

**BONNER COUNTY PLANNING and ZONING COMMISSION  
PUBLIC HEARING MINUTES  
JANUARY 7, 2021**

**PLEDGE OF ALLEGIANCE**

**CALL TO ORDER:** Chair Bailey called the Bonner County Planning and Zoning Commission hearing to order at 5:30 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 Brian Bailey; Vice Chair Matt Linscott; Don Davis; Taylor Bradish; Dave Frankenbach; Sheryl Reeve; and Suzanne Glasoe

**ABSENT:** None

**ALSO PRESENT:** Planning Director Milton Ollerton; Assistant Planning Director Josh Pilch; Senior Planner Amanda DeLima; Planner II Halee Sabourin; Planner II Tessa Vogel; Administrative Manager Jeannie Welter; and Administrative Assistant III Elizabeth Jensen

**CHANGES IN AGENDA:** None

**CONSENT AGENDA:**

**APPROVAL OF MINUTES:** The Chair requested the Commissioners declare if they had any corrections or changes to the approval of minutes as written for: December 17, 2020. Hearing no changes or objections, the Chair declared the minutes approved as written.

**PUBLIC HEARINGS:**

**ZONE CHANGES**

**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 ZC0014-20 - Zone Change - Joseph & Shawna Huggler** are requesting a zone change from Rural-10 to Rural-5. The 20.08 acre property's comprehensive plan designation is Rural Residential. The project is located off Hunter Road in Section 16, Township 54 North, Range 5 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:** Planner II Tessa Vogel presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code.

**APPLICANT PRESENTATION:** None

**PUBLIC/AGENCY TESTIMONY:**

The following individuals spoke on the record:

- Ron Smith
- Wayne Martin
- Nickl H.

**APPLICANT REBUTTAL:** None

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

**MOTION TO RECOMMEND APPROVAL:** Commissioner Bradish moved to recommend approval to the Board of County Commissioners on this project, FILE ZC0014-20, requesting 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 Bradish 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 Linscott seconded the motion.

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

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**Background:**

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**A. Site data:**

- Use: Vacant
- Unplatted
- Size: 20.08 acres
- Zone: Rural-10
- Land Use: Rural Residential

**B. Access:**

- Hunter Road
  - 30' wide public (Bonner County) road within a public right-of-way.

**C. Environmental factors:**

- Site does not contain mapped slopes. (USGS)
- Site does not contain mapped wetlands. (USFWS)
- Site does not contain waterfront or streams. (NHD)

- Per Jason Johnson, CFM: *Parcel is within SFHA Zone X, per FIRM panel 16017C1100E, effective date 11/18/2009. No further floodplain review is required on this proposal.*
- Soils –
  - Rathdrum-Bonner ashy silt loams, 0-8% slopes
    - Classification: All areas are prime farmland
    - Drainage: Well drained
  - Kootenai gravelly silt loam, 0-4% slopes
    - Classification: Prime farmland if irrigated
    - Drainage: Well drained

**D. Services:**

- Water: Individual well
- Sewage: Individual septic
- Fire: Spirit Lake Fire District
- Power: Inland Power & Light

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

| Compass | Comp Plan         | Zoning   | Current Land Use & Density |
|---------|-------------------|----------|----------------------------|
| Site    | Rural Residential | Rural-10 | Vacant timber ground       |
| North   | Rural Residential | Rural-10 | Vacant timber ground       |
| East    | Rural Residential | Rural-10 | Vacant timber ground       |
| South   | Rural Residential | Rural-10 | Vacant timber ground       |
| West    | Rural Residential | Rural-5  | 5 acre lots with houses    |

**F. Standards review: Bonner County Revised Code**

- **12-215:** Applications for Zone Changes and Comprehensive Plan Map Amendments, Contents
  - A. The application was considered complete and routed to agencies accordingly.
- **12-216:** Evaluation of Amendment Proposals
  - A. 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. (Ord. 501, 11-18-2008)
- **Comprehensive Plan:**
  - The Rural Residential area provides for residential development in areas where urban services are not available and slopes may vary up to 30%. These areas include hazard areas 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. The requested zone change would be in compliance with the comprehensive land use designation.

• **Existing Zoning: BCRC 12-323 Rural District (Rural-10)**

- A. The rural district is established to allow low density residential uses that are compatible with rural pursuits. The purpose can be accomplished by:
  1. Limiting residential densities and permitted uses to those that are compatible with rural character and nearby resource production districts and sites and can be adequately supported by rural service levels.
  2. Allowing small scale farming and forestry activities, and tourism and recreation uses that can be supported by rural service levels and are compatible with rural character.
  3. Encouraging conservation development configurations that create permanent open space or farming areas, protect sensitive environmental features, reduce infrastructure costs and/or enhance recreational opportunities.
- B. Use of this zone is appropriate in areas designated by the comprehensive plan as follows:
  1. **R-10** In areas designated as rural residential in the comprehensive plan that meet one or more of the following criteria:
    - a. Characterized by slopes that are steeper than thirty percent (30%).
    - b. Located within critical wildlife habitat as identified by federal, state or local agencies.
    - c. Contain prime agricultural soils.
    - d. Served by a network of public and/or private roadways that generally do not meet applicable roadway standards set forth in title 2 (public roads) of this code of appendix A (private roads) of this title or are absent.
    - e. Within the floodway.
    - f. Contain limited access to public services.

