

**PLANNING DEPARTMENT  
PUBLIC HEARING DECISION MINUTES  
WEDNESDAY, OCTOBER 24, 2018**

**CALL TO ORDER:** Chair Bailey 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.

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

**ABSENT:** None

**ALSO PRESENT:** Planning Director Milton Ollerton; Planner I Sam Ross; and Office Manager Jeannie Welter

**PUBLIC HEARINGS:**

**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 VS1926-17 Vacation of McGee Summer Place Subdivision Right-of-Way – The Alaskan, LLC** is seeking an approval to allow for a vacation of a Right-of-Way, with the intent to vacate a portion of a former state highway, currently owned by private party. The subject right of way exists on a strip of land located north of US highway 200, 4.6 miles east of the city Kootenai, Section 2, Township 57 North, Range 1 West, B.M. The subject property is zoned recreation.

**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 Sam Ross presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code.

**APPLICANT PRESENTATION:** Project representative Clare Marley, Ruen-Yeager and Associates, stated the proposed vacation has not been maintained by the county or the state. She further stated due to the nature of the right-of-way the state has declared no access from the right-of-way. She submitted an email from Ted Diehl as exhibit A into the record, which states Tim Fitzpatrick is in support of the vacation.

**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 McDonald moved to approve this petition, FILE VS1926-17 to vacate the public's interest in a strip of land known as the abandoned Kootenai-Cabinet Road and old Highway 10-A, as described in the attached Exhibit A and as illustrated in attached Exhibit B. I find 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 McDonald further moved to adopt the following findings of fact, conclusions of law and conditions of approval (noting any amendments) as written. 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.

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**Background:**

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**A. Site data:** The area to be vacated is approximately 0.31 acres in size and lies within Lot 1 of THE MCGHEE SUMMER PLACE, a plat recorded in Book 12 of Plats, page 17 in the records of Bonner County, Idaho.

**B. Access:** Access is provided to the subject property, as well as adjacent properties by US-200, Old Highway Road, and Genias View.

**C. Standards review:** In accordance with Idaho Code §40-203(h), the Board shall decide "whether the abandonment and vacation of the highway or public right-of-way is in the public interest of the highway jurisdiction affected by the abandonment or vacation." See staff analysis.

**D. Agency Review:** The application was routed to the following agencies for comment on August 23, 2018:

<i>Panhandle Health District Dept. of Water Resources Bonner County Road Dept. Army Corps (Coeur d'Alene) Northside Fire District Army Corps (Newport) Northern Lights INC. Bonner School District #84</i>	<i>Dept. of Fish and Game State Historical Society Dept. of Env. Quality Dept. of Transportation Dept. of Lands Coeur d'Alene Pacific Gas Transmission Fish and Wildlife Service Forest Service</i>
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**The following agency commented:**

IDEQ – September 25, 2018:

"At this time, the Department of Environmental Quality has no comments."

-Faye Beller

IDWR – August, 24, 2018:

"No Comment"

-Idaho Dept. of Water Resources

Bonner County Public Works – September, 30, 2018:

"Road & Bridge supports the vacation of this old highway right-of-way. The old road ROW is no longer necessary. Old Hwy 200 Rd has a different point of access off of Hwy 200 now and I see no reason why the road would ever be rerouted back to the old ROW."

-Matt Mulder, Bonner County Road & Bridge – Staff Engineer

#### **E. Public Notice & Comments**

No public comments were submitted to the record at the time of staff report publication.

Public comments were submitted during the original petition to vacate which prompted the project being postponed. See file for details.

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#### **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: Highways and Bridges, Chapter 2: General Provisions.

##### Conclusion 2

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

##### Finding

No public agency has objected to the proposed right-of-way vacation. There are no utilities located within the areas that are proposed to be vacated, according to the application. Local utility providers were routed as part of agency review, and none responded.

##### 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

Access will be maintained via US-200, Old Highway Road, and Genias View.

