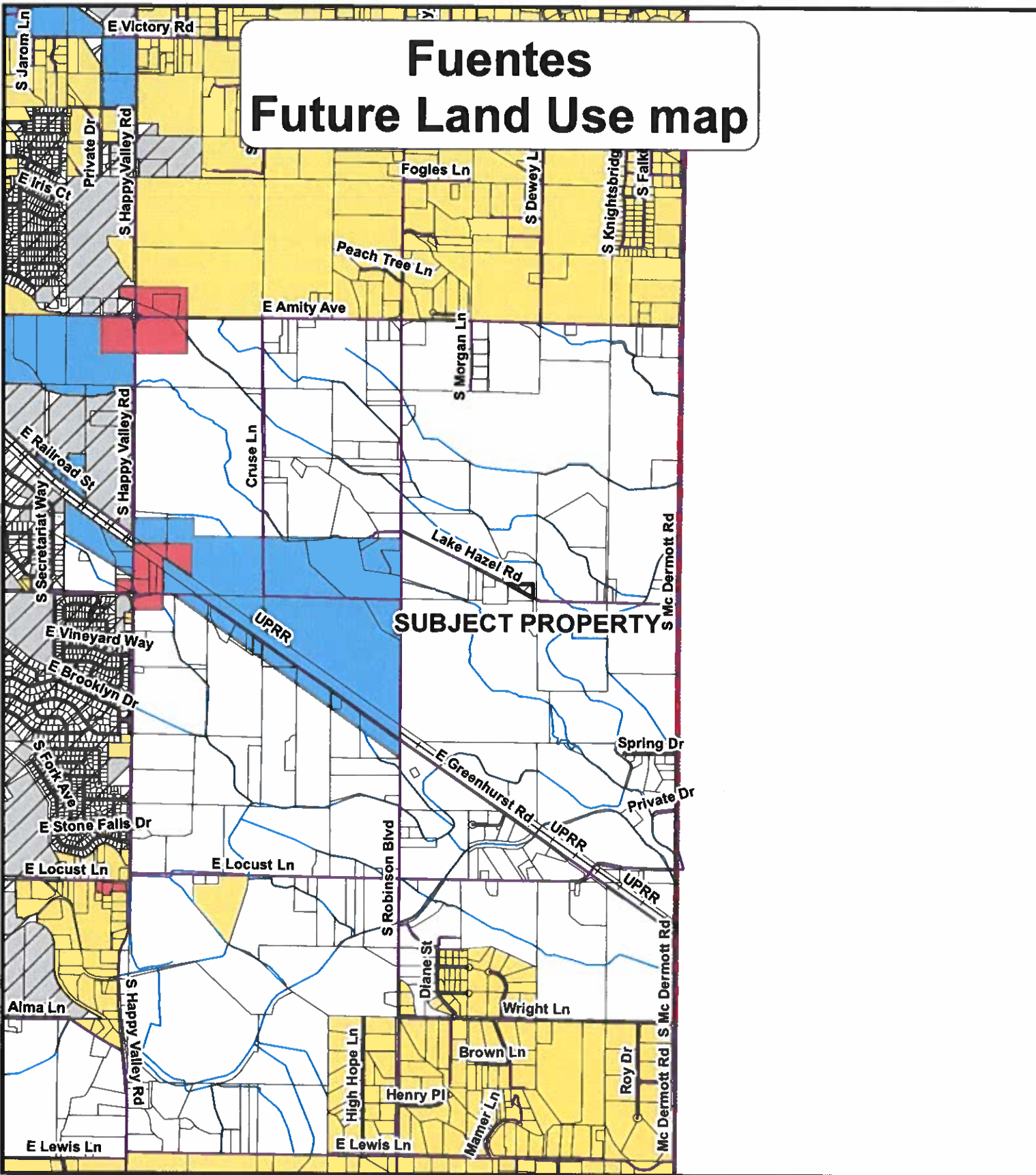


ZONING							
	RR		C1		C		AG
	CR-RR		CR-C1		M1		
	R1		C2		CR-M1		
	R2		CR-C2		M2		

EXHIBIT
7



Fuentes Future Land Use map

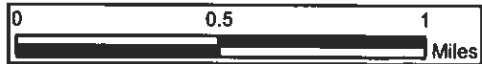


Legend

- COMMERCIAL
- INDUSTRIAL
- RESIDENTIAL

EXHIBIT

8





ORGANIZED 1904

Nampa & Meridian Irrigation District

1503 FIRST STREET SOUTH
FAX #208-463-0092

NAMPA, IDAHO 83651-4395
nmid.org

OFFICE: Nampa 208-466-7861
SHOP: Nampa 208-466-0663

May 1, 2019

Canyon County Development Services Dept.
111 North 11th Avenue, Suite 140
Caldwell, ID 83605

RE: ZV2019-0002/ 7004 Lake Hazel Road

Dear development services:

Nampa & Meridian Irrigation District (NMID) has no comment on the above-referenced application as no facilities are impacted and plans show storm water is retained on site.