• **Proposed Zoning: BCRC 12-323 Rural District (Rural-5)**

- The proposal is to stay within the Rural zoning district but to rezone from Rural-10 to Rural-5.
- BCRC 12-323(B): Use of this zone is appropriate in areas designated by the comprehensive plan as follows:
  - BCRC 12-323(B)(2): **R-5** in areas designated rural residential in the comprehensive plan that are already developed at or near the one dwelling per five (5) acre density and/or do not meet the criteria for R-10 above.

**G. Stormwater plan**

- A stormwater management plan was not required due to the proposal not resulting in new impervious surfaces.

**H. Agency Review:** The application was routed to agencies for comment on **December 08, 2020.**

**Bonner County Road & Bridge Department:** *No comments.*

**Idaho Department of Environmental Quality:** *DEQ has no comments for project ZC0014-20.*

**Idaho Department of Lands – Sandpoint:** no response

**Idaho Department of Water Resources:** no response

**Inland Power & Light:** *Inland Power would be the serving utility for this parcel. We supply electric service from Hunter Road.*

**Panhandle Health District:** *Panhandle Health District (PHD) does not have a comment on the zone change. PHD notes that the application states there is to be individual septic provided for each new lot. PHD has no record of septic approval for the property. We recommend the applicant contact PHD to assess the septic feasibility.*

**Spirit Lake Fire District:** no response

**U.S. Forest Service:** no response

*\*All taxing districts for Bonner County were routed as well.*

**I. Public Notice & Comments:** The application was routed to property owners within 300' of the subject property for comment on **December 08, 2020.** No public comments were received at the time of the completion of this staff report.

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#### **Zone Change Findings of Fact**

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1. The existing parcel is designated Rural Residential in the comprehensive plan.
2. The site fronts on Hunter Road, a public roadway within a public right-of-way.
3. The entire 20.08 acre parcel is proposed to be rezoned from Rural-10 to Rural-5.
4. Parcels and lots in the vicinity are zoned Rural-5 and Rural-10 with a comprehensive plan designation of Rural Residential and are either vacant or developed with residential uses.
5. The site is within the boundaries of the Spirit Lake Fire District and is to be served by individual septic, individual well, and Inland Power & Light.
6. A land division application with Bonner County will be required for the proposed land division of creating four, five (5) acre lots.
7. The parcel does not feature slopes, wetlands, or surface water.

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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 was 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.

#### **PUBLIC HEARING**

**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 AM0011-20 – Title 12 Text Amendment – Bonner County** is initiating a text amendment to Bonner County Revised Code to include the following proposed changes: 1) Amend the following sections with respect to surface mining and batch plant uses and standards in various zones, and the necessary permits and procedures to permit said uses: **Sections 330:** Use Tables Described, **336:** Resource Based Use Table, **482:** Mining, **Section 482.2:** Batch Plants, **Section 341:** General Provisions for Nonconforming Uses and Structures. This includes amending **Table 3-6 Resource Based Use Table** and amending the table's **Standards.** 2) Amend Chapter 8 Definitions to amend and add definitions pertaining to surface mines (temporary & permanent), batch plants, certified uses, and certificates of zoning compliance. 3) Add **Subchapter 2.7:** Certificate of Zoning Compliance, and the respective, necessary procedures and requirements.

**CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS:** The Chair requested the Commissioners declare any conflicts of interest or disclosures. Chair Bailey and Vice Chair Linscott recused themselves from this file. Chair Bailey appointed Commissioner Davis as acting Chair to facilitate this file.

**STAFF/APPLICANT PRESENTATION:** Planner II Hallee Sabourin presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code. Ms. Sabourin stated staff received a comment from Panhandle Health District after the staff report was prepared.

**PUBLIC/AGENCY TESTIMONY:**

The following individuals spoke on the record in favor of this project:

- Mike Peak

The following individuals spoke on the record opposed to this project:

|               |                    |
|---------------|--------------------|
| Jonna Painte  | ReAnna Sharp       |
| Rusty Brookes | Scott Rusho        |
| Larry Smith   | Kristine Noella    |
| Carol Curtis  | Nikki Hockenberger |
| Reg Crawford  | Susan Drumheller   |

**STAFF/APPLICANT REBUTTAL:** Planner II Halee Sabourin responded to comments from the public. She address some of the verbiage changes as well as spoke to the removal/shift of some of the verbiage. She also explained the complaint process.

