

SEGREGATION REVISIONS

The revision dates below represent the file save dates for the posting of the latest revisions are posted within the ARCHIVE REVISIONS box in the drawing title block.

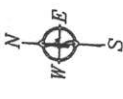
- 08/17/98 - bc
- 0-0000-000-001-A redescrbed as Tax #17871 (99)
- 02/18/99 - bc
- 53N04W-07-7600 redescrbed as Tax #18167 (99)
- Pin of 53N04W-07-7600 combined w/ 7010 (99)
- Tax #18095 out of unplatted R/W and combined w/ 8310 (72K)
- Tax #18095 out of unplatted R/W and combined w/ 8310 (72K)
- 09/13/99 - VMC
- 53N04W-07-7640 redescrbed as Tax #18300 (72K)
- 12/21/99 - VMC
- Pin of 53N04W-07-7630 combined w/ 7635 (72K)
- Tax combined w/ 7635 (72K)
- 10/03/00 - VMC
- 53N04W-07-7635 combined back w/ 7630 (01)
- 10/31/00 - VMC
- 53N04W-07-7630 acreage combined (01)
- 06/08/01 - VMC
- 53N04W-07-7605 redescrbed as Tax #18883 (02)
- 06/21/01 - VMC
- 53N04W-07-7600 redescrbed as Tax #18883 (02)
- 07/13/01 - VMC
- 53N04W-07-7600 redescrbed as Tax #18883 (02)
- 12/28/01 - TH
- 53N04W-07-4600 (low S-0000-007-4600) annexed into the city of Spirit Lake per Ord #459, last #1711599 (02)
- 01/07/03 - bc
- Pin of 53N04W-07-7120 redescrbed as Tax #18534 (03)
- 02/02/04 - VMC
- 53N04W-07-8350 combined w/ 8340 (04)
- 04/13/04 - SLW
- 53N04W-07-7430 redescrbed as Tax #20003 (04)
- 07/01/04 - SLW
- 53N04W-07-0423 combined w/ S-0000-007-0100 (05)
- S-0000-007-0125 out of 0100 (05)
- 08/23/04 - VMC
- 53N04W-07-7910 redescrbed as Tax #20168 (05)
- 02/01/05 - ET
- Pin 53N04W-07-8710 combined w/ 8720 as Tax #20407
- Pin 53N04W-07-8730 combined w/ 8720 as Tax #20408 (05)
- 06/02/05 - ET
- 53N04W-07-8340 redescrbed as Tax #20819 (06)
- 01/31/07 - VAW
- S-0000-007-0150 out of 0100 (07)
- 12/26/07 - EH
- Adjacent riparian & allway combined w/ 53N04W-07-7430 (08)

FILENAME: 53N04W-07-7430

Sec. 7 Twp. 53N. R. 4 W.B.M.

53N04W-07

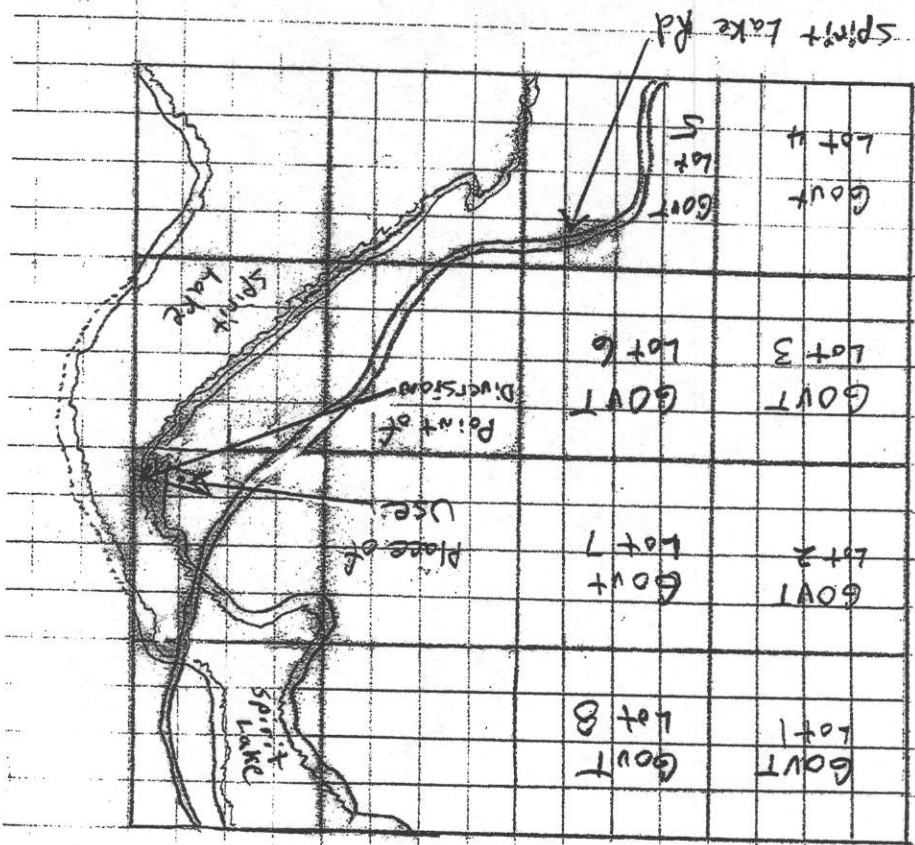
NOT BEING USED FOR REVISION PURPOSES
UNLESS SPECIFICALLY NOTED OTHERWISE



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Parcel no 00960000002C

Sec. 7 Twp. 53 N. R4 W.B.M.



Scale (2" = 1 mile)

LOT

ROAD EASEMENT 12' WIDE
N 44° 12' 28" E
30.4'

40' ROAD EASEMENT
PER PLAT design
11/18/19

OF BEARING
THE BRENTWOOD)

BK 199 PAGE 25
TW 3788

197
POUND 1 1/2" IRON PIPE

SHOCK
Place of FACT
Subject for
Dm

Water line

MC	DELTA
2	106.02.48"
3	602.24.59"
4	1015.24.89"

RECORD

SCALE: 1" = 50'

DATE 10/30/97

**DWAYNE & JANE TOFELL
17702 E. GALAXY ROAD
SPOKANE, WASHINGTON 99016
(509) 922-6883**

May 6, 2009

State of Idaho
Department of Water Resources
7600 N. Mineral Drive, Suite 100
Coeur d' Alene, Idaho 83815

Attn: Mr. Chad H. Goodwin
RE: Adjudication Claim No. 95-10416

Dear Mr. Goodwin:

I am writing in response to your letter of April 24, 2009 with respect to my Notice of Claim to a Water Right. We purchased the subject property on March 30, 1995 at which time there was an existing house that had been constructed by a previous owner in 1970 according to an electrical permit I found in the electrical panel. Unfortunately, this permit was destroyed with the electrical panel when it was replaced as part of the remodel project discussed below. The mother of the party from whom I purchased the property, Mark and Jackie Hatfield, purchased the property from the individual who built the home. In 2005 we decided to update and remodel the exiting home and undertook a process to obtain a variance to allow for us to add additional square footage to the existing home while remodeling the existing structure. This remodel project was completed in 2007 at which time we were given a certificate of occupancy.

