

**BONNER COUNTY PLANNING COMMISSION
PUBLIC HEARING MINUTES
MAY 17, 2022**

PLEDGE OF ALLEGIANCE

CALL TO ORDER: Chair Bailey called the Bonner County Planning Commission hearing to order at 5:30 p.m. in the 3rd Floor BOCC meeting room, Ste. 338, 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 Allan Songstad; Dave Frankenbach; Josh Pilch; Don Davis; Wayne Benner and Debby Trinen

ABSENT: None

ALSO PRESENT: Planning Director Milton Ollerton; Assistant Planning Director Jacob Gabell; Planner I Swati Rastogi; Planner I Chad Chambers; and Hearing Coordinator Jenna Crone

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 May 3, 2022. Hearing no changes or objections, the Chair declared the minutes approved as written.

PUBLIC HEARINGS:

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.

AM0005-22 – Comprehensive Land Use Plan Map Amendment – Manfred are requesting a comprehensive land use plan map amendment from Rural Residential to Resort Community. The property is zoned Rural 5-acre. The project is located off Golf Estates Drive in Section 24, Township 60 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 I Chad Chambers presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code.

APPLICANT PRESENTATION: Jacob Manfred, family member, shared the family's plan for the property.

PUBLIC/AGENCY TESTIMONY: None

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

MOTION TO RECOMMEND APPROVAL: Commissioner Songstad moved to recommend approval to the Board of County Commissioners for this project, FILE AM0005-22, requesting a comprehensive land use plan map amendment from Rural Residential to Resort Community, 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 Songstad 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 the Chairman sign, and transmit to all interested parties. This action does not result in a taking of private property.

Commissioner Trinen seconded the Motion.

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

Comprehensive Land Use Plan Map Amendment – Findings of Fact

1. The subject property is in the Rural Residential comprehensive land use plan designation.
2. The site does not contain slopes over 30% or greater.
3. The site contains two (2) soil types, Andic Humudepts-Humic Udivitrands-Pearsoncreek families (not prime farmland, well drained) and Glacier-Humic Udivitrands-Pearsoncreek families (not prime farmland, moderately well drained).
4. The site is served by Golf Estates Drive, a privately owned and maintained road.
5. The site is in mapped floodplain zone D but is not in a mapped floodplain zone A or AE or floodway.
6. Per the applicant, the site will be served by an individual well and Kallispel Sewer District and West Priest Lake Fire District.
7. Properties to the immediate south of the subject parcel are in the Resort Community comprehensive land use plan designation.

Comprehensive Land Use Plan Map Amendment – 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, Transportation
Community Design	Implementation	Economic Development
Land Use	Natural Resources	Hazardous Areas
Public Services	Transportation	Recreation
Special Areas or Sites	Housing	Agriculture

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 Resort Community comprehensive land use plan designation.

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.

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.

CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS: The Chair requested the Commissioners declare any conflicts of interest or disclosures. Commissioner Bailey and Commissioner Benner recused themselves.

STAFF PRESENTATION: Planner I Swati Rastogi 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 presented a PowerPoint presentation (Exhibit B) discussing the reasons for the proposed text amendment and stated the applicants are not interested in Staff's recommendations for the amendment.

APPLICANT REPRESENTATIVE: Toby McLaughlin, Sandpoint Law, discussed Staff's recommendations for the proposed text amendment and why the applicants have chosen not to accept the recommendations.

PUBLIC/AGENCY TESTIMONY: The following members of the public spoke on the record: Brian Wood; Jonna Plante; Sharon Walton; Susan Bowman; John Murray; Susan Drumheller; Reg Crawford; Christine Logue; Jake Ray; and Annisa Keith.

APPLICANT REBUTTAL: Jeremy Grimm, addressed comments made by the Public regarding the specifics of the text amendment and how it affects legally non-conforming pits and quarries that were in existence on November 11, 2008. Toby McLaughlin addressed expansion and the continued need for a reclamation plan and IDL approval.