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

**MOTION TO RECOMMEND APPROVAL:** Commissioner Suzanne Glasoe moved to recommend approval of this project FILE AM0011-20 to the Board of County Commissioners to amend the sections of Title 12, Bonner County Revised Code, as presented or amended in this hearing, finding that it is in accord with the general and specific objectives of the Bonner County Comprehensive Plan as enumerated in the following findings of fact and 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 Suzanne Glasoe further moved to recommend adoption of the following findings of fact and conclusions of law as written during this hearing amending section 12-341.A.3 and section 12-336 (22). This action does not result in a taking of private property. Commissioner Bradish seconded the motion.

**VOTED** upon and the Acting Chair declared the motion carried, 3-1. Commissioners Glasoe, Reeve, and Bradish voted in favor of the motion. Commissioner Frankenbach voted in opposition.

**Project Authority**

This Ordinance amendment is proposed under the authority granted at Idaho Code:

- §31-714 through §31-716 (Board of County Commissioners)
- §31-801 (Powers And Duties Of Board Of Commissioners);
- §67-6518 (Local Land Use Planning – Standards);
- §67-6509 (Procedural requirements, Recommendation and adoption, amendment, and repeal of the plan);
- §67-6511 (Zoning ordinance);

And Bonner County Revised Code:

- BCRC 12-213 (Applications, Applicants for Amendments to This Title);
- BCRC 12-214 (Procedures for Amendments to This Title);
- BCRC 12-216 (Evaluation of Amendment Proposals);
- BCRC 12-217 (Public Hearings, Notice of).

**Project Summary:**

The Bonner County Planning Department initiated an amendment to Title 12. The proposed amendment (File #AM0011-20), are to provide for the following:

Bonner County Planning Department is proposing a new administrative procedure called a "certificate of zoning compliance". The purpose in adding the "certificate of zoning compliance" is two-fold:

- 1) To verify the legality of land uses and development/structures just as the "certificate of compliance" verifies legality of a lot or parcel.
- 2) To provide a review process for those uses with specific and thorough standards outlined in the ordinance addressing those concerns that would come up in a public hearing process.

Bonner County Planning Department is also proposing modifications to the existing ordinance with regards to mining, rock crushing, and batch plants/nonmetallic mineral processing plants. The purpose of these amendments is to provide clear standards for operation of these uses while ensuring the uses will be in compliance with state and federal regulations.

Currently, our standards revolving around emissions of noise, light, glare, smoke, odor, dust, particulate matter, vibrations or hours of operation are vague. Vague standards can lead to arbitrary conditions or rules set in place during a public hearing procedure in an attempt to satiate public concerns. However, the permits and plans required by state and federal agencies have much clearer standards, and they have the power and means to enforce said standards. It does not make sense for Bonner County Planning to regulate the proper authority whom have the required expertise and the standards in place for public health, safety, and welfare.

**Public and Agency Comment:**

**Agency Review**

The application was routed to agencies for comment on July 28, 2020.

*Bonner County Road Department  
 Avista Utilities  
 Northern Lights  
 BNSF Railway*

*Idaho Department of Water Resources  
 U.S. Army Corps (Coeur d'Alene)  
 Army Corps (Newport)  
 U.S. Fish and Wildlife Service*

Union Pacific Railroad  
Bonner County Schools – Transportation  
Idaho Department of Fish and Game  
Idaho Department of Environmental Quality  
Idaho Department of Lands, Nav. Waters

Idaho Department of Lands (Sandpoint)  
State Historical Society  
Naval Station Bayview  
Federal Aviation Admin  
Verizon

**The following agencies commented:**

*City of Kootenai – 8/11/2020*

*"The City Council members discussed their concerns for allowing mining operations and asphalt/batch plants to be administratively permitted in certain zones through the proposed 'certificate of compliance.' Although the zoning code continues to prohibit the mines and batch plants within the Areas of City Impact, these operations can still have far-reaching effects on air and water quality, noise, and traffic impacts, as the City of Kootenai has witnessed with gravel pits and rock quarries north of the City. The Council believes these major land use decisions should not be made by staff members, who are not elected officials. Applications for mining operations and batch plants should be considered through the public hearing process. Without public hearings, affected landowners and cities will not have the due process rights to review the proposal, observe the proceedings, and have their concerns be heard. The City Council voted unanimously to advise Bonner County that is objects to the proposed ordinance amendment."*

*City of Kootenai – 10/8/2020*

*"The Council strongly objects to the removal of Standard #21 from the Resources table, which would open up Areas of City Impact to batch plant operations. The City has a large mining operation to the north within the ACI and would be further affected by an added batch plant to this operation. Removal of the standard, paired with the administrative action on a batch plant, leaves the City with no ability to comment on operations and request off-site mitigations. Administrative actions are not covered by the ACI agreement for city notification. Batch plants are not appropriate uses within an ACI, where there is potential for future annexation into the city limits."*

