

**Madison County  
Commissioner Meeting Minutes  
July 11, 2022**



**Attendees:**

**Todd Smith, Commissioner Chairman  
Brent Mendenhall, Commissioner  
Douglas Smith, Commissioner  
Troy Evans, Deputy Prosecuting Attorney  
Kim Muir, County Clerk**

**Instrument # 451383**

**REXBURG, MADISON, IDAHO  
7-25-2022 04:26:43 PM No. of Pages: 1  
Recorded for : MADISON COUNTY  
KIM H. MUIR Fee: 0.00  
Ex-Officio Recorder Deputy** sg

**ACTION ITEMS**

This meeting was streamed electronically.

Pledge of Allegiance: By all

Invocation: Clerk Kim Muir

Dustin Parkinson was in attendance.

Gary Armstrong was present to discuss small scale developments.

**Calendar Discussion:**

Next Commission Meeting: Monday, July 25, 2022.

Wednesday, July 20, 2022, District 6 meeting in Butte County 11:30 a.m.

**Schedule of Commissioners:**

Todd: Semiannual Tri-County and 5C meetings Tuesday, July 12, 2022.

Solid Waste meeting on Wednesday.

**Discussion Items:**

Beer and Wine License transfer costs.

The success of the rodeo was discussed. The gate attendance exceeded more than in past years.

Department Head meeting will be held July 25, 2022. This will be a short meeting with a light lunch.

**Contracts/Documents:**

The Beer and Wine License for Blisters BBQ was not received in time. This matter will be moved to the next agenda.

**Routine Matters:** After review and discussion, Commissioner Mendenhall made a motion to approve the claims presented by the Clerk. The grand total of claims was \$587,719.52. Commissioner Doug Smith seconded and voting was unanimous. The motion passed.

After review and discussion, Commissioner Mendenhall made a motion to approve the meeting minutes of June 29, 2022. Commissioner Todd Smith seconded and voting was unanimous. The motion passed.

**Personnel Actions:**

<u>Employee Name</u>	<u>Position</u>	<u>Salary/Wage</u>	<u>Change</u>
<b>Sheriff:</b>			
Austin Burshia	Detention	None	Resignation
<b>D-7:</b>			
<b>Assessor:</b>			
Lana Atkinson	DMV	\$19.25/hr.	Reallocation
Rosalia Garcia	DMV	\$19.25/hr.	Reallocation
Alena Williams	DMV	\$19.25/hr.	Reallocation
Tammy Erickson	Assessor	\$23/hr.	Reallocation
Amanda Larese	Assessor	\$26.86/hr.	Reallocation
Julia Solomon	Assessor	\$25/hr.	Reallocation
Edward Waahila	Assessor	\$22.50/hr.	Reallocation
<b>Mosquito:</b>			
Ben Prescott			Resignation
<b>Juvenile Probation:</b>			
Mark Helms	Youth Tracker	\$11.75/hr.	Temp fill-in
<b>Road and Bridge:</b>			
Jason Muir	Truck Driver	\$16/hr.	New hire

After review and discussion, Commissioner Doug Smith made a motion to approve the personnel actions. Commissioner Mendenhall seconded and voting was unanimous. The motion passed.

**Public Comment:**

Jeanette Barrck, of 913 Heritage Road in Burton. She wanted to speak regarding mosquitos. She would like to have the foggers come by her home more often. The Commissioners will discuss this further with Jared Arnold.

**Public Hearing to consider the small-scale subdivision Diamond Acres Division No. 2 for Granite Peaks Holdings:**

Commissioner Todd Smith made a motion to open the public hearing at 9:05 a.m. Commissioner Mendenhall seconded and voting was unanimous. The motion passed. There were no conflicts declared. Clerk Kim Muir stated the hearing was properly noticed, and was being recorded.

Gary Armstrong and Lance Wickham were present to discuss small scale developments.

The application is to divide 17 acres into 6 lots of more than 2 acres each and is north of the current Diamond Acres Subdivision. Gary has received some calls stating that some of the property was sold before receiving a permit Gary talked with the applicant and was told the owners of the land are retaining 3 of the lots and they were not for sale. There were no lots sold before the permit was issued. He corresponded with the concerned applicant. The application is consistent with development in the area. Commissioner Smith asked if the access from the north is the only access.

There were questions regarding how the property was subdivided a second time. Lance Wickham states property for Phase 2 was purchased from a different person than the first subdivision. Commissioner Mendenhall asks if the land was purchased from 2 different owners, if it creates a separate parcel. Gary answered it is a discrete different parcel called Diamond Acres #2 only because it is adjacent. This division is being processed as a small-scale subdivision.

Public Testimony: There was no one to speak for or against.

Kristen Ruebush spoke in the neutral position. She asked when the first phase approved and questioned the small-scale short plat in one subdivision. Gary stated this is the phasing of a subdivision rather than a brand-new subdivision.

Gary explained we are holding a public hearing on this, but when we do the small-scale subdivision, a public hearing is not required. Since it was more than 5 lots and there was a lot split, he went ahead with the public hearing. Administrative splits were explained and stated these do not normally go through the political process. They are simply recorded. Any future division of that is subject to the process. Gary talked about the county not being interested in stacking in the future for new developers, and is looking at this further.

The public hearing was closed at 9:22 a.m.

After review and discussion, Commissioner Doug Smith moved to approve the application for Matt Bitner for Diamond Acres Division 2 Subdivision as proposed in application materials received April 28, 2022. Commissioner Mendenhall seconded and voting was unanimous. The motion passed.