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#### **Conditions of approval:**

1. The vacation of the above-described right-of-way shall be effective upon the recording of 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 VS1985-18 Vacation of McGee Summer Place Subdivision Plat – The Alaskan, LLC** is petitioning to vacate a ±0.38 acre portion of Lot 1 of the McGhee Summer Place in order to adjust a boundary line with a neighboring parcel. The subject portion of land is located north of US highway 200, 4.6 miles east of the city Kootenai, Section 2, Township 57 North, Range 1 West, B.M. The subject property is zoned recreation.

**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 Sam Ross presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code.

**APPLICANT PRESENTATION:** Project representative Clare Marley, Ruen-Yeager and Associates stated this petition would allow resolution of boundary line issues with the adjoining landowner to the west. She wanted it stated in the record that this would reduce the property size to just below the minimum zoning requirements as per the REC zone. She clarified the order in which the documents would be recorded if approved; 1) approval and recording of right-of-way vacation resolution; 2) approval and recording of resolution vacation portion of Lot 1; 3) recording of deed conveying vacated portion by petitioner to adjoining landowner; 4) recording of boundary line adjustment deed by adjoining landowner.

**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 petition, FILE VS1985-18, finding that it is in accord with Idaho Code enumerated in the following conclusions of law, and based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. Commissioner Connolly further moved to adopt the following findings of fact, conclusions of law and conditions of approval as amended in Conclusion 1, Finding as a proposed plat vacation. 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 McDonald seconded the motion.

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

## Overview:

### A. Site data:

Lot acreage: 5.4 acres (platted)  
 Hydrologic Features: None  
 Flood Hazard Zone: X  
 Wetlands: Freshwater Forest Shrub; Riverine  
 Slope: <15% per USGS  
 Soils: Dufort-Rock Outcrop Complex, 5%-45% Slopes; Pend Oreille-Rock Outcrop Complex, 5%-45% Slopes.

Area to be vacated: ±0.38-acres  
 Flood Hazard Zone: X; 0.2% Annual Chance Flood Hazard  
 Wetlands: Freshwater Forest Shrub; Riverine

**B. Access:** Access to the property is provided by US-200, a principal arterial roadway owned and maintained by the Idaho Transportation Department.

### C. Standards review:

The project has been reviewed for conformance with Idaho Code §50-1306A, Vacation of Plats - Procedure, and Idaho Code §50-1317. The following facts relate to the standards of review:

- The petition to vacate a platted area complies with all State procedures set forth in IC §50-1306A and IC §50-1317.
- In the case of easements granted for gas, sewer, water, telephone, cable television, power, drainage, and slope purposes, public notice of intent to vacate is not required. These easements are to be left intact and are not vacated through the provisions of this petition.
- The portion of platted area to be vacated will result in the portion being eligible for a boundary line adjustment with the neighboring parcel lying to the west.
- Abandonment would not impede or deprive any property of legal access.

### D. Agency Review

The application was routed to the following agencies on August 23, 2018.

Panhandle Health District Dept. of Water Resources Bonner County Road Dept. Army Corps (Coeur d'Alene) Northside Fire District Army Corps (Newport) Northern Lights INC. Bonner School District #84	Dept. of Fish and Game State Historical Society Dept. of Env. Quality Dept. of Transportation Dept. of Lands Coeur d'Alene Pacific Gas Transmission Fish and Wildlife Service Forest Service
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Agency Review Ended on September 24, 2018.

- No agencies responded in opposition.

### E. Public Notice & Comments

There have been no public comments at the time this staff report was produced.

## Conclusions of Law:

**The Overview 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 is compliant with the vacation criteria and standards set forth at Idaho Code §50-1306A and §50-1317.

### Finding

No public agency has objected to the proposed plat vacation. There are no utilities located within the areas that are proposed to be vacated, according to the application. Local utility providers were routed as part of agency review, and none responded.

### Conclusion 2

By granting this petition for vacation, that portion shown to be vacated will be eligible for a boundary line adjustment with the neighboring un-platted parcel lying to the west.

