

**PLANNING DEPARTMENT  
PUBLIC HEARING DECISION MINUTES  
WEDNESDAY, DECEMBER 5, 2018**

**CALL TO ORDER:** Chair Bailey called the Bonner County Commissioners' hearing to order at 1:30 p.m. in the 1<sup>st</sup> Floor Conference Room of the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho.

**PRESENT:** Commissioners Chair Glen Bailey; Vice Chair Dan McDonald; and Jeff Connolly

**ABSENT:** None

**ALSO PRESENT:** Planning Director Milton Ollerton; Floodplain Manager Jason Johnson; and Office Manager Jeannie Welter

**PUBLIC HEARINGS:**

**ZONE CHANGE**

**CALL FOR VISUAL, HEARING OR OTHER IMPAIRMENT REQUIRING ASSISTANCE:** The Chair asked whether anyone needed special assistance to hear, see or participate in these proceedings. Hearing no response, the Chair continued with the public hearing.

**File File ZC368-18 – Zone Change Rural 10 to Rural 5 – Rocky and Rita Jordan** are requesting to bring a split zone property to one consistent zone, specifically changing the Rural-10 zone designation to a Rural-5 zone designation. The property is located on Homestead Loop in a portion of Section 23, Township 57 North, Range 3 West, Boise Meridian. The Planning & Zoning Commission at the public hearing on November 15, 2018 recommended approval of this project to the Board of County Commissioners.

**CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS:** The Chair requested the Commissioners declare any conflicts of interest or disclosures. The Chair noted that there were no disclosures or conflicts.

**STAFF PRESENTATION:** Director Ollerton presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code.

**APPLICANT PRESENTATION:** Applicant Rocky Jordan gave a brief statement regarding the well and septic.

**PUBLIC/AGENCY TESTIMONY:** None.

**APPLICANT REBUTTAL:** None.

**BOARD DELIBERATION:** The Chair closed the hearing to public testimony. The Board discussed Findings and Conclusions.

**MOTION:** Commissioner Connolly moved to approve this project FILE ZC368-18, a zone change from Rural-10 to Rural-5, finding that it is in accord with the general and specific objectives of the Bonner County Comprehensive Plan and Bonner County Revised Code as enumerated in the following conclusions of law, and based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. Commissioner Connolly further moved to adopt the following findings of fact and conclusions of law as written. This action does not result in a taking of private property. Commissioner McDonald seconded the motion.

**VOTED** upon and the Chair declared the motion carried, unanimously.

**BOARD MOTION TO ADOPT ORDINANCE:** Commissioner McDonald moved to adopt an Ordinance of Bonner County, Idaho, the number to be assigned, citing its authority, and providing for the zone change for File ZC368-19. Commissioner Connolly seconded the motion.

**VOTED** upon and the Chair declared the motion carried, unanimously.

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**Background:**

**A. Site data:** There is one parcel approximately 23 acres.

**B. Access:** The parcel is located off Homestead Loop coming from Carr Creek Road, off Highway 2.

**C. Environmental factors:**

FEMA DFIRM Panel: 16017C0695E, Zone X.

The parcel does not contain mapped wetlands. Source: USFWS

The site does contain some slope 15-29%. Source: USGS

**D. Services:**

- Water: Individual well.
- Septic: Residential/Individual. Septic tank and leach field already in place.
- Fire District: West Side Fire District
- Power: Northern Lights
- School: Bonner School District #84.

**E. Comprehensive Plan, Zoning and Current Land Use**

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Rural Residential	Rural-5/Rural-10	Single family residence
North	Rural Residential	Rural-10	6-9 acre parcels - Residences and vacant land
East	Rural Residential	Rural-5	5+ acre parcels - Residences and vacant land.
South	Rural Residential	Rural-5	5+ acre parcels - vacant land
West	Rural Residential	Rural-5	20+ acre parcels - timberland

**F. Standards review**

Section 12-216 of BCRC specifies that “Staff and the governing bodies shall review the particular facts and circumstances of each proposal submitted and shall determine whether there is adequate evidence that the proposal is in accordance with the general and specific objectives of the comprehensive plan.” Idaho Code stipulates that zoning districts “shall be in accordance with the policies set forth in the adopted comprehensive plan.” ( I.C., §67-6511).

**BCRC 12-215 APPLICATIONS FOR ZONE CHANGES AND COMPREHENSIVE PLAN MAP AMENDMENTS, CONTENTS:**

A: Site plan drawn to scale: Please see attached maps

B: A narrative statement that addresses:

1. The effects of elements such as noise, light glare, odors, fumes and vibrations on adjoining property.

Staff: The proposal is increasing the allowable density on the north ± 7 acres by changing the Rural-10 zone to a Rural-5 zone. The potential for increase of elements appears to be minimal.