*"There may be an error in the ordinance text relating to batch plants. The Resource table lists the use as "C" for conditional use permit required. But Section 12-482.2 C 2 requires the administrative "certificate of zoning compliance permit" for batch plants. The City believes the batch plants should be conditionally permitted through the hearing process and also be prohibited within the ACI."*  
*Bayview Naval Station Everett – 9/16/2020*

*"In regard to our request for project notification: I've had an opportunity to review and discuss the potential effect of mining and certain land use activities on underwater ranges. Our analysis finds it is only the industrial pier and marine transfer operations and resulting vessel traffic that would impact the mission - and not the upland mining itself. Therefore, please modify our request for notification to the following: Any future mines that use marine transit for extraction; and/or any future*

*projects that include shoreline industrial piers within the acoustic line of site to the ARD Bayview testing facility on Lake Pend Oreille."*

**The following agencies replied "No Comment":**

*City of Clark Fork – 7/17/2020*  
*Pend Oreille Hospital District – 7/30/2020*  
*Spirit Lake Fire District – 7/20/2020*  
*Granite Reeder Bay Sewer District – 7/23/2020*  
*Independent Highway District – 10/1/2020*

**All other agencies did not reply.**

**Public Notice & Comments**

Public comments were received in opposition. See staff response addressing common concerns.

**Staff Response:**

Overall, there appears to be common concerns regarding the following: which category mining uses and its auxiliary uses fall into, what due process entails per state statute, and the available resources to educate themselves further on the proposed changes.

The mining and its auxiliary uses are resource based uses, not commercial or industrial in nature. It has been categorized this way since 2008, outlined in the comprehensive plan, and is not proposed to be changed. All new batch plants and surface mines are proposed to have specific standards mandating proof of compliance with state and federal level environmental standards to ensure public health, safety, and welfare. Additionally, batch plants will only be allowed in conjunction with a surface mine to localize and reduce the impact of these uses on the county. If the plants do not meet the required standards they will not be approved – these uses cannot be approved with a signature alone. Lastly, only accessory uses are proposed to be administratively permitted – all new surface mines must go through the conditional use permit process.

Due process is provided for during this amendment procedure. It is not against the law to establish administrative procedures as long as the ordinance proposal goes through the required public hearing process as mandated by Idaho Statute. The legals have the mandated information provided on them per Idaho Statute 67-6509.

The public has access to the proposal via the planning department's website and have been notified of a workshop prior to staff report posting and hearing to show new analysis and proposed changes that were not in the original proposal. This gives time for the public to review the proposal and provide comment. Additionally, the planning department is open 9 a.m. - 5 p.m. Monday through Friday, and the public is welcome to have a conversation, or set up a meeting should they desire any clarification, voice any concern, or provide suggestions and perspective.

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**Staff Analysis:**

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

## **Subchapter 2.7 – Certificate of Zoning Compliance**

### **12-270: Purpose**

#### **12-271: General Provisions**

#### **12-272: Application, Contents**

#### **12-273: Certificates of Zoning Compliance, Standards For Review Of Applications, Procedures**

#### **12-274: Approval, Disapproval, Appeal Of Decision**

### **12-270: PURPOSE:**

- A. The purpose of a certificate of zoning compliance is to ensure a land use is in conformance with the code, whether it be a prior, existing, or new use.
- B. This subchapter establishes the procedure for certificates of zoning compliance in a zoning district.

### **12-271: GENERAL PROVISIONS:**

- A. No construction or alteration shall commence until the Planning Director has issued a certificate of zoning compliance. If no structures are involved, no use, or change in use, shall commence until the director has issued a certificate of zoning compliance.
- B. No certificate of zoning compliance shall be issued for any use on a property in violation of this title or on a property that contains structures or uses in violation of this title. Any certificate of zoning compliance secured in violation of a state or federal law shall be invalid.
- C. Once a certificate of zoning compliance is approved, the standards of the certificate of zoning compliance become the controlling plan for the use of the property and may only be changed in accord with section 12-266 of this chapter.
- D. Certificates of zoning compliance issued under this title are valid for the life of the use at the location for which the certificate was issued, unless an expiration date is specified in the certificate of zoning compliance or unless a certificate has been revoked under this title. Certificates of zoning compliance shall be deemed to run with the land to which they are attached, and the terms of the certificate shall not be modified or terminated by a change in ownership of the lands.

- E. The certificate of zoning compliance may require inspections and approvals specified in the approval of the application.
- F. The certificate of zoning compliance may be invalidated if there is a violation of any regulations in this title on the subject property, or any term of the zoning certificate.
- G. Alleged or perceived violations will be dealt with in accordance with Subchapter 1.3 - Enforcement of this title. If it is determined that the certificate of zoning compliance or this title have been violated, a stop work order may be issued and remain in effect until the violation has been remedied.

