

STAFF REPORT

TO: Kimberly P&Z Commission

FROM: Planning and Zoning Department

RE: Public Hearing and consideration of Ordinance No. 618 amending Ordinance No. 137 to clarify that the vacated real property reverted to adjoining property owners according to the applicable statutory provisions in effect on the effective date of said vacation.

HEARING: November 4, 2014

Applicant: Archer-Daniels-Midland (ADM) Company

Location: Corner of Ash St. & Hwy 30 where a shed presently exists

Zoning: Applicable property is not presently zoned but does show as vacated property on The City of Kimberly February 10, 2009 Zoning Map, and is surrounded by Light Industrial (LI)zoned properties.

Note: Staff analysis is in lighter type.

Notice

Notice for the public hearing was published in the Times News on October 20, 2014; the notice was mailed to property owners within 300 feet and public agencies on October 20, 2014

Application

The applicant has requested consideration of an ordinance clarifying that the vacated real property reverted to adjoining property owners according to applicable statutory provisions in effect on the effective date as noted above.

Procedural History

Ordinance 137 and Ordinance 618 clarifying Ordinance 137 are attached.

Department Comments:

Archer-Daniels-Midland (ADM) has utilized the property shown as vacated property on the zoning map for many years. Title, however, shows the property as listed to the City of Kimberly. The City Attorney drafted Ordinance 618 to clarify the intent of Ordinance 137.



Standards of Evaluation

Standards are in bold text, staff evaluation is in regular text.

17.14.010: AUTHORITY TO AMEND:

Whenever the public necessity, convenience, general welfare or good zoning practices require, the council may, by ordinance, after receipt of recommendation thereon from the commission and subject to procedures provided by law, amend, supplement, change or repeal the regulations, restrictions and boundaries or classification of property.

As the zoning map shows the property is already vacated, Ordinance 618 is to clarify the intent of Ordinance 137.

Summary

The commission prior to recommending an amendment shall conduct at least one public hearing in which interested persons shall have an opportunity to be heard.

Motion Language:

Approval:

Motion to recommend approval of Ordinance No. 618 amending Ordinance No. 137, to clarify that the vacated real property reverted to adjoining property owners according to the applicable statutory provisions in effect on the effective date of said vacation.

Denial:

Motion to deny recommendation of Ordinance No. 618 amending Ordinance No. 137, clarifying that the vacated real property reverted to adjoining property owners according to the applicable statutory provisions in effect on the effective date of said vacation, finding that _____ [the Commission should cite which standards are not met and provided the reason why each identified standard is not met].

Continuation:

Motion to continue the public hearing upon Ordinance No. 618 the _____ to _____ [The Commission should specify a date].



ORDINANCE NO. 618

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KIMBERLY, IDAHO, AMENDING ORDINANCE NO. 137 ENTITLED “AN ORDINANCE OF THE VILLAGE OF KIMBERLY, IDAHO, CLOSING AND VACATING ALL OF JACKSON STREET LYING SOUTH AND WEST OF U.S. HIGHWAY 30, AND EXTENDING BETWEEN SAID U.S. HIGHWAY 30 ON THE EAST AND ASH STREET AND TYLER STREET (PREVIOUSLY VACATED) ON THE WEST”; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, pursuant to Ordinance No. 137 all of Jackson Street lying South and West of U.S. Highway 30, and extending between said U.S. Highway 30 on the East and Ash Street and Tyler Street (previously vacated) on the West, and lying between Blocks one (1) and Sixteen (16) of the Townsite of Kimberly was vacated; however, Section 1 of Ordinance No. 137 did not expressly grant the vacated property to the adjoining property owners; and

WHEREAS, the Mayor and City Council desire to amend Section 1 of Ordinance No. 137 to clarify that the vacated real property reverted to the adjoining property owners according to the applicable statutory provisions in effect on the effect date of the vacation; and

WHEREAS, said amendment serves the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF KIMBERLY, IDAHO, AS FOLLOWS:

SECTION 1. That Section 1 of Ordinance No. 137 is hereby amended by the addition of the following underlined language and the deletion of the following stricken language:

Section 1. That all of Jackson Street lying South and West of U.S. Highway 30, and extending between said U.S. Highway 30 on the East and Ash Street and Tyler Street (previously vacated) on the West, and lying between Blocks One (1) and Sixteen (16) of the Townsite of Kimberly, be and the same hereby is, vacated; and the vacated real property shall revert to the owners of the adjacent real property according to applicable statutory provisions in effect on the effective date of said vacation.

