

**CORRECTED**  
**PLANNING DEPARTMENT**  
**PUBLIC HEARING DECISION MINUTES**  
**NOVEMBER 18, 2020**

**CALL TO ORDER:** Chair McDonald called the Bonner County Commissioners' hearing to order at 1:30 p.m. in the 3rd floor meeting room, Suite 338 of the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho, via Zoom webinar, and YouTube live streaming.

**PRESENT:** Commissioners Chair Dan McDonald; Vice Chair Jeff Connolly; and Steve Bradshaw

**ABSENT:** None

**ALSO PRESENT:** Planning Director Milton Ollerton; Assistant Planning Director Josh Pilch; Senior Planner Amanda DeLima; Administrative Manager Jeannie Welter; and Administrative Assistant III Jenna Mickelson

**PUBLIC HEARINGS:**

**ROAD VACATIONS**

**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 VS0001-20 – Petition to vacate a portion of Hamptons Lots Subdivision public Right-Of-Way – Steve Phillabaum** is requesting to vacate a public right-of-way (Idaho title Code 40). The property is zoned Recreation. The project is located off Sundance Loop Rd. in Sections 16/21, Township 61 North, Range 4 West, Boise-Meridian.

**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:** Assistant Director Josh Pilch presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is with Bonner County Comprehensive Plan and Bonner County Revised Code.

**APPLICANT PRESENTATION:** Applicant Steve Phillabaum submitted a copy of survey (exhibit A) to the record. Discussion between applicant and commissioner's regarding ownership of portion of right-of-way to be vacated and legal access pertaining to other lots in subdivision. The applicant stated according to the plat there is no gap. Discussion regarding the easement existing on one plat but not on the other plat.

**PUBLIC/AGENCY TESTIMONY:** None.

**APPLICANT REBUTTAL:** None.

**BOARD DELIBERATION:** The Chair closed the hearing to public testimony. The Board discussed Findings and Conclusions. Discussion regarding the value of the property.

**MOTION TO APPROVE:** Commissioner Bradshaw moved to approve this petition, FILE VS0001-20, a petition to vacate a portion of Hamptons Lots Subdivision public Right-Of-Way, finding that it is in accord with Idaho Code §40-203 as enumerated in the foregoing 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 Bradshaw further moved to adopt the following findings of fact, conclusions of law and conditions of approval. The action that could be taken to obtain the vacation is to complete the Conditions of Approval as adopted. This action does not result in a taking of private property. Commissioner Connolly seconded the motion.

**VOTED** upon and the Chair declared the motion carried, with a vote of 2-1. Commissioners Bradshaw and McDonald voted in favor of the motion. Commissioner Connolly voted in opposition of the motion.

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**Background:**

**A. Site data:**

Hydrologic features: None  
Flood Zone: D  
Wet Lands: None  
Soil: Caribouridge-Stien families, complex, outwash plains of mixed geology  
Slope: 0 to 2 Percent Slopes

**B. Access:**

Access is provided off of Sundance Loop Rd.

**C. Standards review**

- Required:
  - Compliance with §40-203, Abandonment and Vacation of County and Highway District System Highways or Public Rights-Of-Way.
    - The commissioners may by resolution declare their intention to abandon and vacate any highway or public right-of-way, or to reclassify a public highway as a public right-of-way, where doing so is in the public interest.

**D. Agency Review**

The application was routed to agencies for comment on October 9, 2020.

Panhandle Health District	Dept. of Water Resources
West Priest Lake Fire District	Army Corps (Newport)
Avista utilities	Fish and Wildlife Service
School District #83	Bonner County Schools – Transportation
Dept. of Fish and Game	U.S. Forest Service
Dept. of Env. Quality	Granite-reader water and sewer
Dept. of Transportation	
Dept. of Lands, Nav. Waters	

DEQ – No comment  
Idaho Fish and Game – No Comment  
PHD – No Comment

All other agencies did not respond.

**E. Public Notice & Comments**

Two public comments was received in opposition of the vacation.

**Conclusions of Law:**

The Background section of the staff report above is the basis for all of the following findings of fact and conclusions of law. Based upon the findings of fact, the following conclusions of law are adopted:

Conclusion 1

This proposal was reviewed for compliance with the vacation criteria and standards set forth at Idaho Code, Title 40, Chapter 2, Highways and Bridges, General Provisions.

Finding

The subdivision and right of way was created in 1945 but has not been used because of the adjacent 50’ public right of way (Sundance loop Rd.)