**Public Hearing regarding the request to consider the small-scale subdivision Twin Tree Subdivision No. 2 for Generic Investments. The property is owned by the Lerwill's.**

This was posted and noticed as required by law. This was also recorded, and the Commissioners had no conflict of interest.

The property is located at 4300 W. 1100 S., across from Heritage Subdivision. This is 60 acres proposing to put in 7 lots. The application was reviewed administratively and found that all lots meet requirements. A canal dissects diagonally and allows for irrigation. He found it to meet all terms of code to go under small-scale subdivisions. They have received no phone calls or written response.

The applicant was not present and there was no one present to speak for or against.

In neutral was Jeff Hochstrasser lives in the Homestead Development. With the access coming through 1000 South he is concerned that the road really has no markings and requests the county looks to stripe the road. He said 1000 South is becoming a main road and has been to get to Burton Elementary and the High School. More and more homes are being built with access to 4000 West which has a 50 MPH speed limit and would like county to review this roadway for speed. He believes there will be future problems on the Highway.

Kirsten Ruebush also spoke in a neutral position. Kirsten is worried about developers suddenly doing a subdivision with many lots without considering irrigation and water rights. She asks if the person buying the property is made aware and realize that lots are large to be irrigating with a well. Is the plan detailed enough and are their covenants that explain the irrigation plan allowing all residents to work together?

Kathryn Michaels spoke in a neutral position. She agrees with Kirsten and is would like to see where the road is going to go for the project. Access is to 1000 South except the one lot which connects to 4000

South. She lives on the other side of the line and asks if there will be a privacy fence so they can't drive on her property? Gary states a property fence is not required.

Jeanette Barrick, 913 Heritage Road, spoke in a neutral position. Jeanette stated she moved to the country for serenity and peace. When does development stop? Do Commissioners realize that mental Health and wellness play in the development of the county. Commissioner Mendenhall replied, it doesn't stop as long as people have money and want to develop. As long as developers abide by the law, that is the process.

Commissioners ask about irrigation for the property. Gary states they reach out to Fremont/Madison on every subdivision. They received no comment. An irrigation plan is not a requirement per code for this subdivision. Commissioner Smith asks about access to Lot 7? Gary answered the lot owner can choose which access he would like to use.

Kirsten asks if irrigation laws need to be reviewed before subdivisions go in. Gary does ask them to look into irrigation laws.

After review and discussion, Commissioner Mendenhall made a motion to approve the application from Generic Investments for Twin Tree Subdivision No. 2, as proposed in application materials received March 15, 2022 as it has been presented to us. Commissioner Doug Smith seconded and voting was unanimous. The motion passed.

**Executive Session:** Employee and indigent matters. Chairman Todd Smith made a motion to go into Executive Session at 9: 52 a.m. Idaho Code §74-206 (1)(b) employee matters, (d) exempt records - AnnMarie Sorensen, Indigent Clerk and (f) litigation matters. A roll call vote was taken as follows: Commissioner Todd Smith – yes, Commissioner Mendenhall – yes, Commissioner Doug Smith - yes The motion passed. Commissioner Todd Smith returned to open session at 10:12 a.m.

**Public Hearing, regarding adoption of the 2018 International Fire Code:**

Commissioner Todd Smith made a motion to open the public hearing at 10:20 a.m. Commissioner Mendenhall seconded and voting was unanimous. The motion passed. There were no conflicts declared. Clerk Kim Muir stated the hearing was properly noticed. This public hearing was recorded.

Stan Crittenden explained the Fire Department position stating they are updating the County Code to reflect the 2018 Fire Codes. There was some verbiage changed for a four-plex that specifies if they do not currently have sprinklers, the Code will require them to be separated by 10 feet. If they are in closer proximity, a firewall will be required. There was also further clarification for access to water. Commissioner Smith asks why the update is just to the 2018 Code rather than a more current Code. Stan explained the code only updates every 3 years and the new Code is not ready at this time. Stan also stated the Thornton water issue is considered commercial and is a separate issue.

There was no one present to speak in the neutral position, for or against.

Gary from the County P&Z commented he is in support of this update to the code and that 2018 clarifies residential and commercial law.

Commissioner Smith closed the public hearing at 10:26 a.m.

Commissioner Mendenhall made a motion to adopt the 2018 International Fire Code. Commissioner Doug Smith seconded and voting was unanimous. The motion passed.

After review and discussion, Commissioner Mendenhall made a motion to approve Ordinance #459, Adoption of 2018 International Fire Code. Commissioner Smith seconded and voting was unanimous. The motion passed.

**Tammy Erickson, Summer Wellness:**

Tammy presented a plan to begin a new wellness program to begin on July 18, 2022, and run through August 31 with 8 hours of comp time for those meeting the requirements which include and exercise plan, as well as a weight loss plan.

After review and discussion, Commissioner Doug Smith made a motion to approve giving 8 hours of comp time to those employees completing the requirements. Commissioner Mendenhall seconded and voting was unanimous. The motion passed

**Gary Armstrong, research regarding Yellowstone Safari game ranch:**

This matter first came before the County Commissioners on June 29, 2022, from citizens' concerns about a game ranch called Yellowstone Safari being placed west of town. It is being built by Jared Sommers. From the June 29, 2022 meeting, the Commissioners asked Gary Armstrong of the county's P&Z department to research what has occurred regarding this and provide his research to the Commissioners in this meeting.

Gary was present and reported his findings on the game ranch and answering the questions Commissioner's asked of him. His written research will be made a part of these minutes.