STAFF REBUTTAL: Planner I Swati Rastogi addressed comments made during the hearing, concluding that Staff is not against the expansion of legal non-conforming mining operations, however staff has made recommendations that they be restricted to certain conditions in order to ensure public health and safety.

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

MOTION TO RECOMMEND DENIAL: Commissioner Frankenbach moved to recommend denial of 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 following conclusions:

Conclusion 3: The proposed amendment **is not** in accord with the general and specific objectives of the Bonner County Comprehensive Plan.

The decision is based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. Commissioner Frankenbach further moved to adopt the findings of fact and conclusions of law as set forth in the Staff Report (or as amended during this hearing) 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 Davis seconded the motion

VOTED upon and the Chair declared the motion carried, with a 4-1 vote: Commissioners Davis; Frankenbach; Songstad; and Trinen for recommending denial

and Commissioner Pilch against recommending denial. Commissioners Bailey and Benner Abstained.

Findings of Fact:

1. Citizens of Bonner County, per Idaho Code Chapter 65, Title 67, may recommend a zoning ordinance.
2. The Bonner County Planning Department has reviewed the proposed changes against existing code and the Comprehensive Plan and laid out the reasoning for the staff recommendation in this staff report.
3. The applicants are requesting amendments to BCRC 12-341. General provisions for non-conforming uses and structures.
4. 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).
5. The amendment to BCRC 12-341.A.1 excludes uses not directly listed in the above referenced tables but are either permitted by right or conditionally in compliance with BCRC 12-331 Interpretation of Use Tables and BCRC 12-339: Classification of New Uses within Zone Districts. BCRC 12-339 provides for new unanticipated types of land uses not directly listed in BCRC Use Tables that could be permitted, conditionally permitted or prohibited in the zoning districts through this provision of the code.
6. 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, several commercial, industrial and public uses permitted between December 9, 1981 and November 18, 2008 may now be legal non-conforming.
7. The proposed text amendment addresses certain resource based legal non-conforming uses such as mining, stone quarries and gravel pits (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.
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.

Reclamation plans typically discuss how to reclaim the land after the use of the land as a mine has been completed. They do not discuss issues such as hours of operation or other neighborhood affecting factors that can only be handled at the level of local jurisdiction.

9. The second sentence in the proposed text *"For the complete development of the material resources of the State or any other necessary means to their complete development, or any other use necessary to the complete development of the material resources of the State"* seems to be a statement specifying the intent for requesting this amendment. It, however, does not add clarity to the current code or the proposed amendment. This statement is vague and overly broad.
10. 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.
11. 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..."
12. The applicant requested that the Planning Commission vote on the text amendment as proposed by the applicant and not vote on the recommendations made by the Planning staff.
13. Non-conforming extraction based uses are unique and require consideration unlike any other uses specified in the code.
14. Significant changes in the volume of the business of the legal non-conforming extraction-based uses that are likely to have large impacts on the community that should trigger an overview from the community using a tool such as Conditional Use Permit.
15. Expansion in terms of extraction based uses needs to be defined. Uses such as mining, gravel pits or sand pits are diminishing assets, thus setting them apart from the any other uses – resource based, commercial, industrial or public.

16. Through this text amendment, the applicant is requesting the governing body to adopt the "Doctrine of Diminishing Assets" that has not yet been adopted by the State of Idaho. If this doctrine is adopted by the State in the future, it is likely to limit the local jurisdiction's authority to impose conditions on expansion of resource based uses. Currently, the State has not adopted this doctrine.

Conclusions of Law:

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 NOT** in accord with the general and specific objectives of the Bonner County Comprehensive Plan.

COMMISSIONER & STAFF UPDATES:

The Planning Director and the Commissioners discussed the progress made on the Comprehensive Plan so far. It was discussed that the Commissioner look at the areas that they were assigned and how they relate to the Goals and Policies of the Comp Plan.

At 8:46 p.m., the Chair declared the hearing adjourned until June 7, 2022.

Respectfully submitted,



Jacob Gabell, Interim Planning Director

The above Minutes are hereby approved this 7th day of June 2022.

Bonner County Planning Commission



Brian Bailey, Chair