

**PLANNING DEPARTMENT  
PUBLIC HEARING DECISION MINUTES  
JUNE 23, 2022**

**CALL TO ORDER:** Chair McDonald 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, via Zoom webinar, and YouTube live streaming.

**PRESENT:** Commissioners Chair Dan McDonald and Vice Chair Steve Bradshaw

**ABSENT:** Jeff Connolly

**ALSO PRESENT:** Interim Planning Director Jacob Gabell; Planner II Jason Johnson; Planner I Swati Rastogi; Planner I Chad Chambers; and Hearing Coordinator Jenna Crone.

**CHANGES IN AGENDA:**

**File AM0007-22 - Text Amendment and Map Adoption.** The County is requesting an update to BCRC 12-310-313 updating the procedures for maintaining the Bonner County Zone Map. This change moves the official zone map to digital format on the County website consistent with upgrades to technology. This includes adopting a new zone map showing all the changes that have been approved by ordinance since 2010. There are no new zone changes shown on this map.

Commissioner Bradshaw moved to continue File AM0007-22 to a date uncertain.

Commissioner McDonald stepped down from the Chair and seconded the Motion.

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

**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 ZC0005-22 - Zone Change A/F-20 and Rural-5 to Rural- 5 - Adams.** The applicants are requesting a Zone Change from Agricultural/Forestry-20 to Rural-5 to correct the split zoning. The parcel is 56.64 acres. The property is zoned A/F-20 and Rural-5. The project is located off Kelso Lake Road in Section 3, Township 54 North, Range 4 West, Boise-Meridian. The Zoning Commission, at the June 2, 2022, public hearing, recommended approval of this file 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:** Planner I Daniel Britt 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:** The following members of the public spoke on the record: Susan Bowman.

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

**MOTION TO APPROVE:** Commissioner Bradshaw moved to approve this project, FILE ZC0005-22, for a zone change from Agricultural/Forestry-20 and Rural-5 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 Bradshaw further moved to adopt the findings of fact and conclusions of law as set forth in the Staff Report (or as amended during the hearing) and direct planning staff to draft written findings and conclusions to reflect this motion, have Chairman sign, and transmit to all interested parties. This action does not result in a taking of private property.

Commissioner McDonald stepped down from the Chair to second the Motion.

**Roll Call Vote:**

**Commissioner McDonald AYE**

**Commissioner Bradshaw AYE**

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

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**Zone Change Findings of Fact**

- The parcel does not contain prime agricultural soils.
- Agricultural/ Forestry pursuits remain viable for this parcel.
- The parcel is not characterized by slopes greater than 30% grade.
- The parcel lies within Spirit Lake Fire District.
- Access to the property is on Bonner County 50' maintained easement.
- The parcel is comprehensive planned Agricultural/ Forestry Land and Rural Residential.
- Utilities are provided by Northern Lights.
- Water is provided by Individual well.
- Sewage disposal is an existing septic system.
- The parcel is currently 56.64 acres.
- Surrounding parcel are developed at or near one dwelling unit per 5 acres.
- This parcel was not identified as being within a critical wildlife habitat by any agency.

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**Zone Change Conclusions of Law:**

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

**Conclusion 1**

The proposal is in accord with the following elements of the Bonner County Comprehensive Plan:

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

**Conclusion 2**

This proposal was reviewed for compliance with Title 12, Bonner County Revised Code, and is found to be in compliance.

**Conclusion 3**

The proposal is in accord with the purpose of the Rural-5 zoning district, provided at Chapter 3, Title 12, Bonner County Revised Code.

**File ZC0041-21 – Zone Change – Rural 5 to Commercial – Lund.** The applicants are requesting a Zone Change from Rural 5 to Commercial for a 5.3 acre parcel. The property is zoned Rural 5. The project is located on Highway 95 north of Dufort Road in Section 29, Township 56 North, Range 2 West, Boise-Meridian. The Zoning Commission, at the June 2, 2022, public hearing, recommended approval of this file to the Board of County Commissioners.

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

**APPLICANT REPRESENTATIVE:** Jeremy Grimm, Whiskey Rock Planning, submitted Exhibit A (PowerPoint) and provided information on the zoning of surrounding parcels.