Gary and the Commissioners noted this is not a public hearing nor an action to act on an application triggering the Commissioners' quasi-judicial role. This matter was discussed between Mr. Sommers and the County's former P&Z administrator back in March, 2021 to confirm the facility as a Game Ranch, which is a permitted use in the zone where it sits. This was completed over 15 months ago, and Mr. Sommers has proceeded with building his game ranch ever since. Though it was reviewed by the P&Z director back in March 2021, there was no application and no county approval required because it is a permitted use. For today's purposes, Gary is providing research to what occurred over a year ago, and his current interactions with concerned citizens.

Gary then reviewed with the Commissioners his research as outlined in his July 11, 2022 letter to them. He addressed their specific questions raised at the last hearing.

Commissioner Doug Smith stated that Gary's response was informative and substantiated with County and Idaho Code. Commissioner Brent Mendenhall stated that most ranches have a product tied to the use. What is the product and what is coming out of this operation? Gary answered that no product is being bought or sold and that under the Right to Farm Act doesn't say anything has to be sold. He drew the comparison to a riding stable where it is a teaching operation or provided a recreational service. It is a service provided the same as keeping game animals and allowing other to enjoy the animals.

Questions were also posed regarding the point in the regulatory process that would require traffic studies be done? Gary compared the game ranch to a school or a church and traffic studies are not required. There are many uses that induce traffic, but they are not required in our code at this point. Commissioner

Doug Smith said there is value to the community to have this park in our area. Commissioner Todd Smith said he sees both sides of this situation. Was it truly an Ag use or commercial is the question? You have some citizens saying it is ag and others commercial. When he hears fur bearing animals on a farm, he thinks of a mink farm and asks is there anything in the code that defines that better. Gary said the code addresses more the foxes and doesn't say you have to breed or sell them.

Troy stated the right to farm act has been in existence in Idaho since the early 80s and was substantially updated in 2011. The Act protects farm operations, not necessarily land, and every state appears to have adopted similar acts.

Commissioners asked if citizens disagree, what is the next step? Can an appeal be filed? Gary stated there is no application because it was determined a permitted use, and any permits have been issued according to code. That this was done well over a year ago. That any time to appeal or seek judicial review should have long expired because this occurred in 2021. The Commissioners suggest that the P&Z department look at defining game ranches in our code and further regulation so it can be made clearer moving forward. Gary will follow up on this.

After listening to Gary and discussion with him, the Commissioners stated this meeting was informational only to them and the public in order to review what occurred last year because on permitted uses, the Commissioners don't see anything up front on these. If problems are raised, the Commissioners simply don't hear about them until many months later—usually when something is being built on a property. It appears what occurred over a year ago was consistent with county code and Idaho law. The Commissioners thanked those present for attending.

**Lance Wickham, Adoption of County Road Diamond Acres Division 1 road adoption.**

The County Road and Bridge department has signed off on this matter and all requirements have been met. After review and discussion, Commissioner Doug Smith made a motion to adopt Diamond Acres Division 1 into the County road system. Commissioner Mendenhall seconded and voting was unanimous. The motion passed

**Shawn Boice, tax cancellation request for Kevin Fuller and Craig or Camille Peck:**

This is a tax cancellation request. Camille Peck was in attendance and requested Commissioners reverse the late fees and the interest. Camille explained that a check had been written on a savings account rather than a checking account and presented as NSF. There were funds to cover the check in the checking account. It was their error, and they are asking forgiveness of penalty and interest.

Commissioner Todd Smith made a motion to forgive the interest, but still charge the NSF fee for Craig and Camille Pack. The cancellation total is \$195.17. Commissioner Doug Smith seconded and voting was unanimous. The motion passed.

Commissioner Todd Smith made a motion to recess Commission meeting and reconvene Board of Equalization at 11:40 a.m. Commissioner Mendenhall seconded and voting was unanimous. The motion passed.

Present from the county were: Commissioner Todd Smith, Commissioner Brent Mendenhall, Commissioner Doug Smith, Troy Evans, Clerk Kim Muir and Shawn Boice and were previously sworn in.

**BOE Taylor Corp DBA Artco:**

After review and discussion, Commissioner Doug Smith made a motion to uphold the value on Taylor Corp. Commissioner Todd Smith seconded and voting was unanimous. The motion passed.

**BOE Jeremy Hay:**

Shawn and Julie, from the Assessor's went and measured his home and the correct square footage was obtained. The differences were in the garage and bonus areas.

After review and discussion, Commissioner Mendenhall made a motion to adjust the value to \$636,383 to reflect the correct square footage. Commissioner Doug Smith seconded and voting was unanimous. The motion passed

**BOE Steven Boyce:**

The BOE request for Steven Boyce was withdrawn by the applicant. The value stays.

**BOE Madison Section 42 Housing, Douglas S. John, Main Street Station:**

Mr. John joined telephonically. Mr. John referred to a report from Jan, 2014 to 2021 indicating a credit to his expenditures. Shawn discussed the matter with the State Tax Commission and a new value of \$3,311,106 was agreed to reflect credits and depreciation to his capital expenditures.

After review and discussion, Commissioner Todd Smith made a motion to adjust the value of Main Street Station LP to \$3,311,106 based on capital improvements and depreciation. Commissioner Doug Smith seconded and voting was unanimous. The motion passed.

**BOE Madison Section 42 Housing, Douglas S. John, Donegal LP:**

Mr. John referred to a report from Jan, 2014 to 2021 indicating a credit to his expenditures. Shawn discussed the matter with the State Tax Commission and a new value of \$1,553,293 was agreed to reflect credits and depreciation to his capital expenditures.

After review and discussion, Commissioner Mendenhall made a motion to accept and adjust the monies in the amount of \$1,553,293 for Donegal Bay. Commissioner Todd Smith seconded and voting was unanimous. The motion passed.