Conclusion 2

The abandonment of the public right-of-way is in the public interest.

Finding

Vacating the 40’x 40’ right of way will not impact the public in anyway.

Conclusion 3

By granting this petition for vacation of public right-of-way, real property adjoining the subject highway or public right-of-way will not be left without access to an established highway or public right-of-way.

Finding

All surrounding parcels will continue to have access off of Sundance loop Rd.

**Conditions of approval:**

1. The vacation of the above-described right-of-way shall be effective upon the recording of a resolution by the Bonner County Commissioners granting the vacation.
2. The costs for legal advertisements and recording fees shall be borne by the applicant and shall be paid prior to the recording of the resolution vacating the right-of-way.

**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 VS0003-20 – Petition to vacate a portion of Hamptons Lots Subdivision Public Right-Of-Way – Craig Ehlinger** is requesting to vacate a public right-of-way (Idaho title Code 40). The property is zoned Recreation. The project is located off Sundance Loop Rd. in Sections 16/21, Township 61 North, Range 4 West, Boise-Meridian.

**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:** Assistant Director Josh Pilch presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is with Bonner County Comprehensive Plan and Bonner County Revised Code.

**APPLICANT PRESENTATION:** Applicant Craig Ehlinger stated he has been maintaining this property for many years. Trees from this property have fallen onto Sundance which he has taken care of.

**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 Bradshaw moved to approve this petition, FILE VS0003-20 a petition to vacate a portion of Hamptons Lots Subdivision public Right-Of-Way, finding that it is in accord with Idaho Code §40-203 as enumerated in the foregoing 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 Bradshaw further moved to adopt the following findings of fact, conclusions of law and conditions of approval. The action that could be taken to obtain the vacation is to complete the Conditions of Approval as adopted. This action does not result in a taking of private property. Commissioner Connolly seconded the motion.

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

**Background:**

**A. Site data:**

Hydrologic features: None  
 Flood Zone: D  
 Wet Lands: None  
 Soil: Caribouridge-Stien families, complex, outwash plains of mixed geology  
 Slope: 0 to 2 Percent Slopes

**B. Access:**

Access is gained off of Sundance Loop Rd.

**C. Standards review**

Required compliance with §40-203, Abandonment and Vacation of County and Highway District System Highways or Public Rights-Of-Way. The commissioners may by resolution declare their intention to abandon and vacate any highway or public right-of-way, or to reclassify a public highway as a public right-of-way, where doing so is in the public interest.

**D. Agency Review:** The application was routed to agencies for comment on October 9, 2020.

Panhandle Health District	Dept. of Water Resources
West Priest Lake Fire District	Army Corps (Newport)
Avista utilities	Fish and Wildlife Service
School District #83	Bonner County Schools – Transportation
Dept. of Fish and Game	U.S. Forest Service
Dept. of Env. Quality	Granite-reader water and sewer
Dept. of Transportation	
Dept. of Lands, Nav. Waters	

DEQ – No comment  
 Idaho Fish and Game – No Comment  
 PHD – No Comment

**E. Public Notice & Comments**

Two public comments was received in opposition of the vacation.

**Conclusions of Law:**

**The Background section of the staff report above is the basis for all of the following findings of fact and conclusions of law. Based upon the findings of fact, the following conclusions of law are adopted:**

Conclusion 1

This proposal was reviewed for compliance with the vacation criteria and standards set forth at Idaho Code, Title 40, Chapter 2, Highways and Bridges, General Provisions.

Finding

The subdivision and right of way was created in 1945 but has not been used because of the adjacent 50’ public right of way (Sundance loop Rd.)

Conclusion 2

The abandonment of the public right-of-way **is** in the public interest.

Finding

Vacating the 40’x 87’ right of way will not impact the public in anyway.

Conclusion 3

By granting this petition for vacation of public right-of-way, real property adjoining the subject highway or public right-of-way **will not** be left without access to an established highway or public right-of-way.

Finding

All surrounding parcels will continue to have access off of Sundance loop Rd.

**Conditions of approval:**

1. The vacation of the above-described right-of-way shall be effective upon the recording of a resolution by the Bonner County Commissioners granting the vacation.
2. The costs for legal advertisements and recording fees shall be borne by the applicant and shall be paid prior to the recording of the resolution vacating the right-of-way.