Although the remodeling involved significant modifications to the original home, at no time did we remove or modify the existing pump and water line used to obtain water from Spirit Lake for domestic purposes as described in my Notice of Claim to a Water Right.

As documentation for the above I attach the following information:

1. Copy of Real Estate Purchase and Sale Agreement.
2. Copy of Easement dated November 20, 1969 setting forth the rights of land owners in the Shuck Tract addition to a 40' Road Easement for access to the subject property.
3. A survey dated March 20, 1968 outlining the property lines as well as the easement above.
4. I was told that the original house was constructed by the then President of Eastern Washington University as a vacation home once the access matters were resolved.

5. A copy of the Order of Decision for Case No. V-848-05 whereby the Kootenai County Building & Planning Department granted me a variance to allow for me to proceed with the remodel of the existing home that was constructed in 1970.
6. A copy of exhibit A-5 submitted with the variance application showing the location of the existing home and proposed addition that we made.
7. A copy of a document from the County records department indicating that there was an improvement on the property having a value of \$65,718 for property tax purposes.

At the time we applied for the building permit to remodel the existing home we inquired about the existence of a permit for the original construction and were told by the building department that this was before they kept such documents and did not know if such existed anywhere in their records. As this was not critical to our project we let the matter drop.

I certify that based on information known to me that the water system for which I have filed a Notice of Claim to a Water Right was originally installed in 1970 and has since been in place providing domestic water to our home on Spirit Lake.

I trust that this information is adequate for you to proceed with our Notice of Claim to a Water Right. If you should want to inspect the property please let me know and we can arrange for that to take place.

Very truly yours.



Dwayne Tofell

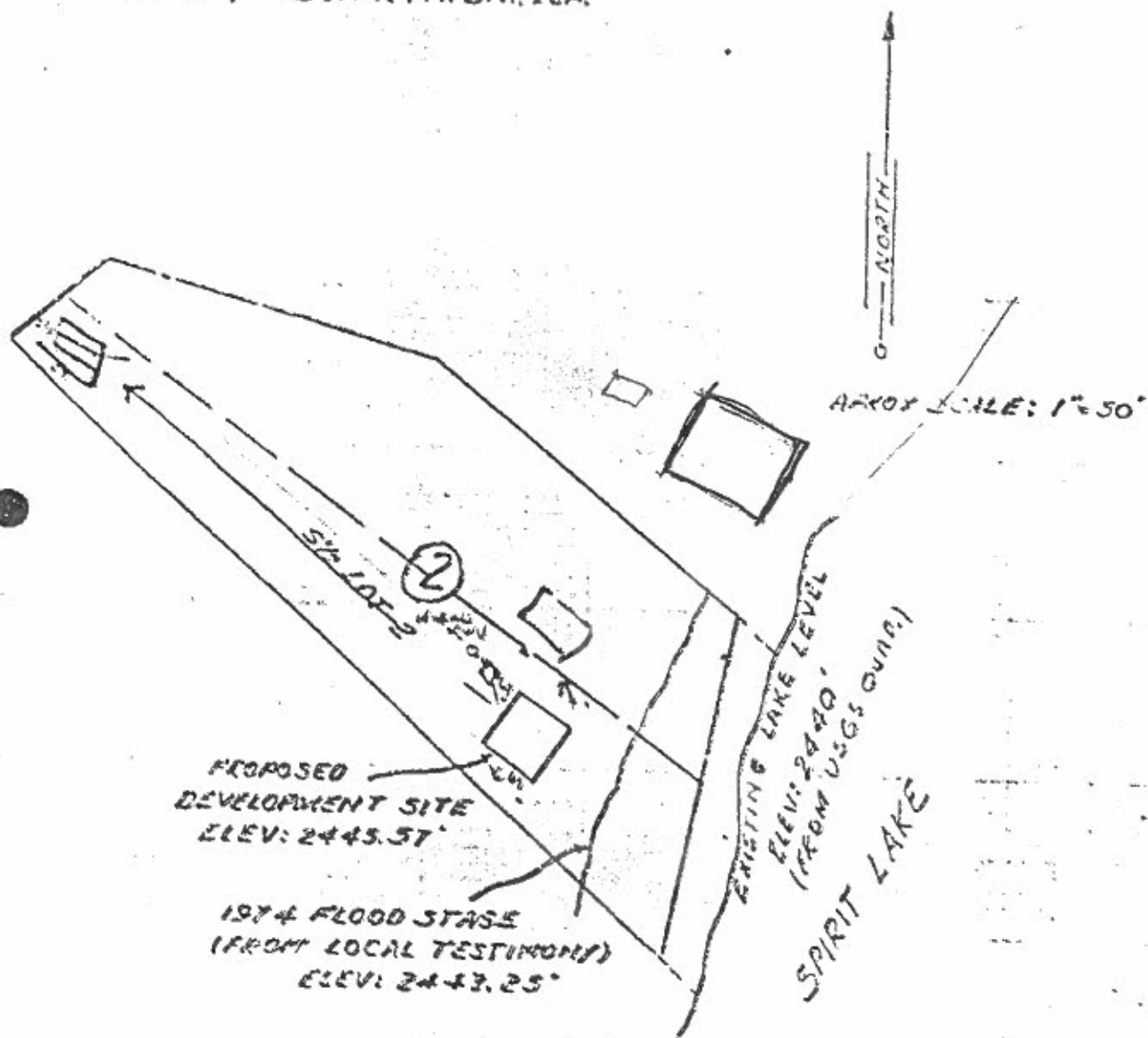
Dt

PROPOSED BLDG. SITE

IN S $\frac{1}{2}$ LOT 2

BRENTWOOD ADD'N
TO SPIRIT LAKE

SEC. 7, T53N R4W. BM. 10A.