### **12-272: APPLICATION, CONTENTS:**

An application for a certificate of zoning compliance must be submitted to the Planning Department. At a minimum, the application shall contain the following information:

- A. Name, address and phone number of applicant.
- B. Authorized signature of at least one owner of the property for which the certificate of zoning compliance is proposed.
- C. Legal description of property.
- D. Applicant's interest in title.
- E. Description of existing use.
- F. Zoning district in which property is located.
- G. Description of proposed use requested.
- H. A narrative statement that addresses:
1. The effects of elements such as noise, glare, odors, fumes and vibrations on adjoining property.
  2. The compatibility of the proposal with the adjoining land uses.
  3. How the proposed use complies with the comprehensive plan.
- I. A plan of the site, drawn to scale, showing location of all existing and proposed buildings, parking and loading areas, traffic access and circulation, undisturbed areas, open spaces, landscaping, refuse and service areas, utilities, signs and yards.
- L. Other information that the Planning Director requires to determine if the proposed certificate of zoning compliance meets the intent and requirements of this title, such as information regarding utilities, traffic, service connections, natural resources, unique features of the land or off site features affecting the proposal.

**12-273: CERTIFICATES OF ZONING COMPLIANCE, STANDARDS FOR REVIEW OF APPLICATIONS, PROCEDURES:**

- A. Any person owning a lot or parcel may apply for a certificate of zoning compliance for existing uses and/or development, on an application form provided by the Planning Department, requesting the Planning Director to determine whether the use and/or development complies with the applicable provisions of this Code in effect at the time the use and/or development occurred prior to November 18, 2008.
- B. Any person owning a lot or parcel may apply for a certificate of zoning compliance for new uses and/or development, on an application form provided by the Planning Department, requesting the Planning Director to determine whether the use and/or development complies with the applicable provisions of this Code.
- C. The fee for applying for a certificate of zoning compliance shall be as set forth in section 12-265 of this title.
- D. The director shall review the particular facts and circumstances of each proposal submitted. To grant a certificate of zoning compliance, the director must find there is adequate evidence showing that the proposal is in accordance with the general and specific objectives of the comprehensive plan and this title.
- E. The planning director shall send notice to those public agencies that may be affected by the proposed or existing use.
- F. Upon acceptance of an application, the Director shall provide notification by mail of the certificate of zoning compliance request to the owners of parcels within three hundred feet (300') of the external boundaries of the parcel and shall provide such individuals a period of twenty one (21) calendar days from the date of the mailing to submit comments concerning the proposed certificate.

**12-274: APPROVAL, DISAPPROVAL, APPEAL OF DECISION:**

- A. Within seven (7) working days from the end of the twenty one (21) day comment period from staff, agency, and those from affected property owners, after the filing of a complete application for a certificate of zoning compliance, according to the provisions of these regulations, the Planning Director shall either issue or refuse to issue the certificate; when such certificate is refused, the Planning director shall state in writing their reason(s) for such refusal, so informing the applicant and retaining a file copy of the action in accord with Idaho Code sections 67-6519 and 67-6535.
- B. The final decision of the Planning Director on a certificate of zoning compliance may be appealed to the board as set forth at section 12-261 of this chapter.

**STAFF: CERTIFICATE OF ZONING COMPLIANCE**

Bonner County Planning Department is proposing a new administrative procedure called a "certificate of zoning compliance". The purpose in adding the "certificate of zoning compliance" is two-fold:

- 1) To verify the legality of land uses and development/structures just as the "certificate of compliance" verifies legality of a lot or parcel.
- 2) To provide a review process for those uses with specific and thorough standards outlined in the ordinance addressing those concerns that would come up in a public hearing process.

**12-330: USE TABLES DESCRIBED:**

In the use tables in this subchapter, land use classifications are listed on the vertical axis and zoning districts are shown on the horizontal axis.

- A. If no symbol appears in the box at the intersection of the column and the row, the use is not allowed in that district.
- B. If the symbol "P" appears in the box at the intersection of the column and row, the use is permitted subject to general requirements for the use and the zoning district.
- C. If the symbol "C" appears in the box at the intersection of the column and the row, the use is permitted subject to the conditional use provisions specified in chapter 2, subchapter 2.2 of this title and to general requirements for the use and the zoning district.
- D. If the symbol "Z" appears in the box at the intersection of the column and row, the use is permitted subject to the certificate of zoning compliance provisions specified in chapter 2, subchapter 2.7 of this title and the general and specific requirements for the use and the zoning district.
- D E. Standards associated with particular uses are identified by numbers in parentheses. Standards are listed below the tables. Standards listed in the "use" column (far left column in each table) apply to the applicable use in each district that the use is permitted or conditionally permitted. (Ord. 501, 11-18-2008)