**TEXT AMENDMENT**

**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 AM0014-20 – Title 12 Text Amendment – Bonner County** has initiated a an amendment of the Bonner County Revised Code for the purpose of amending Section 12-412 and Table 4-2 DENSITY AND DIMENSIONAL STANDARDS; SUBURBAN, COMMERCIAL, INDUSTRIAL, RURAL SERVICE CENTER, RECREATION AND ALPINE VILLAGE ZONES to allow lot size minimums to be one (1) acre when urban water or a community drainfield is provided and adding corresponding standards requiring the sanitary restriction lift on new lots created and community drainfields be on separate lots.

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

**PUBLIC/AGENCY TESTIMONY:** None.

**APPLICANT REBUTTAL:** None.

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

**MOTION TO APPROVE:** Commissioner Connolly moved to APPROVE this FILE AM0014-20, amending the sections of Title 12, Bonner County Revised Code, as amended in this hearing, based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing, amending note (20) Community LSAS or community drain field shall be located on a common lot or tract of land. This action does not result in a taking of private property. Commissioner Bradshaw seconded the motion.

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

**MOTION TO ADOPT ORDINANCE:** Commissioner Bradshaw 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, Sections 12-412, including Table 4-2 adding standards 19 & 20, providing for publication and an effective date. Commissioner Connolly seconded the motion.

**ROLL CALL VOTE:**

Commissioner McDonald      AYE  
 Commissioner Connolly      AYE  
 Commissioner Bradshaw      AYE

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

**Project Authority**

Bonner County initiated an amendment to Title 12. Under the proposed amendment (File #AM0014-20), is provided a change to density based on presence of urban water, community LSAS or community drainfield. Currently the ordinance allows for 2 acre minimums where urban water is present, this change will now allow 1 acre but it would require a sanitary restriction lift in the creation of new lots.

This is a result of the increase in demand for smaller lots in the County as well as an effort to bring the zoning ordinance more in line with the comprehensive plan. Below are the proposed amendments 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. The orange is additional language the planning commission should consider.

TABLE 4-2 (Amending only the highlighted rows)  
 DENSITY AND DIMENSIONAL STANDARDS

Standard	Zoning District					
	S	C	I	RSC	REC	AV
Minimum lot size where all urban services are available	10,000 square feet (1), (2)	See standard (3)	See standard (3)	12,000 square feet (1), (2)	12,000 square feet (1), (2)	12,000 square feet (1), (2)
Urban water only <u>(19)</u>	<del>2</del> <u>1</u> acres (4)	<del>2</del> <u>1</u> acres	<del>2</del> <u>1</u> acres	<del>2</del> <u>1</u> acres	<del>2</del> <u>1</u> acres (4)	<del>2</del> <u>1</u> acres (4)
Community LSAS and urban water <u>(19) (20)</u>	<del>1.5</del> <u>1</u> acres (4)	<del>1.5</del> <u>1</u> acres	<del>1.5</del> <u>1</u> acres	<del>1.5</del> <u>1</u> acres	<del>1.5</del> <u>1</u> acres (4)	<del>1.5</del> <u>1</u> acres (4)
Community drain field and individual well <u>(19) (20)</u>	<del>2</del> <u>1</u> acres (4)	<del>2</del> <u>1</u> acres	<del>2</del> <u>1</u> acres	<del>2</del> <u>1</u> acres	<del>2</del> <u>1</u> acres (4)	<del>2</del> <u>1</u> acres (4)

Requirements Or Exceptions:

Add requirements (19) and (20).

(19) New lots created through any land division process shall include the sanitary restriction lift.

(20) Community LSAS or community drain field shall be located on a common lot or tract of land.

(Ord. 501, 11-18-2008; amd. Ord. 512, 1-6-2010; Ord. 538, 6-26-2014)

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**Staff and Agency Comment:**

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There have been comments received from:

City of Clark Fork – No comment  
Idaho Dept of Fish and Game – No comment  
Idaho Transportation Dept. – No comment  
Independent Highway District – See previous comment. Staff is not sure which previous comment IHD is referring to.  
Inland Power and Lights – No comment  
Pend Oreille Hospital District – No comment

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**Public Comment:**

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At the time of the staff report, there have been no public comments on this file.

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**Authority**

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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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**Findings of Fact:**

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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. The land use element of the comprehensive plan allows for the existence of one acre lots around cities and sewer districts in the recreational areas of the County.

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**Conclusions of Law:**

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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.

The Chair declared the hearing adjourned at 2:55 p.m.

Respectfully submitted, this 18<sup>th</sup> day of November 2020,



Milton Ollerton, Planning Director