Robert S. H.
10/31/78



REAL ESTATE PURCHASE AND SALE AGREEMENT. THIS CONTRACT
CONTROLS THE TERMS OF THE SALE OF REAL PROPERTY AND IS A
BINDING DOCUMENT

Please read carefully before signing

February 19, 1995

We, Dwayne and Jane Tofell, hereby offer to purchase the following described real estate, which Seller agrees to sell, located in Kootenai County State of Idaho, and legally described on the attachment.

Purchase price: One hundred sixty seven thousand five hundred and no/100 dollars (\$167,500.00) payable as follows: One hundred thousand and no/100 at closing with the remaining sixty seven thousand to be finance by seller. Such financing shall be secured by a first mortgage on the subject property. Buyer shall make monthly payments on the amount financed based on a 30 year amortization schedule and seven and one half percent (7.5%) interest. In addition the buyer agrees to make an additional payment in the amount of fifteen thousand and no/100 (\$15,000.00) on each anniversary date until the principal and interest are paid in full. (The attached schedule for reference purposes only shows the amount of such payments assuming an April 1, 1995 closing date)

Purchaser's Representation: Purchaser represents that Purchaser has available sufficient funds to close this sale in accordance with this Agreement, and is not relying upon any contingent source of such funds.

Title: Unless otherwise specified in this document, title to the property shall be marketable at closing, rights, reservations, covenants, conditions and restrictions, presently of record, easements and encroachments not materially affecting the value or unduly interfering with Purchaser's intended use of the property, shall not be deemed to render title unmarketable, Encumbrances to be discharged by Seller shall be paid by Seller on or before closing.

Title Insurance: Seller authorizes closing agent, at Seller's expense, to apply for a standard form owner's policy of title insurance, with homeowner's additional protection and inflation protection endorsement, if applicable and available at no additional cost, to be

issued by a reputable Title Insurance Company. The title policy shall contain no exceptions other than those contained in said standard form and those not inconsistent with this Agreement. If title is not so insurable and cannot be made so insurable prior to closing Purchaser may elect either to waive such encumbrances or defects, or to terminate this Agreement.

Conveyance: Seller and Purchaser, agree to execute a Note secured by Deed of Trust on or before closing for the amount which Seller is financing. Said Real Estate Contract shall provide that title be conveyed by Statutory Warranty Fulfillment Deed.

Included Items: The following items presently located on the property are included in the sale at no additional cost, attached floor coverings, window and door screens and storms, attached plumbing and lighting fixtures, landscaping, appliances, window coverings, ventilating, heating and cooling systems and fixtures, attached irrigation equipment, beds (3), chest of drawers, televisions, VCR, stereo equipment, lawn furniture, and other items of a personal nature that are identified by the Seller and Buyer.

Seller's Representations: Seller represents that the property is not connected to a public/community/private water system, or well. The property is connected to a septic system. Seller further represents to the best of Seller's knowledge Seller has no knowledge that the sewage system needs any repairs and warrants that the sewage system will be in good working order at the time of closing. In addition, there is available at the property line electricity, telephone, and cable television. Seller further represents, to the best of Seller's knowledge, that all included items and all electrical, wiring, heating, cooling, plumbing systems and fixtures will be in working order at the time Purchaser takes possession unless otherwise noted herein; and Seller is not aware of any material facts adversely affecting the property,
EXCEPT _____

Seller represents, to the best of Seller's knowledge, that the water system, including pump, motor and all other portions of the water system are in working order. Seller represents that during Seller's term of ownership the private water system serving the property has always

provided an adequate supply of household water. Seller represents that Seller has no knowledge of asbestos or lead paint in the structures or of hazardous waste deposits in the vicinity except as disclosed. Seller represents that Seller has no knowledge of any ground contamination from the storage of heating oil for the furnace. Seller agrees to maintain the property in the present condition until the time Purchaser is entitled to possession.

Seller's Responsibilities: On or prior to closing the seller shall be responsible for making the following repairs to the property:

1. Repair and/or replace the broken window in the master bedroom.
2. Repair of the ramp leading to the dock.
3. Have the septic tank pumped

Radon Gas: Radon is a radioactive gas produced naturally in the ground by the normal decay of uranium and radium. Seller agrees to have the property tested to determine whether radon gas is present. Seller shall provide a copy of the results to Purchaser. Should the amount of radon gas exceed that which is determined to be safe for normal living conditions by the Idaho State Board of Health, Buyer shall have the option of requiring that improvements be made which will reduce the amount of exposure to an acceptable level or canceling this purchase.

Closing: This sale shall be closed on March 31, 1995. Upon demand, Purchaser and Seller will deposit, without delay, with a mutually agreeable closing agent, all instruments and monies required to complete the transaction in accordance with this Agreement. Closing, for the purpose of this Agreement, is defined as the date that all documents are recorded and sale proceeds are available for disbursement to Seller. In the event this transaction cannot be closed on the date or within the time period specified due to an occurrence, other than default, or contingency outside the control of Seller or Purchaser which may be remedied within a reasonable period of time, the parties hereby agree to extend the date of closing for a reasonable period of time and/or period of time necessary to remedy the delaying occurrence.

Closing Costs and Proration: The cost of closing agent's fees shall be shared equally between Purchaser and Seller. Seller shall pay any real estate excise tax. Taxes for the current year, condominium and homeowner's association dues, if any, rent, interest, insurance, and water and utility charges constituting liens shall be prorated as of closing.

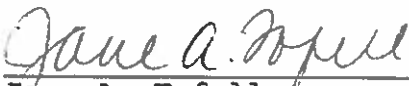
Possession: Purchaser shall be entitled to possession on closing. Possession shall be deemed surrendered when Seller has vacated the premises and has delivered the keys to Purchaser.

Notices: Unless otherwise expressly specified herein, any and all notices required or permitted to be given under this Agreement must be given in writing.

General Provisions: Time is of the essence. There are no verbal agreements which modify this Agreement. This Agreement constitutes the full understanding between Seller and Purchaser. Purchaser has personally inspected the property and has reached Purchaser's own conclusion as to the adequacy and acceptability of the property based upon such personal inspection.

OFFER TO PURCHASE: Purchaser offers to purchase the property, building and improvements on the above terms and conditions in its present "as is" condition except as may otherwise be provided herein. Purchaser hereby acknowledges receipt of copy of this Agreement. Seller shall have until midnight, February 22, 1995, to accept this offer, unless sooner withdrawn. Acceptance shall not be effective until a signed copy hereof is actually received by Purchaser or Seller. If this offer is not so accepted, it shall lapse.