**12-336: RESOURCE BASED USE TABLE:**

TABLE 3-6  
RESOURCE BASED USE TABLE (amending only those referenced portions below)

| Use   | Zoning District |        |        |   |   |        |     |     |    |
|---|-----------------|--------|--------|---|---|--------|-----|-----|----|
|   | F               | A/F    | R      | S | C | I      | RSC | REC | AV |
| Batch plant - asphalt and/or concrete (4), (21)                   | C (22)          | C (22) | C (22) |   |   | P (21) |     |     |    |
| Existing Mining stone quarries, gravel pits, and stone mills (22) | Z               | Z      | Z      | Z | Z | Z      | Z   | Z   | Z  |

| Use  | Zoning District |          |          |   |   |    |     |           |           |
|--|-----------------|----------|----------|---|---|----|-----|-----------|-----------|
|  | F               | A/F      | R        | S | C | I  | RSC | REC       | AV        |
| Permanent Mining stone quarries, gravel pits, and stone mills (10), (3), (4) | C<br>(5)        | C<br>(5) | C<br>(5) |   |   | C  |     | C<br>(10) | C<br>(10) |
| Temporary mining stone quarries, gravel pits, and stone mills (10)           | Z               | Z        | Z        |   |   | Z  |     |           |           |
| Open pits (23)   | Z               | Z        | Z        | Z | Z | PZ | Z   | Z         | Z         |
| Rock crushing operations   | C<br>(5)        | C<br>(5) | C<br>(5) | - | - | C- |     |           |           |

(3) Sufficient land area is required to accommodate the proposed use, and the use and any appurtenant structures shall be so arranged on the land as to minimize any adverse effects on surrounding properties. The use shall not create particular hazards to adjacent properties.

(4) Specified conditions with respect to emissions of noise, light, glare, smoke, odor, dust, particulate matter, vibrations or hours of operation may be prescribed differently from those required in a given district, as to be compatible with other applicable State and Federal standards.

(5) Where access to the site is by road, the road shall be located within a recorded easement or public right-of-way, and constructed to the appropriate standard set forth in title 2 of this Code or appendix A of this title.

(10) See Subchapter 12-482.1 for specific standards. Mining and rock crushing activities shall be temporary, and shall be limited in lifetime and scope by conditions established by the commission.

(21) See Subchapter 12-482.2 for specific standards. Batch plant operations shall be located outside of city impact areas. The emissions control system(s) on such batch plants shall be of "Best Available Control Technology" (BACT) as generally accepted under relevant industry standards, within 5 years prior to application.

(22) A batch plant is conditionally permitted only in association with an active a permanent gravel pit.

(22) All existing surface mines must apply for a certificate of zoning compliance within one year of the date of this ordinance. Failure to complete this, the Director will rely on the most recent Idaho Department of Land reclamation plan and/or other documentation prior to the adoption of this ordinance to determine the nonconforming area of the mine.

(23) An open pit, also known as a sand box, is an area where material (usually soil, gravel or sand) has been dug for use at another location. Open pits shall be in conjunction with and close to major construction projects and shall be limited in lifetime and scope by conditions established by the commission.

## STAFF: MINING AND AUXILLARY USE TABLES

The purpose of amending this table is to reflect the new terms and definitions proposed, move subnotes to specific standard sections or to the definitions chapter, and propose a new review process for auxiliary uses to prevent the need for modifications to previous permits or applications.

Requiring a conditional use permit for permanent surface mines and batch plants shall be maintained and will not be subject to the new certificate of zoning compliance process. However, temporary surface mines – those mining activities preparatory to development – shall not require a conditional use permit – instead will be subject to the certificate of zoning compliance. Additionally, all activities by state and federal agencies on state and federal land are not within the County's jurisdiction and cannot be subject to our ordinance.

### 12-482.1: MINING:

#### A. Purpose:

1. To define and provide standards and procedures for "temporary" and "permanent" mining operations and their accessory uses.
2. To establish mining standards consistent with the goals and policies of the comprehensive plan.
3. To establish mining standards consistent with other local, State, and Federal regulations as required.
4. To ensure mining operations are meeting the requirements of other local, State, and Federal regulations.

#### B. Applicability:

1. All those activities as defined "mining" per BCRC 12-813, "open pit" per BCRC 12-815, and further defined herein.

#### C. General Standards of Review for all Mines:

- A1. A copy of the approved reclamation plan approval by the Idaho department of lands shall be applied for, and a copy of the application shall accompany the required application for the conditional use permit where applicable. Temporary and permanent landscaping and safety fencing shall be provided around all excavations in urban areas. A site plan for the entire parcel shall be submitted with the application identifying the location of any pits, stockpiles, hauling roads, processing facilities, equipment or material storage, fencing, screening and any other pertinent features. A reclamation plan shall also be submitted showing the condition and topography of the land after material and structures have been removed. A grading/stormwater management plan shall be prepared and submitted concurrently with the application for conditional use permit pursuant to the requirements of subchapter 7-2 of this title.