**PUBLIC/AGENCY TESTIMONY:** None

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

**MOTION TO APPROVE:** Commissioner Bradshaw moved to approve this project, FILE ZC0041-21, requesting a zone change from Rural-5 to Commercial, 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 Bradshaw further moved to adopt the findings of fact and conclusions of law as set forth in the Staff Report and direct planning staff to draft written findings and conclusions to reflect this motion, have Chairman sign, and transmit to all interested parties. This action does not result in a taking of private property.

Commissioner McDonald stepped down from the Chair to second the Motion.

**Roll Call Vote:**

**Commissioner McDonald AYE**  
**Commissioner Bradshaw AYE**

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

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**Zone Change Ordinance Motion: Roll Call Vote**

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Commissioner Bradshaw moved to approve an Ordinance of Bonner County, Idaho, the number to be assigned, citing its authority, and providing for the amendment of the Official Zoning Map of Bonner County by the reclassification of lands located in Section 29, Township 56 North, Range 2 West, Boise Meridian, Bonner County, Idaho from Rural-5 to Commercial, and providing for an effective date. Commissioner Bradshaw further moved to authorize the Chair to sign the official supplementary zoning map upon publication of the ordinance.

Commissioner McDonald stepped down from the Chair to second the Motion.

**Roll Call Vote:**

**Commissioner McDonald AYE**  
**Commissioner Bradshaw AYE**

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

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**Zone Change Findings of Fact**

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- The parcel is unplatted and ~5.3 acres in total size.
- The property has direct access onto Highway 95.
- Per the submitted application, the eastern portion of parcel (where the buildings sit) is flat. The parcel begins to slope down towards the lake approximately 15' west of the westernmost commercial building. The slope on the parcel is estimated to be between 15-29%.
- The parcel is designated as Transition on the Comprehensive Plan Land Use Map. This designation is intended to allow the requested Commercial zoning.
- The parcel contains mapped wetlands near and adjacent to Algoma Lake. (USFWS)
- The parcel is within SFHA Zone X and Zone A, per FIRM Panel 16017C0950E Effective Date 11/18/2009. This is not a proposal for development as defined in BCRC Title 14. No further floodplain review is required on this proposal.
- The soil types on the parcel are mostly considered prime farmland or prime farmland if irrigated.
- An individual well and septic system are present on the site.
- The parcel is served by Selkirk Fire, Northern Lights (per application), and Bonner School District #84.
- The area of the parcel mapped as having prime farmland soils is the area currently developed with a single-family home and four commercial storage buildings as well as graveled driveways and parking areas for both the home and the storage buildings.
- Because of the existing development, the area mapped as having prime farmland soil is not currently usable for farming.
- Putting any of the prime farmland soils on this parcel to agricultural use would require the demolition of development currently located on the parcel.
- The parcel in question is immediately to the north of four commercially zoned properties along Highway 95.

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**Zone Change Conclusions of Law:**

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

**Conclusion 1**

The proposal is in accord with the following elements of the Bonner County Comprehensive Plan:

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

**Conclusion 2**

This proposal was reviewed for compliance with Title 12, Bonner County Revised Code, and is found to be in compliance.

**Conclusion 3**

The proposal is in accord with the Commercial zoning designation.

**File AM0004-22 - Text Amendment to BCRC 12-341, General Provisions for Nonconforming Uses and Structures.** The applicants are requesting a Text Amendment to BCRC 12-341, proposing a provision for accumulated expansion by up to ten percent (10%) of a commercial, industrial or public use set forth in BCRC 12-333 and table 3-3, BCRC 12-334 and table 3-4, BCRC 12- 335, or structures in any zoning district that was established prior to November 18, 2008. The applicants are also requesting that natural material resource-based uses, operating under an approved Idaho Department of Lands Reclamation plan, and set forth in BCRC 12-336 and table 3-6, non-conforming uses existing at/on November 11, 2008 be approved to have a provision to expand within the parcel boundaries. The Planning Commission, at the May 17, 2022, public hearing, recommended denial of this file to the Board of County Commissioners. This File is being continued from June 8, 2022.