Dwayne Tofell 2/19/95
Date


Jane A. Tofell 2/19/95
Date

PURCHASER'S PRESENT ADDRESS

S. 3214 Warren Lane Veradale, Washington 99037

Phone (509) 921-9242

ACCEPTANCE OR COUNTEROFFER:

[] A. Acceptance: Seller agrees to sell the property on the terms and conditions specified herein. Seller acknowledges receipt of a copy of this Agreement signed by both parties.

[] B. Counteroffer: If Seller has made a counteroffer hereon or attached hereto, Purchaser shall have until midnight _____, 1995 to accept the counteroffer, unless sooner withdrawn. Acceptance of the counteroffer shall not be effective until a signed copy hereof is actually received by Seller.

Seller Date

Seller Date

Seller's Address:

5513 S. Pawnee Court Spokane, Washington

Phone (509) 927-2281

QUITCLAIM DEED

For Value Received BETTY F. SCHNABEL, a widow, for love and affection, does hereby convey, release, remise and forever quit claim unto MARK JAMES SCHNABEL, a married man as his separate property and JACKIE LYNN HATFIELD, a married woman as her separate property, each as to an undivided one half interest as tenants in common, whose address is 5513 S. Pawnee Ct., Spokane, WA 99206, the following described premises, to-wit:

A portion of Government Lot 7, Section 7, Township 53 North, Range 4 West, Boise Meridian, Kootenai County, Idaho, starting at a point on the West Line of said Section 7, the point being the Northwest corner of Government Lot 4 of Section 7; thence, East 3606 feet to a concrete monument; thence, North 46°47' East, 1160 feet to the Southwest corner of the old Chataugua Grounds; thence North 45° east, 600 feet to a point; thence, North 43°13' West, 492 feet to a point on the old county road right of way; thence, North 59°03' East, a distance of 84.0 feet to a point; thence, South 87°32' East, 294.3 feet; thence, North 54°29' East, 38 feet to the TRUE POINT OF BEGINNING for this description; thence, North 54°29' East, 27 feet; thence North 10°25' East, 50 feet; thence, South 63°50' East, 210.6 feet to a point on the shore of Spirit Lake; thence, along the shore of Spirit Lake South 12°46' West, 75 feet; thence, North 57°14' West, 120.84 feet; thence, North 70°40' West, 107.95 feet to the TRUE POINT OF BEGINNING.

together with appurtenances.

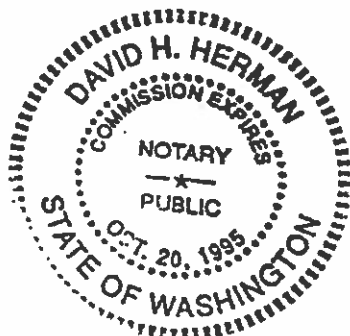
Dated: October 26, 1992

Betty F. Schnabel
BETTY F. SCHNABEL

STATE OF WASHINGTON)
COUNTY OF SPOKANE) ss.

On this day personally appeared before me BETTY F. SCHNABEL, to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 26 day of October, 1992.



David H. Herman
Notary Public in and for
the state of Washington
Residing at:
Commission Expires: 10/20/95

CLERK OF COUNTY OF KOOTENAI } ss.
AT THE REQUEST OF
Herman, Herman & Co.
OCT 27 3 54 PM '92
DEPUTY
J. L. Liska
FEES 3.00
12340 E Valleyway
Spokane, WA 99216

HATFIELD ENTERPRIZES INC.	
FAX TRANSMISSION	
To	<u>ALAN RUBENS</u>
From	<u>KENT HATFIELD</u>
Pages	<u>2</u>
Date/Time	

ADDENDUM "A"

TO

REAL ESTATE PURCHASE AND SALE AGREEMENT

This Addendum "A" is made and entered into as of this 22nd day of February, 1995, as an amendment to that certain Real Estate Purchase and Sale Agreement dated February 19, 1995 between Dwayne Tofell and Jane Tofell, husband and wife, ("Purchasers") and Lynn Hatfield, a married person dealing in her sole and separate property and Mark Schnabel, a single person, ("Sellers").

This Addendum "A" modifies or changes the above referenced Real Estate Purchase and Sale Agreement as follows:

1). Purchasers shall deposit earnest money with the closing agent in the amount of \$5,000.00 upon complete signing of this Addendum "A" and the Real Estate Purchase and Sale Agreement by all Purchasers and all Sellers. In the event that Purchasers are unable to consummate this transaction, at no fault of the Sellers, Sellers may elect to retain said earnest money as liquidated damages, which the parties now agree that the Seller's damages in the event of default by Purchasers are very difficult in ascertaining and that the earnest money is a fair and honest estimate of such damages at this time. Seller may, instead, elect to seek specific performance or damages in the alternative.

2). One of the Sellers is a real estate agent in the State of Washington, and is selling in this transaction for personal profit.

3). The second paragraph of the second page of the Real Estate Purchase and Sale Agreement is changed to delete the second sentence of that paragraph which reads: "Said Real Estate Contract shall provide that title be conveyed by Statutory Warranty Fulfillment Deed." The parties agree that the standard form Note and Deed of Trust utilized by Kootenai County Title Company shall be used in this transaction. ✓

4). As to the last paragraph of page 2 of said agreement, Sellers hereby state that the source of water for the premises is a private pump and waterline drawing water from the lake for the subject premises only, and said water source is not known to be suitable for drinking or human consumption.

5). As to the reference to asbestos, lead paint or other hazardous substances on page 3 of the agreement, Sellers state that they have no actual knowledge of any of such substances on the subject property, but this property is an inheritance, and Sellers make no representation or warranty regarding the absence or presence of any such substances. Sellers also state that there was a death by natural causes in the subject premises several years ago.

ADDENDUM "A", PAGE 2

6). The third paragraph of page 3 of said agreement regarding Radon Gas is deleted. Sellers have no actual knowledge of radon gas in the premises, but Seller has not tested for the same. Purchaser shall have ten (10) days from the date this agreement and this Addendum "A" are executed in which to have any radon testing performed on the premises. In the event that radon is detected in any amount unacceptable to Purchasers and notice thereof is given to Sellers in writing during the 10 days, Purchasers may elect to terminate this agreement and Addendum "A", and will be entitled to a refund of their earnest money.

7). Closing shall be as stated on page 3 of the agreement, however the date of closing shall not, in any event be after April 30, 1995 for any reason.