- a. Those mining activities not subject to stormwater plans per the approved reclamation plans shall provide professional stormwater plans per the following:
  - i. Those land disturbing activities requiring a National Pollutant Discharge Elimination System (NPDES) stormwater permit shall submit a copy to the planning department.
  - ii. Where an NPDES stormwater permit is not applicable those land disturbing activities shall be subject to the stormwater requirements per Title 12 Subchapter 7.2.
- B. The mined area shall not be located closer to the nearest property line or public right of way than a horizontal distance equal to one and one-half (1½) times the vertical depth of the mined area at any given point, except that steeper slopes may be permitted where certified by an Idaho licensed engineer. In no instance shall the actual mined area extend to within sixty feet (60') of the nearest property line or public right of way. Drainage from areas disturbed by surface mining shall be filtered, treated and contained on site.
- C2. The landowner (applicant) shall apply dust abatement (magnesium chloride or other suppressants acceptable to Bonner County) to the private, nonpaved easement and the haulage road on a yearly and/or as needed basis, at no cost to Bonner County.
- D3. No debris from the mining operation shall be placed or tracked onto the public rights of way by vehicles used for the operation, to the satisfaction of the transportation agency having jurisdiction over the adjacent roadways.
- E. Fugitive dust shall be controlled by the applicant at all times to the satisfaction of the Idaho department of environmental quality and consistent with the approved fugitive dust control plan.
- F. The applicant shall comply with all requirements of the reclamation plan approved by the Idaho department of lands.
- G. All retail sales of materials on the site are prohibited.
- H4. The signs on the site shall comply with the standards of subchapter 4.4 of this title.
- I5. The applicant shall install and maintain hazard fencing, and signing to warn of the mining danger, and other health and safety standards, to the satisfaction of the Mine Safety and Health Administration (MSHA) Bonner County Planning Department.
- J6. The applicant shall maintain or restore vegetative buffering of the site, where feasible. (Ord. 501, 11-18-2008)
- 7. Specified conditions with respect to emissions of noise, light, glare, smoke, odor, dust, particulate matter, vibrations or hours of operation may be prescribed, as to be compatible with other applicable State and Federal standards.

D. Standards of Review of Temporary Mines:

- 1. Temporary surface mines shall be defined as mines that:
  - a. Are opened to serve onsite uses; or
  - b. are "open pits" as defined per BCRC 12-815
- 2. Temporary batch or concrete plants are permitted for onsite use.
- 3. The following accessory uses require a conditional use permit:
  - a. All retail sales of materials on the site.

E. Standards of Review of Permanent Mines:

- 1. Existing surface mines shall be approved as permanent, nonconforming through a certificate of zoning compliance.
- 2. New surface mines shall be approved as permanent through a conditional use permit.
- 3. Accessory uses for permanent mining operations that have obtained a certificate of zoning compliance or conditional use permit.
  - a. Retail sales of materials on the site are permitted.
  - b. Batch and concrete plants are permitted with a conditional use permit.
  - c. Rock crushing operations, blasting, drilling, screening, heavy equipment and associated repairs and fueling are permitted.

**STAFF: MINING SPECIFIC STANDARDS**

The purpose of amending the mining ordinance is to provide organization and centralize the standards into 12-482.1, provide clarity on what activities constitute mining, and provide avenues allowing particular auxiliary uses.

Additionally, clarity and specificity was previously lacking regarding the requirements and authority of environmental and safety standards. This section provides amendments clarifying those issues.

**12-482.2: BATCH PLANTS:**

A. Purpose:

- 1. To define and provide standards and procedures for batch plants.
- 2. To establish standards consistent with the goals and policies of the comprehensive plan.
- 3. To establish standards consistent with other local, State, and Federal regulations as required.
- 4. To ensure operations are meeting the requirements of other local, State, and Federal regulations.

B. Applicability;

1. All those activities as defined "batch plants" per BCRC 12-814, and further defined herein.

C. General Standards of Review for all Batch Plants:

1. The emissions control system(s) on such batch plants shall be of "Best Available Control Technology" (BACT) as generally accepted under relevant industry standards, as regulated by the state within 5 years prior to application.
2. A batch plant shall only be permitted in association with a surface mine.
3. A copy of the approved "air quality permit to construct" from Idaho Department of Environmental Quality shall be provided to the Planning Department.
4. Specified conditions with respect to emissions of noise, light, glare, smoke, odor, dust, particulate matter, vibrations or hours of operation may be prescribed, as to be compatible with other applicable State and Federal standards.

**STAFF: BATCH PLANTS SPECIFIC STANDARDS**

It is proposed to have an entire section dedicated to establishing specific standards for batch plants. Having specific standards regarding technology and environmental standards, all while limiting their establishment to locations of existing mines, provides the foundation to allow for administrative approval of batch plants.

In addition, all applications for batch plants will be required to provide copies of other approved state and federal permits. This will ensure compliance with environmental standards and that the use will not be detrimental to the public's health, safety, and welfare.

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**12-803: DEFINITIONS - C:**

**CERTIFIED USE:** A structure, occupancy of a structure, or a use of land, certified or permitted, only upon issuance of a certificate of zoning compliance and subject to the limitations and standards specified in this title.  
**CERTIFICATE OF ZONING COMPLIANCE:** A certificate issued by the planning director stating that the certified use and/or development complies with the standards set forth in this title or the applicable regulations at the time of the certified use's establishment.

