Gmail

Janna Berard <janna.berard@bonnercountyid.gov>

AM0012-22 Comprehensive Goals, Policies and Objectives

1 message

Matt Linscott <matt.linscott@bonnercountyid.gov> Mon, Aug 8, 2022 at 10:38 AM
To: Bonner County Planning <planning@bonnercountyid.gov>, allan.songstad@bonnercountyid.gov, dave.frankenbach@bonnercountyid.gov, josh.pilch@bonnercountyid.gov, don.davis@bonnercountyid.gov, debby.trinen@bonnercountyid.gov, wayne.benner@bonnercountyid.gov

Please find attached my written comments on the goals, policies and objectives draft.
Thank you for your consideration.
Matt Linscott

Written comments on goals, policies, and objectives.docx
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Bonner County, as well as every other governmental entity/municipal in Idaho, receives their power to regulate land use through LLUPA, Title 67-65. LLUPA also lays out a road map with instructional language in 67-6502 and 67-6508 that Bonner County's plan needs to align with.

Property Rights

Please consider this additional language, in red, under "policies" (these were recently adopted in the Kootenai County Comprehensive Plan)

"Avoid reductions in land use intensity (called "down-zoning") in any County initiated zoning map or development code text amendments, with the exceptions being a property owner's voluntary agreement to a change, or if there is a clear, useful and significant public purpose. The need for map and text amendments should either remedy existing nonconformities or at least not create new ones."

Bonner County is not starting with a clear slate. Investments, plans, and expectations have been made on existing zoning designations.
I believe the language suggested does not eliminate the possibility of "down-zoning", however, below explains what has been construed through the courts as the prerequisite of doing so.
A public "harm or evil", as it relates to health, safety, and general welfare, needs to be identified and developed before infringing on property rights.
A "downzone" either is the land use designation, or actual zoning district, should require an analysis demonstrating a clear and evil nexus exists, that can only be averted by downzoning a property.
This is more adequately expressed in the Supreme Court case Penn Central.
"… a use restriction may constitute a 'taking' if (it is) not reasonably necessary to the effectuation of a substantial government purpose. The inquiry here must be whether the police power, (rather than eminent domain power) has exceeded its constitutional limits. To determine whether the regulation violates due process, the court should engage in the classic 3-prong due process test and ask: (1) whether the regulation is aimed at achieving a legitimate public purpose; (2) whether it uses means that are reasonably necessary to achieve that purpose; and (3) whether it is unduly oppressive on the landowner." In other words,
1) there must be a public problem or evil, (related to public health, safety or welfare)

2) the regulation must tend to solve this problem, (effectuation) and
3) the regulation must not be unduly oppressive upon the person regulated. (Narrowly Framed, Least drastic means)
Additionally, as Justice Rehnquist stated in his Supreme Court opinion, Penn Central:
"Rather the question is whether the forbidden use is dangerous to the safety, health and welfare of others."
Also, Justice Scalia stated: "There is a cause-and-effect relationship between the property use restricted by a regulation and the social evil that the regulation seeks to remedy."
As explained in Lucas: "Harmful or noxious use" analysis was, in other words, simply the progenitor…" Nollan, supra, 483 U.S., at 834 , (quoting Agins v. Tiburon, 447 U.S., at 260); see also Penn Central Transportation Co., supra, 438 U.S., at 127 ; Euclid v. Ambler Realty Co., 272 U.S. 365, 387 -388 (1926).

Once again demonstrating, the necessity of identifying and developing a public problem or evil, (Harmful or noxious use), as a prerequisite for a government to be insulated from a taking claim.

Also, from Kootenai County Comprehensive Plan
"Remedy existing nonconformities and avoid creating new nonconformities by adopting appropriate land use regulations."
This language is straight forward, it makes no sense in creating additional nonconforming parcels, while trying to remedy those existing legal nonconforming uses.

Land Use
Please consider adding this additional language in goals/policies from LLUPA, Title 67-6502(E)
"Encourage the protection of prime agricultural, forestry and mining lands for production of food, fibre, and minerals."

From 67-6508 E
"Land use designations will be assigned based on an analysis of natural land types, existing land covers and uses, and the intrinsic suitability of lands for uses such as

agriculture, forestry, mineral exploration and extraction, preservation, recreation, housing, commerce, industry, and public utilities."

Although it is already in State Code, the above quotes will guide the land use designations and eventually zoning districts. This language also reflects back on my suggestion to remedy existing nonconformities and avoid creating new nonconformities.

Natural Resources
Consider adding what is in red below, to the proposed "**Objectives**"
As Title 67-6508 F states,
"Natural resources – An analysis of the uses of rivers and other waters, forests, range, soils, harbors, fisheries, wildlife, minerals, thermal waters, beaches, watersheds, and shorelines."

In your current draft, please consider adding mining lands, to align with 67-6502 E and 67-6508 E & F
"Bonner County values its productive agricultural lands, forests lands, and mining lands, its fisheries, wildlife and wetlands, and will provide measures to protect and maintain these natural features."