8). Closing agent shall be Trunkenbolz & Carlson, P.S. 12704 E. Nora, Spokane, WA. 99216 (509) 928-4100.

9). In the event that either party is required to bring suit to enforce or interpret this agreement or this Addendum "A", the prevailing party shall be entitled to costs of suit and reasonable attorneys fees. Venue of any such action shall be Spokane County, Washington, unless the action deals with the title of the subject property.

10). The title insurance company shall be Kootenai County title, and the escrow agent for the note and deed of trust shall be Allegro Escrow Services, Inc., E. 12817 Sprague Ave., Spokane, Wa. 99216 (509) 926-0223.

SELLERS:

Lynn Hatfield 2/20/95
Lynn Hatfield date
Mark Schnabel
Mark Schnabel date

PURCHASERS:

Jane Tofell date
Dwayne Tofell 2/20/95
Dwayne Tofell date

QUITCLAIM DEED

For Value Received BETTY F. SCHNABEL, a widow, for love and affection, does hereby convey, release, remise and forever quit claim unto MARK JAMES SCHNABEL, a married man as his separate property and JACKIE LYNN HATFIELD, a married woman as her separate property, each as to an undivided one half interest as tenants in common, whose address is 5513 S. Pawnee Ct., Spokane, WA 99206, the following described premises, to-wit:

A portion of Government Lot 7, Section 7, Township 53 North, Range 4 West, Boise Meridian, Kootenai County, Idaho, starting at a point on the West Line of said Section 7, the point being the Northwest corner of Government Lot 4 of Section 7; thence, East 3606 feet to a concrete monument; thence, North 46°47' East, 1160 feet to the Southwest corner of the old Chataugua Grounds; thence North 45° east, 600 feet to a point; thence, North 43°13' West, 492 feet to a point on the old county road right of way; thence, North 59°03' East, a distance of 84.0 feet to a point; thence, South 87°32' East, 294.3 feet; thence, North 54°29' East, 38 feet to the TRUE POINT OF BEGINNING for this description; thence, North 54°29' East, 27 feet; thence North 10°25' East, 50 feet; thence, South 63°50' East, 210.6 feet to a point on the shore of Spirit Lake; thence, along the shore of Spirit Lake South 12°46' West, 75 feet; thence, North 57°14' West, 120.84 feet; thence, North 70°40' West, 107.95 feet to the TRUE POINT OF BEGINNING.

together with appurtenances.

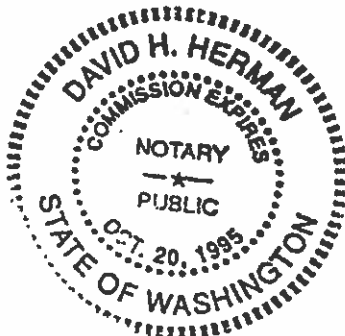
Dated: October 26, 1992

Betty F. Schnabel
BETTY F. SCHNABEL

STATE OF WASHINGTON)
COUNTY OF SPOKANE) ss.

On this day personally appeared before me BETTY F. SCHNABEL, to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 26 day of October, 1992.



David H. Herman
Notary Public in and for
the state of Washington
Residing at:
Commission Expires: 10/20/95

STATE OF IDAHO } ss
COUNTY OF KOOTENAI }
AT THE REQUEST OF
Herman, Herman & Dot
OCT 27 3 54 PM '92
DEPUTY
FEE \$ 3.00
12340 E Valleyway
Spokane, WA 99216

HATFIELD ENTERPRIZES INC.	
FAX TRANSMISSION	
To	ALAN RUBENS
From	KENT HATFIELD
Pages	2
Date/Time	

1. Definition 15
 2. Example

Let $f: \mathbb{R} \rightarrow \mathbb{R}$ be a function. We say that f is continuous at $a \in \mathbb{R}$ if for every $\epsilon > 0$ there exists a $\delta > 0$ such that for all $x \in \mathbb{R}$ with $|x - a| < \delta$ we have $|f(x) - f(a)| < \epsilon$.



3. Proposition 16
 4. Proof

Let $f: \mathbb{R} \rightarrow \mathbb{R}$ be a function. We say that f is continuous at $a \in \mathbb{R}$ if for every $\epsilon > 0$ there exists a $\delta > 0$ such that for all $x \in \mathbb{R}$ with $|x - a| < \delta$ we have $|f(x) - f(a)| < \epsilon$.



5. Definition 17
 6. Example

Let $f: \mathbb{R} \rightarrow \mathbb{R}$ be a function. We say that f is continuous at $a \in \mathbb{R}$ if for every $\epsilon > 0$ there exists a $\delta > 0$ such that for all $x \in \mathbb{R}$ with $|x - a| < \delta$ we have $|f(x) - f(a)| < \epsilon$.



7. Proposition 18
 8. Proof

Let $f: \mathbb{R} \rightarrow \mathbb{R}$ be a function. We say that f is continuous at $a \in \mathbb{R}$ if for every $\epsilon > 0$ there exists a $\delta > 0$ such that for all $x \in \mathbb{R}$ with $|x - a| < \delta$ we have $|f(x) - f(a)| < \epsilon$.





**KOOTENAI COUNTY
BUILDING & PLANNING
DEPARTMENT**

**ORDER OF DECISION
TRANSMITTAL**

April 6, 2006

TO: Dwayne Tofell
2405 NW 116th
Vancouver, WA 96685

FROM: KOOTENAI COUNTY BUILDING AND PLANNING DEPARTMENT

RE: Case No. V-848-05

Enclosed is the following information related to the above referenced case:

A Copy of the Order of Decision for Case No. V-848-05

The approval is subject to all terms and conditions listed in the Order of Decision. The approval must comply with all applicable ordinances and regulations of Kootenai County and other public agencies.

If you have any further questions, please contact the Planning Department at (208) 446-1070. Thank you.