**12-813: DEFINITIONS - M:**

**MINE, SURFACE:** An area where surface mining is conducted of two (2) acres in size or larger, or a volume in excess of one thousand (1,000) cubic yards of minerals or overburden are extracted. An area where minerals are extracted by removing the overburden lying above and adjacent to natural deposits thereof and mining directly from the natural deposits thereby exposed. Rock crushing operations, blasting, drilling, screening, heavy equipment and associated repairs and fueling are permitted.

**12-802: DEFINITIONS - B:**

**BATCH PLANT:** To include asphalt and/or concrete batch plants.

**12-815: DEFINITIONS - O:**

**OPEN PIT:** Also known as a sand box, is an area where material (usually soil, gravel or sand) has been dug for use at another location. Open pits shall be in conjunction with and close to major construction projects and shall be limited in lifetime and scope by conditions established by this title.

**ONSITE USE:** Those auxiliary uses supporting the primary development/use of a property, only for the duration of the primary development/use.

**STAFF: DEFINITIONS**

Due to the new certificate of zoning compliance process, new definitions addressing the new terminology are proposed – see "certified use" and "certificate of zoning compliance."

The previous definition for mining has been replaced with the Idaho Department of Lands' definition to ensure consistency of application of standards. It has also been expanded on to include specific operations required to support mining operations for clarity of allowed activities on site.

It is proposed to adopt the term and definition of Batch Plat as it previously was not defined. This will limit the types of batch plants that can be permitted in Bonner County.

Open pit used to be defined under the use table. It was deemed, more appropriate to be defined in the definitions chapter. Additionally, as this use will be subject to a Certificate of zoning compliance, a slight verbiage change – removing the commission from the definition originally in the subnote under the use tables – provides consistency.

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**12-341: GENERAL PROVISIONS FOR NONCONFORMING USES AND STRUCTURES:**

A. Subject to the provisions of this subchapter, a nonconforming use or structure may be continued but may not be extended or altered, unless necessary to comply with a lawful requirement and unless the use or structure is a less intensive use than the permitted uses in the zone (such as a residence in a conforming residential zone which has been rezoned to industrial). Exceptions:

1. The accumulated expansion by up to ten percent (10%) of a commercial, industrial or public use or structure in any zoning district that was established prior to December 9, 1981, and that has been in use continuously since December 9, 1981, is permitted, provided no additional land area is being acquired for the expansion.

2. The accumulated expansion of such use identified in subsection A1 of this section by more than ten percent (10%), but no more than fifty percent (50%) is conditionally permitted, provided no additional land area is being acquired for the expansion.

3. For natural resource based use, limits on expansion of nonconforming uses beyond the parcel boundaries shall apply.

**STAFF: NONCONFORMING USES**

Currently, the use table categories are organized as follows: Residential, Commercial, Industrial, Public, and Resource Based. Based on previous public input, there is a need to clarify that resource based land uses are separate from commercial, industrial, and public uses for the purposes of land use enforcement and they are not subject to the same standards pertaining to non-conforming status and expansion.

**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. This proposed change provides further clarifying standards enabling the public and the staff to achieve the best results leading to greater understanding and use of the zoning ordinance.

**Conclusions of Law:**

Conclusion 1

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

Conclusion 2

The proposed amendments to Title 12 **IS** in accord with Idaho Code Chapter 67 Title 65.

Conclusion 3

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         |                                    |

Acting Chair Davis relinquished the commission back to sitting Chair Bailey.

**PUBLIC WORKSHOP**

**File AM0016-20 – Bonner County Revised Code - Title 12 - Text Amendment**

– **Bonner County** is initiating a Text Amendment to Title 12 to include the following proposed changes: Amend Title 12 Chapter 6 to reorganize Chapter 6 in its entirety; delete the Short Plat and Condominium project procedures; and amend requirements and standards of plats.

**STAFF PRESENTATION:** Planner II Halee Sabourin presented a summary of the proposed changes for Title 12 Chapter 6.

**DISCUSSION:** Staff and commissioners reviewed and edited the draft document based on comments received and collaborative efforts since last workshop.

Determination made to move forward with a hearing in March for this project.

**COMMISSIONER & STAFF UPDATES:**

Review of current workload and approval to increase in staff.

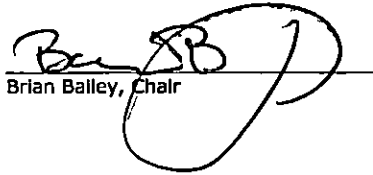
At 9:06 p.m., the Chair declared the hearing adjourned until January 21, 2021.

Respectfully submitted,

  
Milton Ollerton, Planning Director

The above Minutes are hereby approved this 21<sup>st</sup> day of January, 2021.

Bonner County Planning and Zoning Commission

A handwritten signature in black ink, appearing to read 'Brian Bailey', is written over a horizontal line. The signature is stylized and includes a large, circular flourish that loops back under the line.

Brian Bailey, Chair