2. The compatibility of the proposal with the adjoining land uses.

STAFF: The property is currently surrounded with residential uses on five-acre parcels. There are several five-acre subdivisions in the area including Carr Creek Subdivision, Jordan’s Mountain Vista, Carribou Ridge, Elk hills and Nesting Boulder.

3. The relationship of the proposal to the comprehensive plan/zoning district.

**Comprehensive Plan Map Designation Change review**

Comprehensive Plan Designation	Provided
Rural residential provides for residential development in areas where urban services are not available and slopes may vary up to 30%. These areas include hazards and critical wildlife habitats, where lower densities reduce potential impacts to resources and exposures to loss of property or lives. Small scale agricultural uses and residential development are permitted.	<ul style="list-style-type: none"> <li>• Slopes vary 15%-29%, according to the County mapping system</li> <li>• Private roads provide access</li> <li>• Individual systems will be utilized</li> <li>• The site is designated as containing prime agriculture soils.</li> <li>• There is no flood plain present</li> <li>• No wetlands are present</li> <li>• Five-acre parcels and subdivisions neighbor the parcels</li> </ul>

**Zone Change Review**

Zone District	Provided
The rural district is established to allow low density residential uses that are compatible with rural pursuits. Such as limiting residential densities and permitted uses to those compatible with rural character; small scale farming, forestry activities, tourism and recreation activities than can be supported by rural services levels and are compatible with rural character. (BCRC12-323A)	<ul style="list-style-type: none"> <li>• The property is adjacent to a several five-acre subdivisions</li> <li>• No urban water or sewer services in the area</li> <li>• Rural densities exist that are compatible with R-5 zoning</li> </ul>

**G. Land Capability Report**

A land capability report was submitted to the record by Alan Keibert, in accordance with BCRC 12-222(j), which states:

- The site is capable of withstanding any proposed disturbance of a single family residence on the rezoned parcel of land.

**H. Stormwater plan:** A stormwater management plan was not required, pursuant to BCRC 12-720.3(k) because the proposal does not result in the creation of additional impervious surface, as defined.

**I. Agency Review:** The application was routed to agencies and the Dover Area of City Impact for comment on September 6, 2018. The following agencies commented:

**Dover –** “The proposed change is consistent with the city’s projected land use map for this area.

Road and Bridge: “No comments. The subject parcel is on a private road.”

**J. Public Notice & Comments**

No public comments received.

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**Findings of Fact**

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1. The subject property is designated as Rural Residential by the Bonner County Comprehensive Plan.
2. Alan Keibert, PLS, submitted a land capability report concluding the property is adequately suited for the Rural-5 zone district.
3. Future sewage disposal will be handled through individual systems.
4. Water will be provided by individual wells.
5. The property fronts and has access via Homestead Loop, a privately maintained road.
6. The property is located within the West Pend Orielle Fire District.
7. Surrounding properties are vacant lots and/or single-family residences on 5-acre lots.
8. The property contains no wetlands, no flood hazard area, and varying slopes.

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**Conclusions of Law:**

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**Based upon the findings of fact, the following conclusions of law are adopted:**

Conclusion 1

The proposed zone change **is** in accord with the Bonner County comprehensive plan.

- |                       |                         |                                    |
|-----------------------|-------------------------|------------------------------------|
| •Property Rights      | •Population             | •School Facilities, Transportation |
| •Economic Development | •Land Use               | •Natural Resources                 |
| •Hazardous Areas      | •Public Services        | •Transportation                    |
| •Recreation           | •Special Areas or Sites | •Housing                           |
| •Community Design     | •Implementation         |                                    |

Conclusion 2

This proposal was reviewed for compliance with the zone change criteria and standards set forth at Sections 12-212, 12-215, and 12-216, Bonner County Revised Code, and **was** found to be in compliance.

Conclusion 3

The proposal is in accord with the purpose of the intended zoning district, provided at Chapter 3, Bonner County Revised Code.

**CALL FOR VISUAL, HEARING OR OTHER IMPAIRMENT REQUIRING ASSISTANCE:** The Chair asked whether anyone needed special assistance to hear, see or participate in these proceedings. Hearing no response, the Chair continued with the public hearing.