Sent by:

Sandi Gilbertson
Building and Planning Secretary

Enclosure

IN THE MATTER OF THE APPLICATION	)	CASE NO. V-848-05
OF DWAYNE TOFELL, A REQUEST FOR	)	FINDINGS OF FACT,
APPROVAL OF A FRONT AND REAR	)	APPLICABLE LEGAL
SETBACK VARIANCE IN THE	)	STANDARDS, CONCLUSIONS OF
RESTRICTED RESIDENTIAL ZONE	)	LAW, ORDER OF DECISION AND
	)	CONDITIONS OF APPROVAL

- 1.01 The Building and Planning Department issued a Notice of Public Hearing on this application, Case No. V-848-05, with the hearing held on March 16, 2006. On February 14, 2006, notice was published in the Coeur d'Alene Press. On February 23, 2006, notice was posted on the site. The Applicant is responsible for notification of adjacent property owners within 300 feet of the subject property. Based on a signed Affidavit, notice requirements have been met.
- 1.02 A public hearing was held on March 16, 2005 before a Kootenai County Hearing Examiner. The Applicant, Dwayne Tofell, presented the request, explaining that the existing house is located approximately five feet from the side property line and that the logical location for the desired addition is along that same property boundary, which encroaches into the current setback requirement. The septic tank and drain field location prevents locating the proposed addition outside the required side yard setback as well. No further public testimony was given and the public hearing was closed.
- 1.03 At their deliberations on March 30, 2006, the Board of Commissioners received a recommendation from the Hearing Examiner, approving this request with conditions.
- 1.04 Upon review of all files, exhibits and testimony of record regarding this application, the Board of Commissioners makes the following Findings of Fact and Conclusions of Law:

- 2.01 **Applicant/Owner.** The Applicant/Owner is Dwayne Tofell, 2405 NW 116th Street, Vancouver, WA 98685. (Exhibit A-1, Application)
- 2.02 **Request.** The Applicant is requesting a variance to the Kootenai County Zoning Ordinance to allow a side setback of five (5) feet from the required ten (10) foot side setback requirement in the Restricted Residential zone. The purpose of the request is to allow an addition to an existing residence. The site is .318 acres located on Brentwood Lane in Spirit Lake, Idaho. (Exhibits A-1, Application; A-3, Photos; A-5, Site Plan; A-10, Narrative; A-6, Floor Plan)
- 2.03 **Location.** The site is located on the shoreline of the Northeast part of Spirit Lake, just east of the intersection of Brentwood Lane and Spirit Lake Road. (Exhibit S-2, Assessor map)
- 2.04 **Legal Description.** The site is described as Tax No. 6896 located in the Brentwood Subdivision in Section 07, Township 53 North, Range 04 West B.M. Kootenai County Idaho. The parcel number is 0-0960-000-002-C, Serial #113860. (Exhibits S-1, Assessor Data Sheet; S-2, Assessor Map)

- 2.05 **Physical Characteristics.** According to the *Soil Survey of Kootenai County Area, Idaho*, the soils in this area are considered Vassar silt loam, 5 to 30 percent slopes. This Vassar soil is a very deep, well drained soil that formed in weathered granite, gneiss, and schist having a mixture of loess and volcanic ash. *Topography:* The site slopes approximately 0% - 15%. The general area consists of naturally vegetated under story and supports a moderate stand of native, coniferous and deciduous trees. This lot has been developed.
- 2.06 **Lot Size.** According to the County Assessor's records, the lot size is 0.318 acres or approximately 13,730 square feet. The minimum lot size required for the Restricted Residential zone is 8,250 square feet.
- 2.07 **Zoning.** The property is located in the Restricted Residential zone. The required side yard setback in this zone is 10 feet. (**Exhibit S-7, map**)
- 2.08 **Surrounding Land Use.** The surrounding land use in this area is generally single family residences with the occasional accessory buildings. To the south is the Lake Haven Resort area with numerous mobile homes.
- 2.09 **Existing Structures.** The property currently has a primary residence. Additionally, there is an existing detached garage and shed located on the property.
- 2.10 **Access and Transportation.** Access to the site is by a driveway off Brentwood Lane, a privately maintained road. In a letter dated December 12, 2005, Joseph Wuest, Road Supervisor, states that the variance will have no adverse impact on the Lakes Highway District's transportation system. The Highway District has no objections to the variance request from Mr. Tofell. (**Exhibit PA-1, Letter**)
- 2.11 **Water Service/Sewage Disposal.** In e-mails dated December 9, 2005 and January 13, 2006, Jamie Barton, Environmental Health Specialist, stated that they have no concern over the variance request and because no new bedrooms will be added, no upgrade to the existing septic system is necessary. (**Exhibit PA-5, Agency e-mail**)
- 2.12 **Fire Protection.** The site is within the jurisdiction of the Spirit Lake Fire Protection District. In a letter received December 13, 2005, Fire Marshal Wayne Nowacki stated that this variance request will not be an issue for fire protection. (**Exhibit PA-3, Letter**)
- 2.13 **Area of City Impact (ACI).** The property is located within the Area of City Impact for Spirit Lake. As of this writing, no comments have been received from the city.
- 2.14 **Flood Zone.** According to FEMA Flood Insurance Rate Map, Community Panel Number 160076-0025 C, a portion of the property is located in a flood plain, an area of Special Flood Hazard. A completed FEMA Elevation Certificate will be necessary to establish that the structure is sufficiently elevated as to not create a flood hazard. (**Condition 5.04**)
- 2.15 **Public Comment.** As of this writing, five public comments have been received: four in support of this variance, one neutral. (**Exhibits P-1 through P-3, Public Comments**)

III APPLICABLE LEGAL STANDARDS

- 3.01 Kootenai County Zoning Ordinance No. 348.

Article 2, Rules and Definitions, Variance. This restates the Idaho Code definition of a Variance.

Section 30.02 authorizes variances from the Zoning Ordinance, as will not be contrary to the public interest, owing to special conditions where literal enforcement of the Ordinance would result in unnecessary hardship.

Section 30.03 outlines the procedures for granting a variance, states that a public hearing be held with notice according to Idaho Code, authorizes the hearing body to attach conditions to a variance approval, and states that the following findings shall be made:

- a) Whether the requirements of Section 30.03 have been met.
- b) Whether the reasons set forth in the application justify the granting of a variance.
- c) That the variance is the minimum that will make possible the reasonable use of the land, building or structure.
- d) That the granting of the variance will be in harmony with the general purpose and intent of the Zoning Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Section 8.09 outlines the front, rear and side yard setback requirements for the Restricted Residential zone.

3.02 Kootenai County Ordinance No. 355, Hearing Procedures.

3.03 *Idaho Code* §67-6516, Variance; §67-6519 and §67-6520, Permit Process; §67-6521, Actions by Affected Persons; §67-6535, Approval/Denial Requirements; §67-2343, Notice of Meetings.

Idaho Code §67-6516 defines the situations for which a variance to the Zoning Ordinance may be granted, and states that a variance may be granted “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”. Notice and an opportunity to be heard must be provided to property owners adjoining the parcel under consideration.