SECTION 2. All portions of Ordinance 137 not specifically addressed and amended as set forth above are to remain in full force and effect.

SECTION 3. If any section, paragraph, sentence or provision hereof or the application thereof to any particular circumstances shall ever be held invalid or unenforceable, such holding shall not affect the remainder hereof, which shall continue in full force and effect and applicable to all circumstances to which it may validly apply.

SECTION 4. This Ordinance shall be in full force and effect after its passage, approval and publication according to law.

PASSED AND ADOPTED BY THE KIMBERLY CITY COUNCIL and approved by the Mayor this ____ day of _____, 2014.

TRACY ARMSTRONG, Mayor

Attest:

SHOSHONIE HEITMANN, City Clerk

ORDINANCE NO. 137

AN ORDINANCE OF THE VILLAGE OF KIMBERLY, IDAHO, CLOSING AND VACATING ALL OF JACKSON STREET LYING SOUTH AND WEST OF U.S. HIGHWAY 30, AND EXTENDING BETWEEN SAID U.S. HIGHWAY 30 ON THE EAST AND ASH STREET AND TYLER STREET (PREVIOUSLY VACATED) ON THE WEST.

BE IT ORDAINED BY THE CHAIRMAN AND BOARD OF TRUSTEES OF THE VILLAGE OF KIMBERLY, IDAHO:

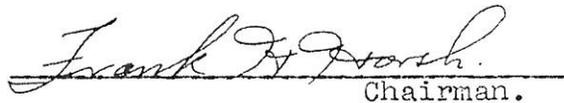
Section 1. That all of Jackson Street lying South and West of U.S. Highway 30, and extending between said U.S. Highway 30 on the East and Ash Street and Tyler Street (previously vacated) on the West, and lying between Blocks One (1) and Sixteen (16) of the Townsite of Kimberly, be and the same hereby is, vacated.

Section 2. That this Ordinance shall not be construed as constituting in any way or manner authority for vacation of any portion of Ash Street, or of the intersection of said Ash and Jackson Streets.

Section 3. That this Ordinance shall constitute authorization for appropriate entry of such vacation upon the Revised Plat of the Supplemental Plat of the Townsite of Kimberly, Idaho, on file and of record in Book 1 of Plats, page 102, in the Office of the Recorder of Twin Falls County, State of Idaho.

PASSED BY THE BOARD OF TRUSTEES, This 13th day of May, 1952.

SIGNED BY THE CHAIRMAN, This 13th day of May, 1952.


Chairman.



Land Title and Escrow, Inc.

Focused on Service, Positioned for the Future

ORDER NO. 4497 - ADM Edible Bean Specialties Inc.

DATE: August 16, 2013

PREPARED FOR: Archer-Daniels-Midland Company

REQUEST BY: Mary Cunningham

COPIES TO: Gem State Realty/NAI Commerce One -
Walt Hess/Steve Keim

TITLE OFFICER: Diana Rodriguez
drodriguez@landtitleandescrow.com

A Full Service Title Company
Title Insurance
Escrow Closing Services
Long Term Escrow Services

Box 177 • Burley, Idaho • 83318
Ph: 208.878.3524
Fx: 208.878.4435
lteb@pmt.org

Box 473 • Gooding, Idaho • 83330
Ph: 208.934.8477
Fx: 208.934.5890
lteg@pmt.org

Box 349 • Jerome, Idaho • 83338
Ph: 208.324.3357
Fx: 208.324.8961
ltej@pmt.org

Box 5375 • Twin Falls, Idaho • 83303-5375
Ph: 208.933.2650
Fx: 208.933.2655
ltetf@pmt.org

Box 111 • Rupert, Idaho • 83350
Ph: 208.436.0606
Fx: 208.436.1199
lter@pmt.org

Archer-Daniels-Midland Company
4666 Faries Parkway
Decatur, IL 62526
Attn: Mary Cunningham

WESTCOR LAND TITLE INSURANCE COMPANY
COMMITMENT FOR TITLE INSURANCE
SCHEDULE A

ORDER NUMBER: 4497

1. Effective Date: July 19, 2013 at 7:30 A. M.

2. Policy or Policies to be issued:

A. ALTA Owners Policy - Standard Coverage
(06/17/06)

Amount of purchase
Premium to be determined

Proposed Insured:

NAME OF PURCHASER

3. The Estate or Interest in the land described or referred to in this Commitment and covered herein is **FEE SIMPLE** and is at the effective date vested in:

**ADM EDIBLE BEAN SPECIALTIES INC.,
by reason of name change from
AGRI SALES, INC., a Delaware corporation**

4. The land referred to in this Commitment is situated in the County of **TWIN FALLS**, State of Idaho, and described as follows:

SEE SCHEDULE A, PAGE 2

Countersigned:


Authorized Officer or Agent

Issued By:
Land Title and Escrow, Inc.
P.O. Box 177
Burley, ID 83318
Phone: (208)-878-3524
Fax: (208)-878-4435

Valid only if Schedule B and Cover are attached

CONTINUATION

SCHEDULE A

Order Number: 4497

PARCEL NO. 1:

All of Block 2 of WILSON SUBDIVISION, Twin Falls County, Idaho, according to the plat thereof recorded in Book 5 of Plats, Page 74, records of said County, and the West 15 feet of Picabo Lane as vacated by Ordinance No. 369 passed by the City Council on October 9, 1979 and signed by the Mayor on October 10, 1979, recorded March 2, 1981 as Instrument No. 798324.

PARCEL NO. 2:

TOWNSHIP 10 SOUTH, RANGE 18 EAST OF THE BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO

Section 21: A parcel of land situated in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, more particularly described as follows:

Commencing at the Northwest corner of Lot 11, Block 17 of the Kimberly Townsite; thence North 00°19'00" West along the projected westerly line of said Lot 11 and the easterly line of Ash Street, a distance of 101.86 feet to the southerly right of way line of the Union Pacific Railroad Company and the True Point of Beginning;

Thence North 00°19'00" West along the easterly line of said Ash Street for a distance of 53.27 feet to the beginning of a curve to the right, concave southwesterly, with a radius of 5,679.65 feet and a chord bearing South 68°44'44" East, a chord distance of 293.78 feet;

Thence southeasterly along said curve through a central angle of 2°57'50", an arc distance of 293.81 feet to a point on the projected easterly line of Lot 21 of said Block 17;

Thence South 00°19'00" East along the projected easterly line of said Lot 21 for a distance of 54.38 feet to the southerly right of way line of the Union Pacific Railroad Company and the beginning of a curve to the left, concave southwesterly with a radius of 5,629.65 feet and a chord bearing North 68°32'39" West, a chord distance of 294.19 feet;

Thence northwesterly along the southerly right of way line of said Railroad Company and along said curve, an arc distance of 294.22 feet to the True Point of Beginning.

PARCEL NO. 3:

TOWNSHIP 10 SOUTH, RANGE 18 EAST OF THE BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO

Section 21: A parcel of land situated in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, more particularly described as follows:

Commencing at the Northwest corner of Lot 11, Block 17 of the Kimberly Townsite; thence North 00°19'00" West along the projected westerly line of said Lot 11 and the easterly line of Ash Street for a distance of 300.78 feet to a point 9.5 feet distant northerly, measured at right angles from the centerline of an existing spur track, said point being the True Point of Beginning;

Thence continuing North 00°19'00" West along the easterly line of said Ash Street for a distance of 34.22 feet to the northerly line of vacated Block 16 of the City of Kimberly;

Thence North 89°41'00" East along the northerly line of said vacated Block 16 for a distance of 103.38 feet to the southerly line of Highway 30;

Thence South 59°19'20" East along the southerly line of said Highway 30 for a distance of 198.10 feet to the southerly line of Highway 30;

Thence South 00°19'00" East along the projected easterly line of said vacated Block 16 for a distance of 98.46 feet to a point 9.5 feet distance northerly, measured at right angles, from the centerline of said existing spur track;

Thence North 56°13'39" West along a line parallel with and 9.5 feet distant northeasterly, measured at right angles, from the centerline of said existing spur track for a distance of 109.19 feet to the beginning of a curve to the left, concave southwesterly, with a radius of 1,391.60 feet and a chord bearing North 60°25'42" West, a chord distance of 210.81 feet;

Thence Northwesterly along said curve through a central angle of 8°41'16", an arc distance of 211.01 feet to the True Point of Beginning.