**AMENDMENTS**

**File File AM167-18 – BCRC Text Amendment – Title 12 – Bonner County** is initiating a text amendment to Title 12, sections 12-215(C) Applications for zone changes and comp plan map amendments, contents; 12-222(J) (Conditional Use Permits) applications and contents; and 12-253.1(C) Planned Unit Development application requirements eliminating the requirement for a land capability report and adjusting the lettering in each section as affected. The Planning & Zoning Commission at the public hearing on October 18, 2018 recommended approval of this project to the Board of County Commissioners.

**CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS:** The Chair requested the Commissioners declare any conflicts of interest or disclosures. The Chair noted that there were no disclosures or conflicts.

**STAFF/APPLICANT PRESENTATION:** Planning Director Milton Ollerton presented a PowerPoint summary of the project, appeal, and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code and Bonner County Comprehensive Plan.

**PUBLIC/AGENCY TESTIMONY:** Grace Bauer spoke on the record in opposition of code change amendment.

Jonna Plante also spoke on the record.

**APPLICANT REBUTTAL:** Director Ollerton responded to public comments.

**BOARD DELIBERATION:** The Chair closed the hearing to public testimony. The Board discussed Findings and Conclusions.

**MOTION:** Commissioner Connolly moved to APPROVE this FILE AM167-18, amending the sections of Title 12, Bonner County Revised Code, as presented or amended in this hearing, to the Board of County Commissioners based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. This action does not result in a taking of private property. Commissioner McDonald seconded the motion.

**VOTED** upon and the Chair declared the motion carried, unanimously.

**BOARD MOTION TO ADOPT ORDINANCE:** Commissioner McDonald moved to adopt an Ordinance of Bonner County, Idaho, the number to be assigned, citing its authority, and providing for the amendment of Title 12, Bonner County Revised

Code, removing Sections 12-215 C., 12-222 J. and 12-253.1, providing for publication and an effective date. Commissioner Connolly seconded the motion.

**VOTED** upon and the Chair declared the motion carried, unanimously.

**Project summary:**

The Bonner County Board of Commissioners initiated an amendment to Title 12. Under the proposed amendment (File #AM167-18), these amendments are to provide for clarifications resulting from questions that occur as the ordinances are being applied.

The land capability report is required in three different sections of the code: zoning and comp plan amendments, conditional use permit, variance, and planned unit developments. The land capability report is not clearly defined. In Section 253.1 Planned Unit Developments, the code identifies a "land capability report" is required with no definition or standard. In Section 215 and Section 222, the code requires a land capability report be prepared by a person or firm qualified by training and experience to have expert knowledge of the subject. This is a vague requirement for the vast possibilities of such an analysis. Some of the requirements of the land capability report are captured through other requirements such as FEMA, PHD or septic requirements, storm drainage and erosion control plans. The vagueness in this requirement could lead to a simple report or require an expensive detailed report.

This is simply a fine tuning of the code. Below are the proposed amendments to each specific section and the description of the changes. The language in **red and underlined** is recommended as additions to the existing code. Those words in **red** and strike through would be deleted from the ordinance.

**12-215: APPLICATIONS FOR ZONE CHANGES AND COMPREHENSIVE PLAN MAP AMENDMENTS, CONTENTS:**

~~C. A **land capability** report prepared by a person or firm qualified by training and experience to have expert knowledge of the subject. The report will identify the capability of the land to withstand disturbance without risk of substantial harmful consequences of floods, sewage, drainage, erosion, sedimentation, or geological or surface slippage.~~

**12-222: (Conditional Use Permits) APPLICATION, CONTENTS:**

~~J. A **land capability** report prepared by a person or firm qualified by training and experience to have expert knowledge of the subject. The report will identify the capability of the land to withstand disturbance without risk of substantial harmful consequences of floods, sewage, drainage, erosion, sedimentation, or geological or surface slippage. A **land capability** report shall not be required to be submitted for proposals in which all of the following apply:~~

- ~~1. No additional "impervious surface", as defined in section 12-809 of this title, is created;~~
- ~~2. No additional site disturbance is proposed and no additional development will occur on slopes fifteen percent (15%) or greater;~~
- ~~3. No additional sewage disposal services are associated with the proposal;~~
- ~~4. The area in which the proposed use will occur is not located within a 100-year floodplain as determined from the FEMA flood insurance rate maps; or is not located within a mapped wetland as determined from the U.S. fish and wildlife service national wetland inventory maps; or as determined in writing by the U.S. army corps of engineers;~~
- ~~5. Existing structures or uses involved with the proposal have not had a detrimental effect on the subject land and adjacent lands with regard to floods, sewage, drainage, erosion, sedimentation, or geological or surface slippage.~~

**12-253.1: PLANNED UNIT DEVELOPMENT APPLICATION REQUIREMENTS:**

~~C. **Land capability** report.~~

**Public Comment:**

Dover provided comments: "The City Council requests Bonner County continue to require applicants to address the potential for hazards and risks from property development, whether it be in the form of a land capability report or other types of documentation to the record so the county has sufficient evidence to make informed decisions."