Idaho Code §67-6519 and §67-6520 outline the permit process and the decision specifications. The application must first go to the Planning Commission or Hearing Examiner for their recommendation. Recommendations and/or decisions must specify the ordinance and standards used in evaluating the application, the reasons for the approval or denial, and if the decision is a denial, the actions that the applicant could take to obtain a permit.

Idaho Code §67-6521 defines an “affected person”, states that an affected person may request a hearing on any permit authorized under Chapter 65, outlines the actions the Board may take, and provides for judicial review if requested within 28 days after all remedies have been exhausted under local ordinances.

Idaho Code §67-6535 requires that the approval or denial be accompanied by a reasoned statement that explains the criteria and standards considered relevant, the relevant contested facts, and the rationale for the decision based on the factual information contained in the record, the applicable provisions of the Comprehensive Plan, relevant ordinances and laws.

Idaho Code §67-2343 provides general requirements for meeting notices such as the Commissioners weekly deliberations.

IV CONCLUSIONS OF LAW

- 4.01 The granting of the requested variances in this application would be in conformance with Kootenai County Zoning Ordinance No. 348, Section 30.03, Section 30.02 and IC 67-6516, because the undue hardship reason brought forth in the application is applicable. The other locations for the structure that would be in accordance with the required setbacks would create an unnecessary and undue hardship by requiring relocation of a septic system and drain field and result in a greater disturbance of the property.
- 4.02 The granting of this permit would not confer a right or special privilege because it is based upon a showing of undue hardship due to constraints that are unique to this property and because there are not other practical locations available that would not create an undue hardship.
- 4.03 The requested variance does conform to Kootenai County Zoning Ordinance No. 348 and IC 67-6516 because the requested variance is necessary to accommodate the proposed use and will not be detrimental to surrounding properties or public welfare. There was no opposition to the requested variance.
- 4.04 Notice and opportunity to be heard have been provided to adjacent property owners in accordance with IC 67-6516

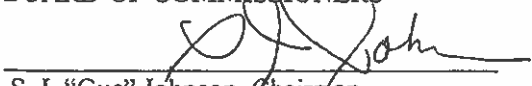
V ORDER OF DECISION AND CONDITIONS OF APPROVAL

Based on the Findings of Fact and Conclusions of Law set forth in this document, Kootenai County Board of Commissioners orders that the application for Case No. V-848-05, a request by Dwayne Tofell for a five-foot (5') variance from the ten-foot (10') side setback requirements, be **APPROVED with the following conditions.**

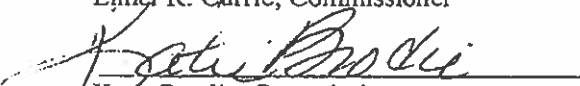
- 5.01 The specific terms and conditions placed on this variance shall run with the land and remain valid upon a change of ownership. The Applicant, or future assigns having an interest in the subject property, shall fully comply with all conditions placed upon this variance. This variance is not transferable from the approved site to another site. This approval is limited to the buildings, activities and plans outlined in the project narrative, site plan and testimony provided as part of this request.
- 5.02 Changes in the conditions and terms of this Order of Decision shall not be undertaken by the Applicant, or future assigns having an interest in the subject property, until the Building and Planning Director has reviewed the proposed changes and approval has been granted by the appropriate official(s).
- 5.03 The project shall conform to the Narrative and Plans that were submitted, labeled **Exhibits A-5, A-6, and A-10**. The structure shall be located no closer than five feet (5') to the side property line. All other setback requirements shall be met. Eaves shall not encroach on any setback greater than two (2') feet.
- 5.04 A completed Elevation Certificate shall be submitted prior to issuance of a building permit.
- 5.05 Construction shall commence no later than two (2) years from the date of the signing of the Order of Decision or this approval becomes null and void.