SCHEDULE B - SECTION 1

Order Number: 4497

The following are the requirements to be complied with:

1. Instrument creating the estate or interest to be insured must be executed and filed for record, to-wit:
 - a. **Deed from ADM Edible Bean Specialties Inc., by reason of name change from Agri Sales, Inc., a Delaware corporation, to Purchaser.**
2. Pay the full consideration to, or for the account of, the grantors or mortgagors.
3. Pay all taxes, charges, assessments, levied and assessed against subject premises, which are due and payable.
4. Satisfactory evidence should be had that improvements and/or repairs or alterations thereto are completed; that contractor, sub-contractors, labor and materialmen are all paid; and have released of record all liens or notice of intent to perfect a lien for labor or material. (Applicable to Extended Coverage only)
5. **A completed acceptable AFFIDAVIT OF TITLE AND INDEMNITY, executed by the authorized signer for ADM Edible Bean Specialties Inc., by reason of name change from Agri Sales, Inc., a Delaware corporation, must be furnished to Land Title and Escrow, Inc. prior to recording the above required documents. (Attached is an AFFIDAVIT OF TITLE AND INDEMNITY that should be used)**
6. **With respect to ADM Edible Bean Specialties Inc., by reason of name change from Agri Sales, Inc., a Delaware corporation, we require:**
 - a. **A certified copy of a resolution of the board of directors authorizing the contemplated transaction and designating which corporate officers shall have the power to execute on behalf of the corporation.**
 - b. **Other requirements which the Company may impose following its review of the material required herein and other information which the Company may require.**

NOTE #1:

The County Treasurer advises us that taxes for 2012 are assessed in the total sum of:

\$3,457.38 - TR. #RPK92210020000A (Parcel No. 1)

which are paid in full, without homeowners exemption

\$556.10 - TR. #RPK86710216020A (Parcel No. 2)

which are paid in full, without homeowners exemption

\$1,193.96 - TR. #RPK86710216000A (Parcel No. 3)

which are paid in full, without homeowners exemption

NOTE #2: In the event this commitment is cancelled prior to the issuance of the policy committed for herein, a fee will be charged in compliance with the State of Idaho Department of Insurance Regulations.

NOTE #3: PROPERTY ADDRESS: 435 Highway 30 - Kimberly, Idaho 83341

SCHEDULE B - SECTION 2

Order Number: 4497

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company, (or unless the policy to be issued is an ALTA Homeowner's Policy (10/22/03) in which case only item 7 is relevant and items 1-6 and 9 are expressly deemed inapplicable to the covered risks of said ALTA Homeowner's policy).

1. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession, or claiming to be in possession, thereof.
2. Easements, liens, encumbrances, or claims thereof, which are not shown by the public records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land, and that is not shown by the Public Records.
4. Any lien, or right to a lien, imposed by law for services, labor, or material heretofore or hereafter furnished, which lien, or right to a lien, is not shown by the public records.
5. Taxes or assessments which are not now payable or which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
6. Any service, installation, connection, maintenance or construction charges for sewer, water, electricity, or garbage collection or disposal or other utilities unless shown as an existing lien by the public records.
7. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
8. Liens in favor of the State of Idaho that might be disclosed by any Notice of Lien filed in the Office of the Secretary of State of Idaho against the vested owner or prior owner or against the purchaser of the land described herein.
9. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) Indian treaty or aboriginal rights, including, but not limited to, easements or equitable servitudes; or, (d) water rights, claims or title to water, whether or not the matters excepted under (a), (b), (c) or (d) are shown by the public records.
10. Taxes for 2013 and subsequent years, a lien, but not yet due or payable.
11. Any assessments levied, or to be levied, by the City of Kimberly.
12. Assessments of the American Falls Reservoir District and the rights and powers of said District as by law provided.
13. Rights-of-way for ditches, tunnels and telephone and transmission lines constructed by authority of the United States, as granted to the United States under provisions of Section 58-604, Idaho Code.
14. Reservation in Quitclaim Deed executed by Union Pacific Railroad Company, a Delaware corporation, successor in interest by merger to Union Pacific Railroad Company, a Utah corporation and Oregon Short Line Railroad Company, Grantor, to Agri Sales, Inc., a Michigan corporation, Grantee, dated March 11, 1999 and recorded August 9, 1999 as Instrument No. 1999-014814, records of Twin Falls County, Idaho.