**Mark Wiley, Circuit Breaker:**

Mark Wiley did not apply for the circuit breaker tax credit but does qualify. He has qualified in the past for \$390 - \$800 credit in the past depending on his income for the year expenses. Phone calls were made and letters were sent out, but he did not respond in a timely matter.

After review and discussion. Commissioner Mendenhall made a motion to grant Mark Wiley to grant a \$390 for a circuit breaker tax cancellation. Commissioner Doug Smith seconded and voting was unanimous.

Commissioner Mendenhall made a motion to adjourn Board of Equalization and reconvene Commissioner meeting. Commissioner Todd Smith seconded and voting was unanimous. The motion passed.

**Kevin Fuller, Tax Cancellation:**

Kevin Fuller submitted application for cancellation after the due date and the cancellation was not processed.

After review and discussion, Commissioner Mendenhall made a motion to approve the tax cancellation for Kevin Fuller in the amount of \$1,214.30. Commissioner Doug Smith seconded and voting was unanimous.

**Bradley Petersen, updates and requests for floodplain and economic development:**

Gary Armstrong and Bradley Petersen were present to request additional funding of \$24,600 to allow for engineering services on the FEMA Risk MAP project.

After review and discussion, Commissioner Mendenhall made a motion to approve additional funding to provide engineering services for the FEMA Risk MAP. The City will be contacted to pay a portion. Commissioner Smith seconded and voting was unanimous. The motion passed.

**Kendall Ballard Final Health, Dental and life insurance decision and cost to employees:**

Final insurance quotes were discussed. The county's current medical provider, Blue Cross, proposed a 14% increase for FY2023. Kendall has done further research and proposals were received from other companies. Select health offered the best coverage, as well as best cost for FY2023. It is 5.33% increase over Blue Cross's current amount.

After review and discussion, Commissioner Doug Smith made a motion to approve the medical insurance contract with Select Health for FY 2023. Employees will now contribute 17% of the total premium through payroll deduction. Commissioner Todd Smith seconded and voting was unanimous. The motion passed.

Kendall compared the county current Delta Dental plan to a few other companies. Beam is a new company just starting to do business in Idaho. Kendall explained the benefits offered by each company.

After review and discussion, Commissioner Mendenhall made a motion to approve the dental insurance contract with Delta Dental for FY2023. Commissioner Doug Smith seconded and voting was unanimous. The motion passed.

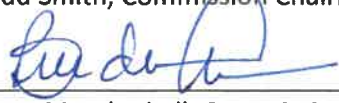
**Jail inspection and visit:**

Commissioners visited the jail to complete their annual inspection. They found the jail to be operating very competently.

Commissioner Todd Smith made a motion to adjourn the meeting at 1:45 p.m. Commissioner Mendenhall seconded and voting was unanimous. The motion passed.

Approved:

  
Todd Smith, Commission Chairman

  
Brent Mendenhall, Commissioner

Attest:

  
Kim Muir, County Clerk

  
Douglas Smith, Commissioner



## PLANNING & ZONING DEPARTMENT

134 E Main Suite 208 Rexburg ID 83440

Phone (208)359-6259

Fax (208) 356-6308



To: Madison County Board of County Commissioners  
From: Gary Armstrong, Planning Administrator  
RE: Jared Sommers' "Game Ranch" in the Salem-Hibbard Area  
Date: July 11, 2022

---

### **Request**

This memo is prepared to provide my opinion regarding the "Game Ranch" that Jared Sommers is constructing in the Salem-Hibbard Area. This was formally requested by the Board of County Commissioners in an open meeting on Wednesday, June 27, 2022. The request came as a matter of public discourse, as residents in the County requested audience with the County Commissioners.

### **Summary of Determination**

Based on my review of the activities to construct a "Game Ranch" at 2246 W 4000 N, Rexburg, on property identified as RP07N39E359041, Game Ranch is a permitted use under Madison County Code 117-51, in Agriculture Zones. It was determined by planning staff in March 2021 that the game ranch as proposed complies with Madison County Land Use Code. At this time, this is reaffirmed by the current planning administrator. As a permitted use, no formal permit or permitting processes is required. There is no further regulatory action to be taken by Madison County at this time regarding this Game Ranch.

The following discussion outlines the reasoning and statutory explanation for this determination, as well as the background and evolution of the project. There are several key questions that have been raised, and this memo attempts to provide a sound and legal answer to those key questions.

### **Key Questions**

- Does the Yellowstone Safari Park as proposed, fall under Madison County's classification as a Game Ranch?"
- Is the Yellowstone Safari Park an agricultural operation?
- Isn't this a commercial operation? Shouldn't this require commercial zoning?
- Doesn't charging entrance fees change the use to commercial?
- How is this different than Bear World?
- What if the animals get out?
- What permit is required by the County?
- Why was there no public hearing?



## PLANNING & ZONING DEPARTMENT

134 E Main Suite 208 Rexburg ID 83440

Phone (208)359-6259

Fax (208) 356-6308



### **Does the Yellowstone Safari Park as proposed, fall under Madison County's classification as a "Game Ranch?"**

At this time, while Madison County Code identifies "Game Ranch" as a permitted use in the land use table found in Section 117-51, there is no definition provided. Historically, this land use was put into Madison County Code to specifically allow elk ranches in the County. There are several elk ranches throughout the County. But what then is a Game Ranch, if it is not defined in Madison County Code?

Generally, ranches are agricultural operations that raise animals, and farms are operations that raise crops. And often times, many agricultural operations will have some combination of both crops and animals.