Dated this 6th day of April 2006

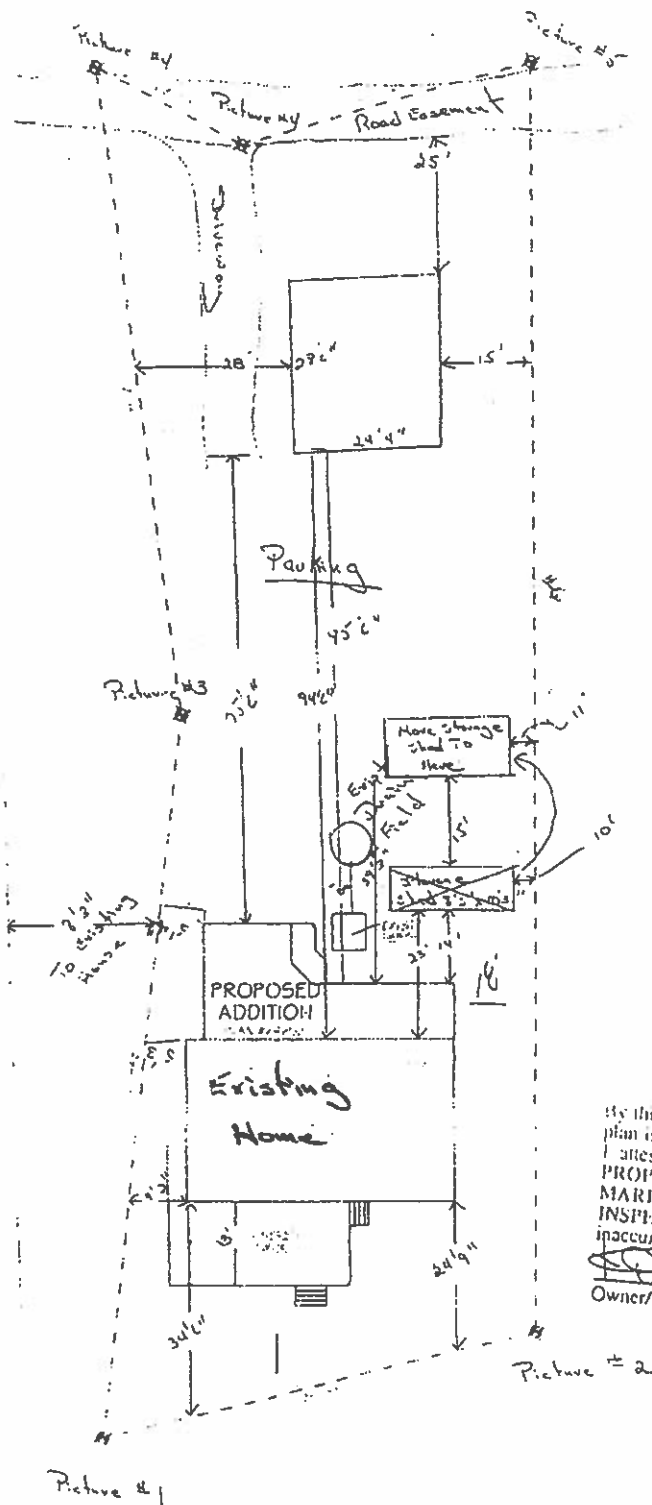
BY ORDER OF THE KOOTENAI COUNTY
BOARD OF COMMISSIONERS


S. J. "Gus" Johnson, Chairman


Elmer R. Currie, Commissioner


Katie Brodie, Commissioner





By this signature I hereby acknowledge that this site plan is a true and accurate representation of the site. I attest that the BUILDING PERIMETER AND PROPERTY LINES WERE CLEARLY MARKED AT THE TIME OF THE FIRST INSPECTION. I assume all responsibility for any inaccuracies contained herein.

Owner/Authorized Agent [Signature] 9-6-05
Date

IN 1,000

IN 1,000

IN 1,000

IN 1,000

IN 1,000

IN 1,000

IN 1,000

IN 1,000

100 24-51N-4W N1:05-28-02
LOCN HAYEN HILLS 61N
LT 4 BLK 2

10655 ROMAN M ETUX
8197 ADDITION RD
MAYHEM, ID 83835

004-000 24-51N-4W N1:05-28-02
113660 0-0960-000-002-1
TIFELT, DAVINE ETUX
BRENTWOOD, TAX 86896

2405 NW 116TH ST
YAKCUMER, WA 98685
65-49K-6566-0-0

074-000 07-53N-4W N1:05-28-02
113178 1152

ADDITION, 20 RESIDENTIA 0.232 26.000 27.820 9-00 JRC10701

ATTACHED TO 15 RURAL SU 1W011 0.318
37 IMPROVEM M1 82,500 82,500 7-01 EDS 1,000
37 IMPROVEM DAI 65,718 65,718 7-01 EDS 1,000
37 IMPROVEM D1 7,291 7,291 7-01 EDS 1,000
37 IMPROVEM S1 7,291 7,291 7-01 EDS 1,000

0.318 156,512 156,512

0 07

TORNAME, C 90505

193-000 07-51N-3W N1:05-28-02
117630 0-4720-001-009-0
TOWNAM, CHARLES J

4601 S ST ANDREWS LN
SPOKANE, WA 99225

112-000 31-53N-4W N1:05-28-02
145551 0-4580-000-000-0
TOWNAM, CHARLES J ETUX TRUSTEES
LIVING TRUST OF CHAS TOWNAM ETUX
4601 S ST ANDREWS LN
SPOKANE, WA 99225
60-1106-24207-0-0

112-000 36-53N-4W N1:05-28-02

A10-40 KOOTENAI COUNTY
S/M-ACCOUNT-NEA-SITU-C/A-SIR
117902 0-2940-21-056-72
TIFELT, JOHN H

8228 N RICHIE RD
POST FALLS, ID 83854
53-1905-8228-0-0

073-000 21-51N-5W N1:05-28-02
211417 0-7312-005-010-0
TIFELT, JASON R ETUX
PRAIRIE FALLS, ID 83877
55-2940-2055-0-0

011-000 27-51N-5W N1:05-28-02
106459 0-5130-001-012-8
TIFELT, NORMA J
KATIERINE ESTATES,
BLK 1

1715 JEWELL LYN LN
COLUMBIA, ID 83815
14-1544-1715-0-0

001-001 06-50N-3W N1:05-28-02
10-014 0-0620-000-011-A
TIFELT, BRUCE C ETUX
SECOND ADD TO BENMOI
12

7510 S REGAL RD
SPOKANE, WA 99223-1931
007-000 20-48N-4W N1:05-28-02
133796 0-0620-000-010-0
TIFELT, BRUCE C ETUX
SECOND ADD TO BENMOI
11, LT 10 15 RURAL SU 0W143 0.373 114,630 114,630 7-01 CUM 1,000

7510 S REGAL RD
SPOKANE, WA 99223-1931

067-000 20-48N-4W N1:05-28-02
172676 0-0620-000-013-8
TIFELT, BRUCE C ETUX
BENMOI 2ND LT 15
15 RURAL SUBD 1.405 1,000 1,000 3-01 CUM 1,000

TORNAME, C 90505

193-000 07-51N-3W N1:05-28-02
117630 0-4720-001-009-0
TOWNAM, CHARLES J

4601 S ST ANDREWS LN
SPOKANE, WA 99225

112-000 31-53N-4W N1:05-28-02
145551 0-4580-000-000-0
TOWNAM, CHARLES J ETUX TRUSTEES
LIVING TRUST OF CHAS TOWNAM ETUX
4601 S ST ANDREWS LN
SPOKANE, WA 99225
60-1106-24207-0-0

A10-40 KOOTENAI COUNTY
S/M-ACCOUNT-NEA-SITU-C/A-SIR
117902 0-2940-21-056-72
TIFELT, JOHN H

8228 N RICHIE RD
POST FALLS, ID 83854
53-1905-8228-0-0

073-000 21-51N-5W N1:05-28-02
211417 0-7312-005-010-0
TIFELT, JASON R ETUX
PRAIRIE FALLS, ID 83877
55-2940-2055-0-0

011-000 27-51N-5W N1:05-28-02
106459 0-5130-001-012-8
TIFELT, NORMA J
KATIERINE ESTATES,
BLK 1

1715 JEWELL LYN LN
COLUMBIA, ID 83815
14-1544-1715-0-0

001-001 06-50N-3W N1:05-28-02
10-014 0-0620-000-011-A
TIFELT, BRUCE C ETUX
SECOND ADD TO BENMOI
12

7510 S REGAL RD
SPOKANE, WA 99223-1931
007-000 20-48N-4W N1:05-28-02
133796 0-0620-000-010-0
TIFELT, BRUCE C ETUX
SECOND ADD TO BENMOI
11, LT 10 15 RURAL SU 0W143 0.373 114,630 114,630 7-01 CUM 1,000

7510 S REGAL RD
SPOKANE, WA 99223-1931

067-000 20-48N-4W N1:05-28-02
172676 0-0620-000-013-8
TIFELT, BRUCE C ETUX
BENMOI 2ND LT 15
15 RURAL SUBD 1.405 1,000 1,000 3-01 CUM 1,000