08/16/13
dr/hm

NOTE: The Policy(s) of insurance may contain a clause permitting arbitration of claims at the request of either the Insured or the Company. Upon request, the Company will provide a copy of this clause and the accompanying arbitration rules prior to the closing of the transaction.

AFFIDAVIT OF TITLE AND INDEMNITY

State of Idaho)
):ss.
County of)

The undersigned does (do) hereby declare under penalty of perjury that with respect to the title to the property described in Westcor Land Title Insurance Company's commitment for title insurance order no. 4497 that:

- (1) There has been no labor or materials furnished upon said land within 90 days prior to this affidavit except:
(2) Subsequent to the effective date of the above referenced commitment for title insurance there have been no judgments or state or federal tax liens recorded in Twin Falls County, Idaho against the undersigned and no petition in bankruptcy has been filed except:
(3) There are no leases, agreements of sale or rights of first refusal binding the property except:
(4) The undersigned has (have) no knowledge of any lien, defect, encumbrance, encroachment, boundary dispute or adverse claim to title other than as set forth in the above referenced commitment for title insurance except:

The undersigned does (do) hereby agree to indemnify and save harmless Land Title and Escrow, Inc. and Westcor Land Title Insurance Company from any loss or damage under a policy of title insurance which loss or damage has occurred from the issuance of title insurance in reliance upon the accuracy of the foregoing statements.

DATED: _____ day of _____, _____

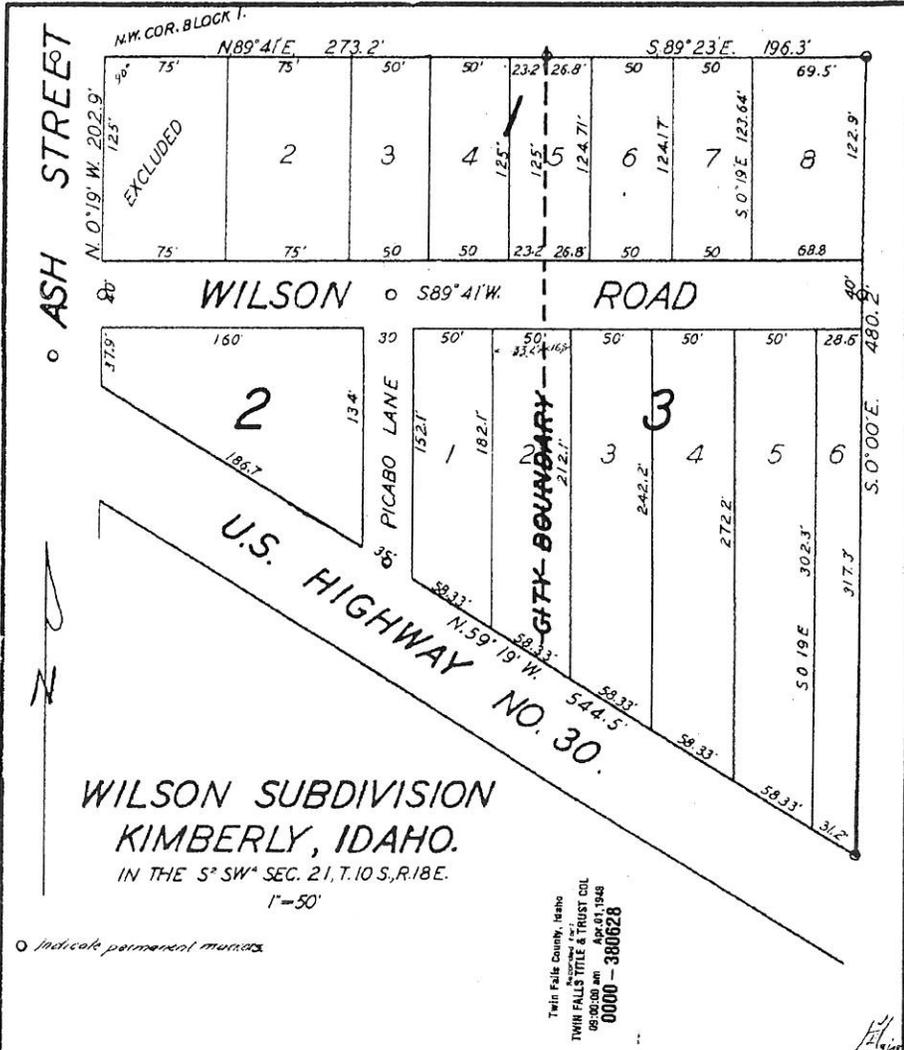
ADM Edible Bean Specialties Inc.,
by reason of name change from
Agri Sales, Inc., a Delaware corporation