Madison County Code definitions for agriculture terms are as follows, as found in MCC 101-2:

Agricultural lands means lands used primarily for agricultural uses, which include the growing of crops, the raising of livestock, and other traditional farming activities.

Agricultural lots means lots in a subdivision designated by platting or deed restriction solely for agricultural purposes.

Agricultural operation includes any facility used in the production or processing of crops, timber, livestock, swine, poultry, livestock products, swine products or poultry products.

Agriculture.

1. The term "agriculture" means the tilling of soil, horticulture, raising crops, livestock, dairying, including all uses customarily accessory and incidental thereto.
2. The term "agriculture" excludes slaughterhouses and livestock confinement operations.

Further, Madison County Code does not define game, ranch, game ranch, or livestock.

Madison County defines the Scope and Purposed of Agriculture Zone with the following description in MCC Section 117-52:

*Scope and purpose.* The provisions of this section apply to the Agricultural (AG) Zone or designation. The purpose of the Agricultural (AG) Zone or designation is to provide for and protect agricultural lands and uses. All other uses will be considered secondary and not allowed if they pose any interference or negative impacts upon the agricultural use of the land. The minimum lot size and building locations in this zone shall be of a size to allow for economically viable agricultural uses without affecting surrounding properties adversely.

The Idaho Right to Farm Act, Idaho Statute 22-4502, defines Agricultural Operation as follows:

- (2) "Agricultural operation" means an activity or condition that occurs in connection with the production of agricultural products for food, fiber, fuel and other lawful uses, and includes, without limitation:



## PLANNING & ZONING DEPARTMENT

134 E Main Suite 208 Rexburg ID 83440

Phone (208)359-6259

Fax (208) 356-6308



- (a) Construction, expansion, use, maintenance and repair of an agricultural facility;
- (b) Preparing land for agricultural production;
- (c) Applying pesticides, herbicides or other chemicals, compounds or substances labeled for insects, pests, crops, weeds, water or soil;
- (d) Planting, irrigating, growing, fertilizing, harvesting or producing agricultural, horticultural, floricultural and viticultural crops, fruits and vegetable products, field grains, seeds, hay, sod and nursery stock, and other plants, plant products, plant byproducts, plant waste and plant compost;
- (e) Breeding, hatching, raising, producing, feeding and keeping livestock, dairy animals, swine, fur-bearing animals, poultry, eggs, fish and other aquatic species, and other animals, animal products and animal byproducts, animal waste, animal compost, and bees, bee products and bee byproducts;**
- (f) Processing and packaging agricultural products, including the processing and packaging of agricultural products into food and other agricultural commodities;
- (g) Manufacturing animal feed;
- (h) Transporting agricultural products to or from an agricultural facility;
- (i) Noise, odors, dust, fumes, light and other conditions associated with an agricultural operation or an agricultural facility;
- (j) Selling agricultural products at a farmers or roadside market;
- (k) Participating in a government sponsored agricultural program.

The Right to Farm act further describes "Nonagricultural Activities" related to the Act as:

- (3) "Nonagricultural activities," for the purposes of this chapter, means residential, commercial or industrial property development **and use not associated with the production of agricultural products.**

The Yellowstone Safari Park as it has been described to Madison County Planning and Zoning Department, will consist of a game ranch that will include bison, elk, fox, deer, captive wolves/hybrid wolves, and Eurasian brown bears.

Bison - Idaho Title 25-3301 (3) defines Livestock:

- (3) "Livestock" means cattle, swine, **bison**, horses, mules, or asses.

In other words, bison are considered livestock in Idaho.

Elk and Deer - Idaho Title 25-3701 addresses domestic cervidae (antlered mammals including deer, elk, moose, etc...)

25-3701. DOMESTIC CERVIDAE FARMING DEEMED AGRICULTURAL PURSUIT. It shall be lawful for any person, association or corporation to breed, own or control domestic cervidae, which are defined as fallow deer (dama dama), elk (cervus elaphus) or reindeer (rangifer tarandus), but shall not include red deer (urasian cervidae) or any subspecies or hybrids thereof, and **hold such animal in captivity for breeding or other useful purposes on domestic cervidae farms or ranches, provided the premises have been registered with the division of animal**



PLANNING & ZONING DEPARTMENT

134 E Main Suite 208 Rexburg ID 83440

Phone (208)359-6259

Fax (208) 356-6308



**industries. For the purposes of all classification and administration of the laws of the state of Idaho, and all administrative orders and rules pertaining thereto, the breeding, raising, producing, harvesting or marketing of such animals or their products by the producer or his agent shall be deemed an agricultural pursuit;** such animals shall be deemed livestock and their products shall be deemed agricultural products; the persons engaged in such agricultural pursuits shall be deemed farmers, cervidae farmers, cervidae breeders or cervidae ranchers; the premises within which such pursuit is conducted shall be deemed farms, cervidae farms, or cervidae ranches.

In other words, Cervidae species (deer and elk) are considered an agricultural pursuit.

Fur Bearing Animals – Fox, bobcat, lynx, otters, muskrats, mink, beaver, badger, marten, coyote, skunks, weasel, raccoon, and ermine are all considered and managed as Fur Bearing Animals.

Idaho Statute 22-4502 (e) as an “agricultural operation”

(e) **Breeding, hatching, raising, producing, feeding and keeping livestock**, dairy animals, swine, **fur-bearing animals**, poultry, eggs, fish and other aquatic species, and **other animals, animal products and animal byproducts**, animal waste, animal compost, and bees, bee products and bee byproducts;

**Conclusion** – The Yellowstone Safari Park as described meets the intent of the Game Ranch classification in Madison County Code, and as an agricultural operation in Idaho State Laws.