**STAFF PRESENTATION:** Planner I Swati Rastogi presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is not consistent with Bonner County Revised Code.

**APPLICANT REPRESENTATIVE:** Jeremy Grimm, Whiskey Rock Planning, presented a PowerPoint presentation (Exhibit B) outlining why the existing code is insufficiently clear and how the proposed text amendment provides clarity and to avoid misinterpretation moving forward.

**APPLICANT REPRESENTATIVE:** Toby McLaughlin, Sandpoint Law, discussed previous County Resolutions regarding mining production and mining rights.

**APPLICANT PRESENTATION:** Mike Peak, Applicant, spoke on the volume and production of his gravel mine and the importance of these materials.

*Chair McDonald called for a recess at 3:05 p.m.*

*Chair McDonald called the hearing back to order at 3:12 p.m.*

**PUBLIC/AGENCY TESTIMONY:** The following members of the public spoke on the record: Shawn Moore, Larry Smith, Susan Bowman, Dave Bowman, Jonna Plante, ReAnna Sharp, Doug Paterson, Maureen Paterson, and Rusty Brooks.

**APPLICANT REBUTTAL:** Toby McLaughlin, addressed comments made by the public.

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

**MOTION TO APPROVE:** Commissioner Bradshaw moved to approve this project FILE AM0004-22, to the Board of County Commissioners, to amend the sections of Title 12, Bonner County Revised Code, as presented or amended in this hearing, based upon the discussion during the deliberation, the findings of facts and conclusions of law as amended during the hearing. The decision is based upon and testimony received at this hearing. Commissioner Bradshaw further moved to adopt the findings of fact and conclusions of law as set forth in

our discussion and direct planning staff to draft written findings and conclusions to reflect this motion, have the Chairman sign, and transmit to all interested parties. This action does not result in a taking of private property.

Commissioner McDonald stepped down from the Chair to second the Motion.

**Roll Call Vote:**

**Commissioner McDonald AYE**

**Commissioner Bradshaw AYE**

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

**Findings of Fact:**

1. Citizens of Bonner County, per Idaho Code Chapter 65, Title 67, may recommend a zoning ordinance.
2. The applicants are requesting amendments to BCRC 12-341. General provisions for non-conforming uses and structures.
3. The intent of the text amendment is to bring clarity to the provisions of the code for Commercial Uses (BCRC 12-333 and table 3-3), Industrial Uses (BCRC 12-334 and table 3-4), Public Uses (BCRC 12-335 and table 3-5) and Resource based Uses (BCRC 12-336 and table 3-6).
4. The provisions of BCRC 12-431.A.1. have been misconstrued in the past to understand that commercial, industrial and public uses as mentioned above include resource based uses as well, despite clear segregation of uses provided in the previous subchapter – Subchapter 3.3. This text amendment is an attempt to bring clarity to the code as it is practiced.
5. On November 18, 2008, Bonner County repealed the existing zoning ordinance in its entirety and replaced it with the Bonner County Revised Code through ordinance No. 501. Consequently, all uses established before November 18, 2008 are now legal non-conforming whether established in compliance with the zoning regulations at the time or not.
6. The proposed text amendment addresses certain specific resource based legal non-conforming uses such as mining, stone quarries and gravel pits functioning under an approved Idaho Department of Lands Reclamation Plan (uses typically requiring extraction of material from earth and natural expansion for continued functioning) through addition of BCRC 12-341.A.3, to allow expansion of such uses within parcel boundaries with an Idaho Department of Lands approved Reclamation Plan.
7. The text amendment is not applicable to any new mining operations that shall be permitted only with Conditional Use Permits as required by the County's current land use ordinances.
8. As per the comments received from Idaho Department of Lands, the agency notes that an interagency review with IDEQ, Fish and Game and IDWR may not be required for all reclamation plans unless potential impacts to water quality and wildlife are identified. Interagency reviews are undertaken to identify if permits would also be required from other agencies suggesting improvements to mitigate impacts to water quality and wildlife. The agency further notes that interagency reviews are not intended to address every

concern put forward by the other agencies if those concerns involve issues outside of IDL authority such as noise, hours of operation, public safety, air quality, etc.