By: _____

By: _____

Subscribed and sworn to before me this _____ day of _____, _____

Notary Public
Residing at:
My Commission expires:



○ Indicate permanent monuments

Twin Falls County, Idaho
 TWIN FALLS TITLE & TRUST CO.
 09:00:00 AM APR 01 1948
 0000 - 380628

State of Idaho ss
 County of Twin Falls
 Know all Men By These Presents:
 This is to certify that the undersigned are owners in fee simple of the property hereinafter described and comprising the Wilson Subdivision located in the S2 SW4, Section 21, T.10 S., R.18 E., 3TH and that the description thereof which is included in this Plat is as follows:
 Beginning at the northwest corner of Block 1, Kimberly Township -
 Thence N 89° 41' E. 273.2 feet;
 Thence S 89° 23' E. 196.3 "
 Thence South 490.2 " To Highway 30 RR RT
 Thence N. 59° 19' W. 574.5 " Along Highway 30 RT
 Thence N. 0° 19' W. 202.9 " Along West Line Block 1 to the point of beginning.
 And we do further certify that it is our intention to include the same in said Plat and we do further hereby declare that in consideration of the filing of said Plat by the Recorder of Twin Falls County, Idaho and the acceptance by the Public of the streets, roads, lanes and alleys shown thereupon we do further give and grant to the Public forever in fee simple, such portions of the premises situated as are on said Plat set aside for streets, roads, lanes and alleys for public use forever.

W.E. Teater
 W. E. Teater

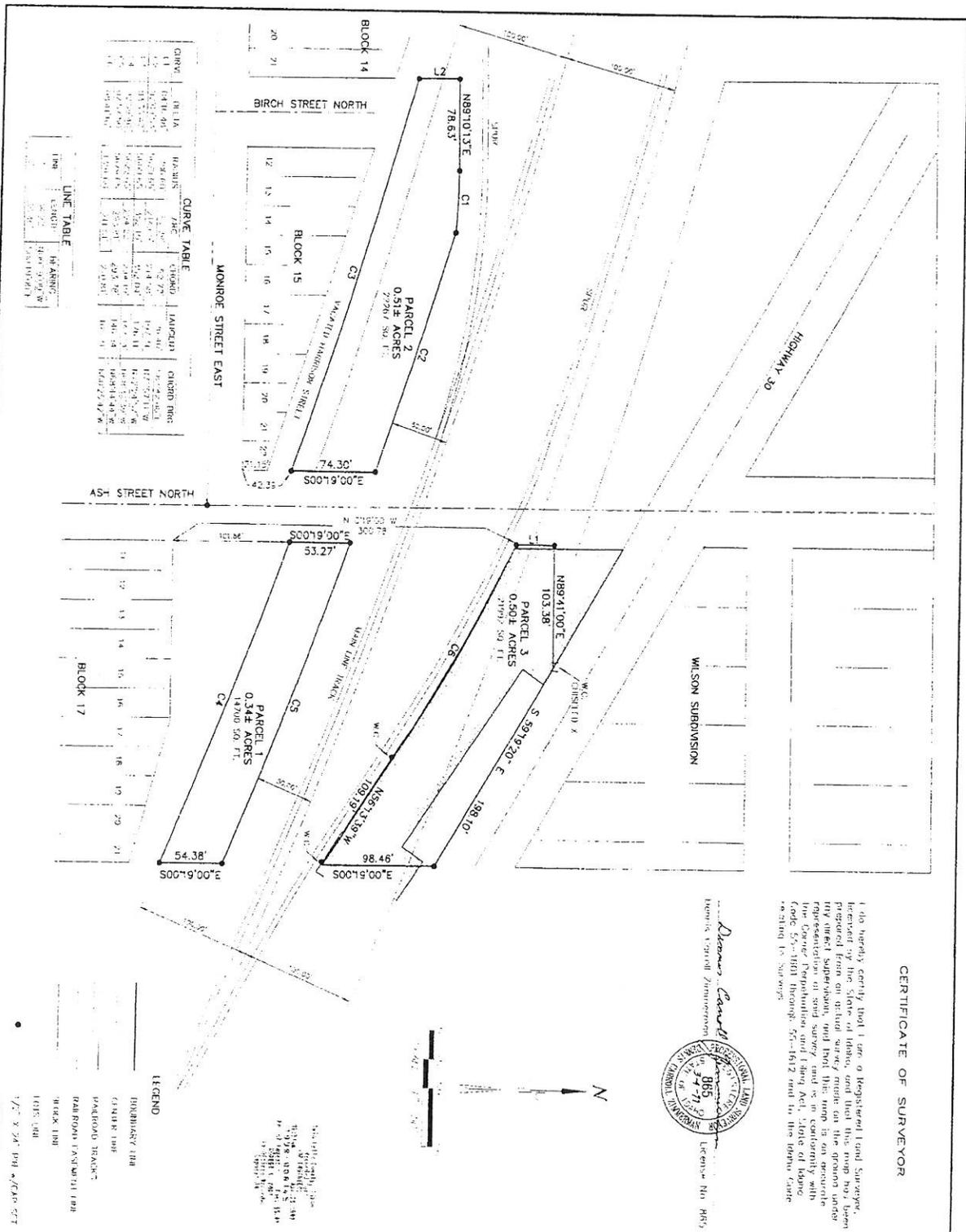
Execution of this above Certificate acknowledged by W.E. Teater and Ailene Teater, and the same being subscribed and sworn to before me this 13th day of April 1948. *Annemie C. Daniels*
 Notary Public