**Is the Yellowstone Safari Park an agricultural operation?**

Yes. See above discussion.

**What about the bears and wolves?**

Private possession of bears and wolves is regulated by Idaho Department of Fish and Game. Such regulation follows a permitting process as outlined in Idaho Administrative Code 13.01.10. Yellowstone Safari Park has obtained permits for the wolves/hybrid wolves and for Eurasian Brown Bears. These permits articulate the terms and conditions for possession of these species, including containment, identification, propagation, and moving the animals to other locations. The permits were issued on June 17, 2022, and are based on IDFG visiting the site and inspecting the site for compliance with the terms and conditions.

Madison County does not have regulatory authority to regulate the possession of bears or wolves/hybrid wolves.

**Isn't this a commercial operation? Shouldn't this require commercial zoning?**

As proposed, the Yellowstone Safari Park is considered a Game Ranch in Madison County Code, and as an Agricultural Operation under Idaho State Statute. Madison County Code allows for a Game Ranch as Permitted in Agriculture Zone.

Madison County Code 117-54 describes the purpose and scope of Commercial Zone as follows;





## PLANNING & ZONING DEPARTMENT

134 E Main Suite 208 Rexburg ID 83440

Phone (208)359-6259

Fax (208) 356-6308



- a) Scope and purpose. The provisions of this section apply to the Commercial (C) Zone. The purpose of the **Commercial Zone (C)** is to **provide areas in the county to fulfill general retail needs and travel or highway related service requirements within the community.**
- b) Uses. Permitted and conditional uses permitted in the Commercial Zone are identified in section 117-51, land use table. Permitted and conditional uses shall be primarily oriented toward light and custom manufacturing and any associated retail sales; repair; storage; wholesale; and support services. Within the Commercial Zone, uses have been divided into 3 distinct types: These are the large-scale commercial, community commercial and convenience commercial.
  1. Large-scale commercial. The large-scale commercial is intended to include buildings of larger scale and size (25,000 square feet or larger) and those typically designed to serve a regional market. Example uses include:
    1. Shopping malls.
    2. Department stores.
    3. Hospitals and health centers.
    4. Theaters.
    5. Auditoriums.
    6. Light manufacturing or production with retail sales.
    7. Convention centers.
    8. Grocery stores.
    9. Community college facilities.
    10. Business center.
    11. Indoor recreation facilities.
    12. Recycling collection centers.
  2. Community commercial. Community commercial uses are intended to serve a mere local or community scale market. The structures in this commercial type will be limited in size, with a maximum of 25,000 square feet. These uses will serve as identifiable commercial centers for the county community and will create pedestrian friendly shopping districts. Example uses include:
    1. Grocery stores.
    2. Restaurants.
    3. Retail stores.
    4. Boutiques.
    5. Professional offices (e.g., dentist, hair salon, bakery, florist).
  3. Convenience commercial. Convenience commercial uses provide basic commercial services to neighborhoods and communities. These uses serve the same market area as community commercial and are located in many of the same areas. However, these uses have specific site layout and access requirements and are therefore separated from community commercial. Example uses include:
    1. Gas stations.
    2. Drive-through restaurants.
    3. Corner stores.
    4. Professional offices (e.g., dentist, hair salon, bakery, florist).
    5. Grocery and retail stores.
    6. Fast food and drive-through restaurants.



# PLANNING & ZONING DEPARTMENT

134 E Main Suite 208 Rexburg ID 83440

Phone (208)359-6259

Fax (208) 356-6308



## 7. Carwashes.

The Land Use Table in Madison County Code 117-51 identifies the following as permitted uses in Commercial Zone:

Permitted	Permitted with Conditional Use Permit
Apartment/Condominium	Duplex
Live/Work Unit	Single Family Dwelling
Rowhouse	Accessory Building with Living Space
Mobile Home Park	Assisted Living Housing, Major
Assisted Living Housing, Minor	Bed and Breakfast (up to five rooms)
Hotel	School Dormitory
Inn (Up to 12 rooms)	Grain Storage
Hostel	Stable, riding club, arena (commercial)
RV Park	Billboard
Office Building	Jail
Mixed Use	Water supply facility
Open Market Building	Sewer and waste facility
Retail Building (less than 25,000 sq/ft)	Electric substation
Warehouse	Wind turbine, commercial
Display Gallery	Wind turbine, private
Restaurant	Gravel pit, accessory to development
Kiosk or pushcart	
Health club, gym, spa	
Bus Shelter	
Convention Center	
Conference Center	
Public Art	
Library	
Live Theater	
Movie Theater	
Outdoor auditorium	
Park, playground, ball field	
Parking Structure	
Sports Stadium	
Surface Parking Lot	
Religious Assembly	
Greenhouse/Nursery (Commercial)	
Kennel/veterinary clinic	
Gun range, indoor	
Agriculture-related structure	
Gas station	
Automobile service station	
Drive through facility	
Rest stop	



## PLANNING & ZONING DEPARTMENT

134 E Main Suite 208 Rexburg ID 83440

Phone (208)359-6259

Fax (208) 356-6308



Roadside Stand	
Shopping Center	
Shopping mall	
Automobile sales	
Fire Station	
Police Station	
Cemetery	
Funeral Home	
Medical Clinic	
College	
High School	
Trade School	
Elementary School	
Child care center, day care, etc..	
Communication tower, wireless tower	
Produce storage	
Mini-storage	

As can be noted, none of the commercial uses, or even description of the commercial zone reference any kind of agricultural operation.