All private laterals and waste ways must be protected. All municipal surface drainage must be retained on-site. If any surface drainage leaves the site, NMID will need to review drainage plans. The developer must comply with Idaho Code 31-3805.

Please feel free to contact me with any further questions

Sincerely,

David T. Duvall
Asst. Water Superintendent
Nampa & Meridian Irrigation District
DTD/ gnf

Cc:

Office/ file



APPROXIMATE IRRIGABLE ACRES
RIVER FLOW RIGHTS - 23,000
BOISE PROJECT RIGHTS - 40,000



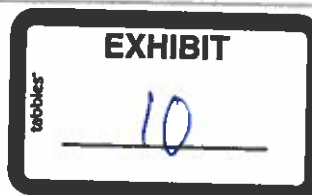
City Hall
411 3rd Street South
Nampa, Idaho 83651

(208) 468-5458
engineering@cityofnampa.us
cityofnampa.us/engineering

Date: May 24, 2019
Rev:
To: Canyon County Development Services
Attn: Randall Faulkner
Cc: Caleb LaClair, P. E., Assistant City Engineer Development
Cc: Daniel Badger, P.E., City Engineer
Cc: Tom Points, P. E., Nampa City Public Works Director
From: Jim Brooks – Engineering Division
Subject: Rear setback variance
Applicant: Doris Fuentes
Applicant Address: 7004 Lake Hazel Road, Nampa, Idaho 83687
Owner: Doris Fuentes
Owner Address: 7004 Lake Hazel Road, Nampa, Idaho 83687
Parcel Address: 7004 Lake Hazel Road, Nampa, Idaho 83687

ZV2019-0002 for the June 20, 2019 Canyon County P & Z Commission

The applicant's property lies within the City of Nampa's Impact Area. The Engineering Division has no concerns with Canyon County granting the applicant's request.



NAMPA *Proud*



June 7, 2019

VIA E-MAIL – RFALKNER@CANYONCO.ORG & DSDINFO@CANYONCO.ORG

Canyon County Planning & Zoning Comm.
c/o Randal Falkner
111 North 11th Ave. #140
Caldwell, ID 83605

Re: *Case No. ZV2019-0002*

Dear Commissioners:

I represent V & L Ranches, LLC. V & L Ranches owns the property surrounding Ms. Doris Fuentes property and is directly impacted by this application. For the reasons set forth in this letter, V & L Ranches requests you deny Ms. Fuentes variance request.

It is our understanding that Ms. Fuentes is requesting the variance because she built a home on her property without obtaining a building permit or otherwise seeking the necessary approvals for constructing the home. As I suspect you are aware, 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. Idaho Code § 67-6516. Here, the “characteristics of the site” are not causing the undue hardship. The undue hardship was created by Ms. Fuentes blatant disregard of the County’s ordinances. One cannot create their own hardship. Where the “characteristics of the site” are not causing the undue hardship, a variance cannot be granted. *City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 910 (Id. Ct. App. 1984).

The variance also conflicts with the public interest. Granting the variance rewards Ms. Fuentes for failing to follow the County’s ordinances. It cannot be “in the public interest” to allow our residents to disregard the law of our land. Furthermore, the almost non-existent set back sought by Ms. Fuentes creates a hazard to my client’s property and limits the use of their land.

TIMOTHY W. TYREE

ADMITTED TO PRACTICE LAW IN IDAHO & UTAH

Canyon County P&Z Comm.
June 7, 2019



Setbacks are established for a variety of reasons, not the least of which is fire safety. My client farms its property. As the heat of the summer sets in, so too does the fire danger. Should a fire occur within Ms. Fuentes home, there is no defensible buffer to keep the fire from spreading to the hundreds of acres farmed by V & L Ranches immediately adjacent to this property. The economic loss would be devastating, and the risk imposed to neighboring properties inexcusable.

The non-existent setback will create additional risks as well. Farm equipment will now pass within 30" of the home and fertilizers, pesticides and herbicides will be applied within 30". Ms. Fuentes may believe seeking a variance is better than moving the home, but that decision is a blatant disregard for my client's property rights and fails to consider the practical conflicts sure to arise. Given the inevitable conflict between adjoining uses with only a 30" setback, this request most certainly conflicts with the public interest.

For the reasons stated above, V & L Ranches, LLC respectfully requests you deny ZV2019-0002.

Very truly yours,

TYREE LEGAL, PLLC

Timothy W. Tyree

c. V & L Ranches, LLC