State of Idaho ss
 County of Twin Falls
 This is to certify that I prepared the map of the Wilson Subdivision which is located in the S2 SW4, Sec. 21 T.10 S., R.18 E., 3TH, and that the several Blocks and Lots are stated to conform therewith.
 Subscribed and sworn to before me this 13th day of April 1948.
Annemie C. Daniels
 Notary Public

By resolution duly adopted the foregoing plat was duly approved and accepted by the Board of Trustees of the Village of Kimberly, Idaho for that portion of the Wilson Subdivision lying within the Village Boundaries.
 April 17, 1948.
Frank J. Bransford
 Chairman of the Board
 Clerk

State of Idaho
 County of Twin Falls ss
 I hereby certify that this instrument was filed for record at the request of TWIN FALLS TITLE & TRUST CO. at 10 o'clock P.M. this 14th day of April 1948 in my office and duly recorded in Book of Plats No. 5-74
 C. C. Buehler
 Deputy
 Ex officio Recorder
 \$ 3.50

380628



CURVE TABLE	
CHORD	ARC
11	131.84
12	131.84
13	131.84
14	131.84
15	131.84
16	131.84
17	131.84
18	131.84
19	131.84
20	131.84
21	131.84

LINE TABLE		
LINE	BEARING	DISTANCE
1	S 00° 19' 00" E	53.27
2	S 00° 19' 00" E	103.38
3	S 59° 10' 20" E	188.10
4	S 00° 19' 00" E	98.46
5	N 86° 13' 19" W	108.79
6	N 89° 41' 00" E	103.38
7	N 89° 10' 15" E	78.63
8	N 89° 10' 15" E	74.30
9	S 00° 19' 00" E	54.38