### **Doesn't charging entrance fees change the use to commercial?**

It has been noted that keeping animals on property is very typical of any agricultural operation. But charging a fee to view those animals seems to cross a line. Or as has been suggested, "once they start taking money and selling tickets, this should be considered commercial."

For the most part, agricultural operations are businesses (certainly there are many hobby farms/ranches) operations. Transactions involving buying and selling of crops, livestock, and services are common for any agricultural operation. Eggs are gathered, cows are milked, hay is cut, potatoes are harvested, beef are fed, and lambs are grown, all for the business purposes. Some agricultural transactions take place on site where the product is grown, while others happen elsewhere as product is hauled to processing locations. As an agricultural operation, a Game Ranch is no different.

Game Ranches as have been historically operated in Madison County generally consist of elk ranches. Elk are raised on the ranches for both meat production, use of dropped antlers for manufacturing various items, as well as providing stock for private trophy hunting operations. The secondary uses of shed antlers would not happen if the elk were not being raised first. It is wholly dependent upon the elk ranch being there. The same goes for private trophy hunting for fee operations. If the elk were not raised, there would be no private trophy hunting for fee operations. Those things are accessory to the primary game ranch use.

There are also regional elk locations such as the National Elk Refuge in Jackson Hole, where visitors pay to take winter sleigh rides through the refuge to view elk, bison, and other animals such as bison, moose, deer and wolves. While those animals are wild, the point of comparison is



## PLANNING & ZONING DEPARTMENT

134 E Main Suite 208 Rexburg ID 83440

Phone (208)359-6259

Fax (208) 356-6308



that the primary function of the elk refuge is to care for the elk over the winter, and the sleigh tours are accessory to that use. The sleigh rides would not happen if there were no elk on the Refuge. They are dependent upon the elk.

In Madison County, several landowners choose to raise horses for breeding, sales, practical uses, and recreational enjoyment. Madison County Code recognizes stable, riding club, arena (commercial) as a permitted land use in Agricultural zones. While providing horseback riding lessons, horse breaking, riding clubs, could all be considered commercial operations since fees are charged, they are accessory to the agricultural operation of raising horses which are considered livestock. The stable or riding arena and horseback riding lessons is wholly dependent upon the agricultural operation to exist.

Other land owners in Madison and surrounding counties choose to grow corn or straw as agricultural operations. And in the fall, they charge fees for people to walk through the agricultural operations for a fee. While these uses may generate revenue, they are still accessory to the agricultural operation. If there were no agricultural operation of raising corn, there would be no corn maze. The corn maze is wholly dependent upon the agricultural operation to exist.

So in the case of charging a fee to drive through a game ranch, such use is secondary to the primary agricultural operation of the game ranch. Idaho's Right to Farm act protects use that is associated with the operation of the agricultural operation. Idaho Title 45-22-4502 (3) differentiates "nonagricultural activities."

(3) "Nonagricultural activities," for the purposes of this chapter, means residential, commercial or industrial property development and **use not associated with the production of agricultural products.**

The key part of this definition is the qualifier of uses that are not associated with the production of agricultural products. In the case of a Game Ranch, viewing and enjoyment of the animals is secondary to the Game Ranch itself. And does not fall under "nonagricultural activities" since it **IS** associated with the production of the agricultural product.

With that under consideration, it is reasonable to consider that a fee for driving through an agricultural operation to be related to the agricultural operation itself. So while compensation (fees) may be exchanged for the chance to drive through the game ranch, this does not constitute a non-agricultural activity. Likewise, such activity is not prohibited or excluded from the Game Ranch land use. And precedent in Madison County for similar non-consumptive accessory uses to agricultural operations would indicate that such use would not demand commercial zoning.

### **How is this different than Yellowstone Bear World?**

Yellowstone Bear World first opened in 1998. Yellowstone Bear World is located in an area that is zoned commercial. While the drive-through animal viewing area may be considered an agricultural operation, it includes many other uses that are specifically noted in the commercial land uses. These include Retail Building (less than 25,000 sq/ft), restaurant, and mixed use. Additionally, Yellowstone Bear World long term plans include hotel, expansion of amusement park rides, and potentially a convention center. Yellowstone Bear World as a whole, considers the operation as a fully commercial project. The retail and food service uses are called out specifically as uses that meet the purpose and intent of commercial zoning in Madison County. As recent as September 2018, in negotiation of land relative to the new frontage road that was





## PLANNING & ZONING DEPARTMENT

134 E Main Suite 208 Rexburg ID 83440

Phone (208)359-6259

Fax (208) 356-6308



constructed, a stipulation was included that the County amend County Code to add a zone or land use "Theme Park," With the definition to include:

*"A theme park is a facility or facilities located on not less than forty (40) contiguous acres, and permanently constructed for the purposes of conducting, presenting or providing activities and services normally related to family oriented entertainment and recreational programs, which are open to the public and which may provide meeting facilities. A fee is generally charged to participate at these facilities."*

While this use or zone classification has not been added at this point. No timeline was identified in the buy/sell agreement for the potential change in the zoning or land use definitions. The point of including this in the discussion is that Yellowstone Bear World includes a much broader array of uses, that includes not only the agricultural operation of the drive through animal viewing portion, but other components which clearly fall within commercial uses. The retail building, restaurant, and amusement rides are all commercial uses that can stand alone with or without the game ranch portions, as evidenced in many other retail stores and restaurants existing in the area that are not associated with a game ranch. It is these other uses that push Yellowstone Bear World to commercial zoning, not the game ranch. In the future, if Yellowstone Safari Park were to include uses such as a retail building, restaurant, hotel, or other similar facilities, then the owners would need to seek a zone change. However, as an agricultural operation, the game ranch is allowed in Agriculture Zone.