There were no other comments received.

**Authority**

The ordinance amendment is proposed under the authority granted at Idaho Code, Chapter 7, Title 31; Chapter 8, Title 31; and Chapter 65, Title 67; and Article XII, Section 2, of the Idaho Constitution.

**Findings of Fact:**

1. The Planning and Zoning Commission, per Idaho Code Chapter 65, Title 67, may recommend a zoning ordinance.
2. The Bonner County Planning Department has reviewed the proposed changes against Idaho Code and made amendments to better comply with the Idaho Code, specifically Title 67 Chapter 65.
3. The Board of County Commissioners is authorized by Idaho Code, Chapter 7, Title 31, to adopt ordinances, rules and regulations "...not repugnant to law, necessary for carrying into effect or discharging the powers and duties conferred by the laws of the state of Idaho, and such as are necessary or proper to provide for the safety, promote the health and prosperity, improve

the morals, peace and good order, comfort and convenience of the county and the inhabitants thereof, and for the protection of property therein..."

The proposed ordinance making the above changes adds to the clarity intended in the interpretation of the Bonner County Revised Code and Bonner County Comprehensive Plan. These actions will further balance the provision of safety, health and prosperity while maintaining the protection of property, peace, good order, comfort and convenience of the county and its inhabitants

4. Further clarifying standards enabling the public and the staff to achieve the best results leading to greater understanding and use of the zoning ordinance.

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**Conclusions of Law:**

1. The proposed amendments to Title 12 **IS** in accord with Idaho Code, Chapter 7, Title 31.
2. The proposed amendments to Title 12 **IS** in accord with Idaho Code Chapter 67 Title 65.

**CALL FOR VISUAL, HEARING OR OTHER IMPAIRMENT REQUIRING ASSISTANCE:** The Chair asked whether anyone needed special assistance to hear, see or participate in these proceedings. Hearing no response, the Chair continued with the public hearing.

**File File AM168-18 – BCRC Text Amendment – Title 12 - Bonner County** is initiating a text amendment to Title 12, Section 12-268 Application Process & General Provisions. The change would bring the Bonner County agency review process in line with the current Idaho Code requirement of 15 days' notice to agencies prior to a public hearing. The code change will lessen the burden on the applicant by shortening the process by at least 30 days. The Planning & Zoning Commission at the public hearing on October 18, 2018 recommended approval of this project to the Board of County Commissioners.

**CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS:** The Chair requested the Commissioners declare any conflicts of interest or disclosures. The Chair noted that there were no disclosures or conflicts.

**STAFF/APPLICANR PRESENTATION:** Director Ollerton presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code.

**PUBLIC/AGENCY TESTIMONY:** Grace Bauer spoke on the record in opposition of the amendment.

**APPLICANT REBUTTAL:** None.

**BOARD DELIBERATION:** The Chair closed the hearing to public testimony. The Board discussed Findings and Conclusions.

**MOTION:** Commissioner Connolly moved to APPROVE this FILE AM168-18, amending the sections of Title 12, Bonner County Revised Code, as presented or amended in this hearing, to the Board of County Commissioners based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. This action does not result in a taking of private property. Commissioner McDonald seconded the motion.

**VOTED** upon and the Chair declared the motion carried, unanimously.

**BOARD MOTION TO ADOPT ORDINANCE:** Commissioner McDonald moved to adopt an Ordinance of Bonner County, Idaho, the number to be assigned, citing its authority, and providing for the amendment of Title 12, Bonner County Revised Code, Section 268 D., E., & F., providing for publication and an effective date. Commissioner Connolly seconded the motion.

**VOTED** upon and the Chair declared the motion carried, unanimously.

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**Project summary:**

The Bonner County Board of Commissioners initiated an amendment to Title 12. Under the proposed amendment (File #AM168-18), the agency review period will be shortened to fifteen (15) days, consistent with State Code shortening the processing time for land use applications.