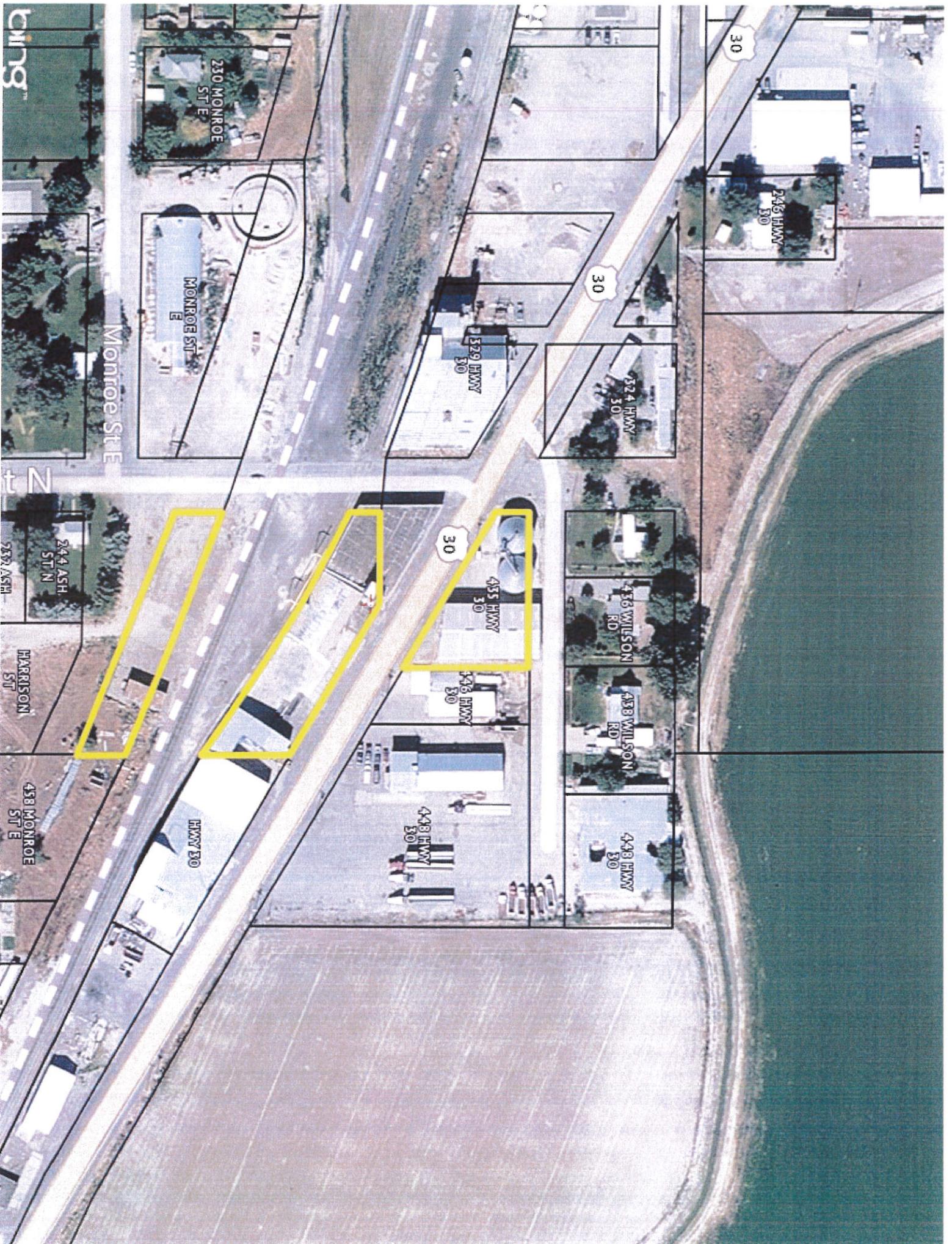
CERTIFICATE OF SURVEYOR

I do hereby certify that I am a Registered Land Surveyor, licensed by the State of Idaho, and that this map has been prepared from an actual survey made on the ground under my personal supervision, and that this map is in conformity with the Code of Ethics of the Surveyors of Idaho, and the Code of Ethics of the Surveyors of the State of Idaho.

Deanna Cantrell
 Deanna Cantrell
 Registered Land Surveyor
 License No. 865



<p>1 OF 1</p>	<p>RECORD OF SURVEY FOR A.S.I. IDAHO U.P. RAILROAD PARCELS IN KIMBERLY TOWNSITE, A PORTION OF THE SW1/4 SW1/4, SEC. 21, T.10S., R.18E., B.M., TWIN FALLS COUNTY, IDAHO</p>	<p>J-U-B ENGINEERS, Inc. 800 FALLS AVENUE SUITE 1 TWIN FALLS, IDAHO 83301 PHONE: 208-733-2414 FAX: 208-733-9455</p>
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30

246 HWY 30

30

324 HWY 30

329 HWY 30

Monroe St E

MONROE ST E

230 MONROE ST E

30

435 HWY 30

436 WILSON RD

438 WILSON RD

436 HWY 30

438 HWY 30

438 HWY 30

king™
244 ASH ST N
239 ASH
HARRISON ST
438 MONROE ST E

HWY 30