### **What if the animals get out?**

Idaho is an "Open Range" state. Meaning, livestock are free to roam, and it is the responsibility of landowners to "fence out" livestock to keep them off their property. Idaho's open range applies statewide, except in incorporated cities and within Herd Districts. Nearly all private land in Madison County is part of a designated Herd District.

The Yellowstone Safari Park is located in the Hibbard Herd District. In Herd Districts, owners of livestock are responsible for keeping livestock on their own property, or "fenced in." If any livestock escape enclosure, the owner of the animal is responsible for any damage that may be caused by that animal. For example, if a cow, sheep, goat, horse, elk, bison, llama, etc... escapes enclosure and is hit by a car, the owner of the animal is responsible for damages to the car and injury to the occupants of the car. Another example of the application of herd districts would be if a dog escaped enclosure and went into a neighbor's yard and killed their chickens, the owner of the dog would be responsible for the damages. Where Yellowstone Safari Park is located in the Hibbard Herd District, the owner of the animals within is responsible for any damages that could be caused if the animals escape the enclosure. This is outlined in Idaho Statute 25-2408 as noted below:

25-2408. CIVIL LIABILITY. The owner of animals permitted or allowed to run at large, or herded in violation of any order made in accordance with the provisions of section 25-2404, shall be liable to any person who shall suffer damage from the depredations or trespasses of such animals, without regard to the condition of his fence; and the person so damaged shall have a lien upon said animals for the amount of damage done, and the cost of the proceedings to recover the same, and may take the animals into custody until all such damages are paid: provided, that the person so taking said animals into custody shall



## PLANNING & ZONING DEPARTMENT

134 E Main Suite 208 Rexburg ID 83440

Phone (208)359-6259

Fax (208) 356-6308



not have the right to retain the same for more than five (5) days without commencing an action against the owner thereof for such damages. Said damages may be recovered by a civil action before any court of competent jurisdiction, and no such action shall be defeated or affected by reason of any criminal action commenced or prosecuted against the same party under the provisions of the preceding section.

Additionally, the permits issued by Idaho Fish and Game for captive wolves and Eurasian Brown Bears mandates approved enclosures and includes conditions referenced in IDAPA 13.01.10.10.410. . This section is regulated by the IDFG.

### **What permit is required by the County?**

The Yellowstone Safari Park as proposed constitutes a Game Ranch as identified in Madison County Code, and an Agricultural Operation as defined in Idaho Statute as previously discussed. Madison County Code classifies "Game Ranch" as "Permitted use" in the Land Use table in MCC 117-51. Permitted uses are allowed by right in the zones they are designated, with no additional permitting required by Madison County. As with other "Permitted Uses" in the County, there is no application or County Approval required.

In the case of Yellowstone Safari Park, the owner came to the County Planning Administrator Bradley Peterson in March, 2021 to review the plans, and the classification of the facility as "Game Ranch." At that point, the Planning Administrator affirmed that the proposed Yellowstone Safari Park would be classified as a Game Ranch, and would be a permitted use in the agriculture zone.

Additionally, in June 2022 when residents in the area around the Yellowstone Safari Park met with Current Planning Administrator Gary Armstrong to discuss their concerns and file a complaint, Mr. Armstrong reached out to the property owner to learn more about the Yellowstone Safari Park. On June 2, 2022, the owner met with Mr. Armstrong in the Planning Office and discussed the plans for the park. Mr. Armstrong requested a site tour, and the owner was happy to provide that. Also on June 2, 2022, Mr. Armstrong met the owner and toured the site, where plans could be explained, access could be viewed, and location of specific animal enclosures could be seen. Concepts discussed during the site visit included enclosure construction, heights, materials, and redundancies (dual fences). Also discussed were access in and out of the property, parking and staging areas, other facilities on site, including animal handling areas such as barns, corals, loading, unloading, etc... Various aspects of the game ranch operation were discussed. Additionally, county and state regulatory authority and requirements were also discussed, including state regulation of the proposed animals, either through Idaho Department of Agriculture or Idaho Department of Fish and Game. It was noted that no permitting for establishment and operation of a game ranch is required in Madison County. It was also noted that land uses that Yellowstone Bear World has, including a retail building, restaurant, and amusement rides would not be allowed in the Agriculture Zone.

After completing a site tour and review of operations with Yellowstone Safari Park, the Planning Administrator affirmed that operation reasonably meets the concept of Game Ranch. This takes into consideration the keeping of animals that are regulated by the Idaho Department of Agriculture and Department of Fish and Game. Visitors wishing to pay a fee to observe the



## PLANNING & ZONING DEPARTMENT

134 E Main Suite 208 Rexburg ID 83440

Phone (208)359-6259

Fax (208) 356-6308



Game Ranch, which is identified by state definition as an "Agricultural Operation" (Idaho Title 22-4502 (2)) would be accessory to operation of the Game Ranch, much the same as visitors to a corn farm may pay a fee to walk through the agricultural operation of a corn field. Such use as charging a fee to drive through the Game Ranch is a use that is associated with the agricultural operation.

### **Why was there no public hearing?**

Many land uses are what is called in Madison County Code as "Permitted Use." This means that the use is allowed with no additional regulations from the county. For example, in Agriculture zones, permitted uses are those that you would expect to find in agricultural areas. Land uses such as grains storage, livestock pens, stables and kennels are all identified as "Permitted Uses." Another example is building a home on property in Agriculture or Trans Agriculture Zones. Building a house is a "Permitted Use" and therefore a land owner is allowed by right to build the house and no public hearing is necessary or required by law. Permitted Uses do not require public hearings.