The current code requires the planning department provide all affected agencies the opportunity to review the application for 30 days. Once the agency review is complete, the application is then set for public hearing. In almost every case, there are a couple responses that state "no comment." It is very rare to receive an agency comment that requires a redo of an application. If there are comments received, a condition added to the application can address the concern. The current ordinance does not allow the department to set a file for hearing until agency review is completed. This proposed change will allow the hearing to be scheduled when the file is noticed to the public and agencies. Applications for lands within an Area of City Impact (ACI) will require the normal notification process per the agreement with the affected city.

This is simply a fine tuning of the code. Below are the proposed amendments to each specific section and the description of the changes. The language in **red and underlined** is recommended as additions to the existing code. Those words in **red** and strike through would be deleted from the ordinance.

**12-268: APPLICATION PROCESS, GENERAL PROVISIONS:**

- D. When the planning director has determined the application is complete and in compliance with this title, the planning director shall send copies of the application to public agencies and entities that may be affected by the

proposal, including, but not limited to, the health district, fire districts, irrigation or drainage districts, sewer and water districts, school districts, solid waste and transportation agencies and fish and wildlife agencies. The notice shall be sent at least fifteen (15) days prior to the public hearing-agencies shall have thirty (30) days to comment on the application.

- E. Applications for permits within an area of city impact shall be noticed according to the agreements set forth for the individual community.
- ~~E. When the agency comment period is complete, the planning director shall advise the applicant in writing that the comment period is complete and shall forward to the applicant the agency comments or a summary of the comments. The planning director shall advise the applicant if additional agency information is necessary in order to provide adequate evidence that the proposal meets the standards of this title. If additional agency information is required, the application shall be considered incomplete at the agency level, pending the receipt of the additional information.~~
- ~~F. On completion of the public agency review, the planning director shall schedule the application to the next available public hearing before the governing body authorized to consider the application, as provided in this title, allowing sufficient time for public hearing notice.~~

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**Public Comment:**

Dover provided comments: "If Bonner County shortens the agency comment period, the Dover City Council desires to see the Area of City Impact comment period specifically listed in the procedures section so that the county continues to afford cities the required 30- or 40-day comment period set by mutual agreements."

There were no other comments received.

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**Authority**

The ordinance amendment is proposed under the authority granted at Idaho Code, Chapter 7, Title 31; Chapter 8, Title 31; and Chapter 65, Title 67; and Article XII, Section 2, of the Idaho Constitution.

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**Staff analysis:**

Idaho Code 67-6509 lists the public hearing requirements for "recommendation and adoption, amendment and repeal of the plan." Idaho Code refers to this section for public hearing requirements for zoning, special use or conditional use permits, and planned unit developments.

Idaho Code 67-6509 requires that at least 15 days' notice be provided to all interested parties prior to the hearing scheduled with the commission.

The code change will lessen the burden on the property owner by shortening the process by at least 30 days. The agencies will still be afforded the opportunity to

provide comment. The interested parties and neighbors will also receive notice the same as before. The burden will increase on the staff to provide a staff report with a shorter review time.

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**Findings of Fact:**

5. The Planning and Zoning Commission, per Idaho Code Chapter 65, Title 67, may recommend a zoning ordinance.
6. The Bonner County Planning Department has reviewed the proposed changes against Idaho Code and made amendments to better comply with the Idaho Code, specifically Title 67 Chapter 65.
7. The Board of County Commissioners is authorized by Idaho Code, Chapter 7, Title 31, to adopt ordinances, rules and regulations "...not repugnant to law, necessary for carrying into effect or discharging the powers and duties conferred by the laws of the state of Idaho, and such as are necessary or proper to provide for the safety, promote the health and prosperity, improve the morals, peace and good order, comfort and convenience of the county and the inhabitants thereof, and for the protection of property therein..."

The proposed ordinance adding appropriate sections and deleting such adds to the clarity intended in the interpretation of the Bonner County Revised Code and Bonner County Comprehensive Plan. These actions will further balance the provision of safety, health and prosperity while maintaining the protection of property, peace, good order, comfort and convenience of the county and its inhabitants

8. Further clarifying standards enabling the public and the staff to achieve the best results leading to greater understanding and use of the zoning ordinance.

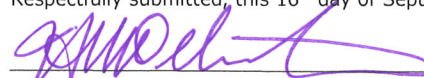
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**Conclusions of Law:**

3. The proposed amendments to Title 12 **IS** in accord with Idaho Code, Chapter 7, Title 31.
4. The proposed amendments to Title 12 **IS** in accord with Idaho Code Chapter 67 Title 65.

The Chair declared the hearing adjourned at 2:27 p.m.

Respectfully submitted, this 16<sup>th</sup> day of September 2019,



Milton Ollerton, Planning Director