However, the applicant provided testimony that the public health and safety concerns lying outside of IDL's authority can be addressed by other public agencies such as MSHA responsible for noise, dust, safety and miners rights; OSHA for responsible for regulating health and safety for the sites; IDEQ responsible for assigning permits for crushing and screening plants; EPA responsible for monitoring water, air quality and testing for dust through opacity testing, ATF responsible for regulating drilling and blasting etc.

Additionally, the County ordinances do not oversee or regulate water quality, air quality etc. Mines have a constitutional protection and the text amendment as proposed does meet the Idaho State code. Therefore, it's important that the County stays within its lane and regulate land use alone that it is responsible for.

9. The text amendment proposes that the expansion of the legal non-conforming mining activities would be allowed to expand only within the parcel boundaries as they existed on November 18, 2008. In case of any reduced parcel sizes, the expansion of non-conforming use should be restricted within the parcel boundaries as they exist on the date of the request for expansion.

10. The proposed text amendment is in accord with the following objective of the Bonner County Comprehensive Plan, as well as all other general and specific objectives of the Comprehensive Plan as listed in the staff report.

"Impacts to other properties shall be taken into account when considering land use proposals, policies and codes."

11. Grandfathered mining operations in the County provide material for maintenance of the County Road systems. If these mines were to be shut down, the mere cost of transportation for bringing in gravel from outside of County for the maintenance of the County road system could have huge cost implications to the County.

12. The legal non-conforming operations have the grandfathered right to expand within the parcel boundaries without being considered expansion as has been practiced by the County through the previous decades. This has been addressed in the letter to the Board, dated June 20, 2022, written by the ex-director of the Planning Department, Clare Marley stating -

*"As the Bonner County Planning Director for 13 years from 2002 to 2015, I authored several zoning code text amendments addressing non-conforming uses. I recently learned about issues that have arisen over the status of non-conforming or "grandfathered" mining operations and the request by mine operators to rectify apparent misinterpretations of county code.*

*Of particular interest is an apparent interpretation that grandfathered (non-conforming) mines could not continue to operate without first obtaining a conditional use permit. This decision apparently is tied to Section 12-341, Bonner County Revised Code (BCRC), which allows the accumulated expansion of up to 10% of a "commercial, industrial, or public use or structure," but requires a conditional use permit beyond that. When I drafted this section on non-conforming uses, I purposefully listed commercial, industrial or public uses, and did not include resourced-based uses, which includes mining. Mines already have a right to continue extracting materials within the*

*parcel boundaries of existing, grandfathered operations without being considered expansion. This right has been confirmed through many past planning directors over time. To decide otherwise would deny mining operators rights set by the non-conforming standards of zoning code. Essentially, this code interpretation would stop every grandfathered pit or quarry operator from taking one more shovelful of gravel until they obtained a conditional use permit and would effectively shut down every grandfathered county or private mining operation. Extraction of materials within the parcel boundaries of a grandfathered, lawfully operating pit or quarry is not considered "expansion."*

*I would urge the County to confirm these lawful, non-conforming mining operations have the rights to continue to extract materials within the parcel boundaries of the established, grandfathered mines, through policy making and/or text amendments, where necessary."*

13. 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..."

14. Based upon the reasoning provided in this staff report, the Findings of Fact and the Conclusions of Law, the proposed ordinance improves and adds clarity in the interpretation of the Bonner County Revised Code. Based upon the reasoning provided in this staff report, adopting the proposed changes 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.

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#### Conclusions of Law:

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Conclusion 1: The proposed amendment **IS** in accord with Idaho Code, Title 31, Chapter 7.

Conclusion 2: The proposed amendment **IS** in accord with Idaho Code Title 67, Chapter 65.

Conclusion 3: The proposed amendment **IS** in accord with all the general and specific objectives of the Bonner County Comprehensive Plan.

The Chair declared the hearing adjourned at 3:57 p.m.

Respectfully submitted, this 6<sup>th</sup> day of July 2022,

  
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Jacob Babell, Interim Planning Director