Under your "**Policies**" draft, consider adding mining lands.
"Productive farmland, ~~and~~ timberland, and mining lands, shall be identified and protected from adverse effects of adjoining developments."

Reason for adding this language.
As shown from 67-6502 and 67-6508, it is instructional to protect not only agriculture and forestry, but mining as well. Also see Bonner County Resolution #18-29. "Mining- Mining production in the County contributes to the livelihood and wellbeing of many of its residents and contributes significantly to its economy. The County must strive to protect its mining heritage. This heritage includes small and large commercial operations. The County must protect the vital natural resources that are necessary to keep these enterprises in operation."

Under **Economic Development**, please consider this language, in red, to your current draft.

"Commercial and industrial uses shall be unconditionally permitted only in areas identified in the Comprehensive Plan as being suitable for such development. Evaluation of suitability shall be based on availability of urban services, or adequate sewer system approved by Panhandle Health Department/DEQ, adequate access to hard surfaced publicly maintained roads and other factors that may impact the surrounding community."

Currently, many commercial and industrial uses do not require public water and sewer. Sagle corridor for example. There are many commercial operations that are not hooked up to public sewer. (None that I am aware of) They have adequate sewer systems already in place. Look at the three welding manufacturers, (Industrial Uses) already in place with individual septic systems. With only a few employees, why require public sewer if Panhandle Health believes a private system is adequate?
Perhaps use language that aligns with IDAPA, if sewage is more than 2,500 gallons per day, would trigger a complex system such as a LSAS or public sewer hookups.
I.C. 67-6522 states in part: "In no event shall the governing board by local ordinance enact provisions that abrogate the statutory authority of a public health district, state and/or federal agency."
That authority to DEQ and Panhandle Health is granted through IDAPA 58.01.03
By adding, "or adequate sewer system approved by Panhandle Health Department/DEQ", the checks and balance on environmentally sound practices are in place.
Also consider adding, "Encourage the protection of prime agricultural, forestry and mining lands for production of food, fibre, and minerals." (67-6502 E)
As those industries contribute significantly to the economy of Bonner County.
I believe this should be placed in the Land Use section as well as the Economic Development sections, to align with the instructional language in State code.

Hazardous Areas, Policies
"Flood mitigation standards shall be adopted that meet or exceed the National Flood Insurance Program minimum requirements."
~~"Residential, commercial or industrial development within the floodway should be prohibited."~~
"Fill within the floodplain should be discouraged."

The National Flood Insurance Program and U.S. Army Corp already have programs which address mitigation and permitting.
Currently, U.S. Army Corp has a 404 permit to allow dredge and fill in such areas. If the area exceeds 1/10 of an acre, mitigation through credits is required. They cost $28,000 per acre, in addition to the engineering fees. Again, a check and balance is already in place with state and federal agencies.
I feel if the County were to "prohibit" activity, that a State or Federal agency conditionally approves through mitigation, would be in conflict.

Consider adding this language to your current draft for clarity in **Policies**.
"New developments should have multiple points of ingress/egress in areas identified as hazardous areas."

Without identifying how many lots are considered a "development", it is difficult to institute this policy. Is the County willing to approve multiple County Road encroachments to the same original parent parcel? I have personally found that answer is "no".
Perhaps in areas identified as hazardous, multiple ingress/egress points make sense. However, until such areas are identified/mapped, how is this possible.

Housing
Consider the instructional language from LLUPA
Title 67-6502(a)
"To protect property rights while making accommodations for other necessary types of development such as low-cost affordable housing and mobile home parks**."**
Since Statute specifically calls out "mobile home parks", consider adding it to your Housing Policies draft.
"Encourage development of a variety of housing options, including mobile home parks."
It may be argued, "variety of housing options", would include mobile home parks, however, LLUPA specifically calls them out, I feel they specifically need to be addressed since LLUPA does.
Sagle currently has 3 mobile home parks. None of them have had a vacancy in years. The need and demand for this type of housing option is great. But none of the sub areas wanted to address it. Not in my back yard was the common theme.

Agriculture

Policies, Current draft with my suggestions in red.
"Land use regulations shall protect larger parcel sizes (=/+ 20 acres) in the Agricultural zoning districts, containing prime agricultural soils, in order to preserve agricultural uses as a viable economic base in the community."

By adding this language, it aligns with LLUPA 67-6502 which specifically calls out the protection of "prime agricultural". Current Bonner County Comprehensive plan addresses which soils are classified as "prime" and which ones are classified as "non-prime". In order for agriculture ventures to be viable and feasible, they need proper soil, and water.

For instance, there are many =/+ 20 acres parcels that are currently being used as hay ground, however, not prime agricultural soils. Many are not designated as agriculture in the land use/comp plan or zoning map, but instead are zoned Rural and even Suburban. With investment backed expectations, the fear may be, of possibly being downzoned, just because a parcel is =/+20 acres and being used for pasture/hay ground.