## Conditions of approval:

1. The vacation of the above-described platted area 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 this vacation.

## 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 AM166-18 Amendment to Text BCRC 12-332(6), 12-448(B)(i), 12-650(B), & Appendix A - Section O Private Road Standards - Bonner County** is initiating changes to Bonner County Revised Code Title 12, 12-332(6) updating residential use table, multi family dwelling, 12-448(B)(i) updating vacation rental site plan requirements, and 12-650(B) minor land division procedure, and Appendix A Private Road Standards, Section O Purpose and Authority. The Planning & Zoning Commission at the September 20, 2018 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/APPLICANT PRESENTATION:** Planning Director Milton Ollerton presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is consistent with the Bonner County Comprehensive Plan.

**PUBLIC/AGENCY TESTIMONY:** Ken Haggman and Debbie Trinan commented on the record regarding the proposed amendment changes.

**STAFF/APPLICANT REBUTTAL:** Commissioners and staff responded to comments relating to Panhandle Health District enforcement.

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

**MOTION TO APPROVE ORDINANCE AMENDMENT:** Commissioner McDonald moved to approve this Ordinance, FILE AM166-18, amending the sections of Title 12, Bonner County Revised Code, as presented or amended in this hearing, to the Board of County Commissioners based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. This action does not result in a taking of private property. Commissioner Connolly seconded the motion.

**BOARD MOTION TO ADOPT ORDINANCE:** Commissioner McDonald moved to adopt an Ordinance of Bonner County, Idaho, the number to be assigned, citing its authority, and providing for the amendment of Title 12, Bonner County Revised Code, Sections 332 (6), 650 B., 484 B., and Appendix A, and providing for publication and an effective date. Commissioner Connolly seconded the motion.

## ROLL CALL VOTE:

Commissioner McDonald	AYE NAY
Commissioner Bailey	AYE NAY
Commissioner Connolly	AYE NAY

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

## Project summary:

The Bonner County Board of Commissioners initiated an amendment to Title 12. Under the proposed amendment (File #AM166-18), these amendments are to provide for clarifications resulting from questions that occur as the ordinances are being followed. This is simply a fine tuning of the code. Below are the proposed amendments to each specific section and the description of the changes. The language in **red and underlined** is recommended as additions to the existing code. Those words in **red** and strike through would be deleted from the ordinance.

### BCRC 12-332 Residential Use Table Standards

(6) **One** Multi-family dwelling with a minimum of 12,000 square feet of lot area for the first unit, plus 3,000 square feet for each additional unit; provided, that all urban services are available.

**STAFF:** This change eliminates the allowance of only one multifamily structure on a property. This change allows a property owner the opportunity to have more than one multi-family dwelling on a property. The way the code reads now, a property owner may develop a property with up to eleven (11) units on a one-acre parcel. With this change a property owner could develop more than one structure and not be required to put such a large structure on the property allowing for some diversity in the design of the units.

It is important to note that the multi-family dwelling is still limited by the requirements of the zone the structure would be built such as lot coverage.

### BCRC 12-650 Minor Land Division Procedure

B. Procedure: Applications for a minor land division which contain four (4) or fewer contiguous lots under common ownership may be processed as "minor land divisions" as set forth in this section and section 12-651 of this subchapter; provided, that no ~~zone district change is required, or a~~ planned unit development requested, to accommodate the proposed lot sizes.

**STAFF:** As this ordinance has come into practice over the last two years it has become apparent that there are many parcels in the County with split zoning. Not allowing a minor land division where a zone district change is going to occur is a bit unrealistic. This change addresses that occurrence.



## BCRC 12-484 B. Vacation Rental Permit Procedures

- e. An adequate potable water supply and a sewage disposal method approved by the Panhandle Health District, a sewer/water district, State of Idaho, or a licensed wastewater professional shall be provided.
- i. Site plan ~~drawn to scale~~.

**STAFF:** One of the biggest concerns with the vacation rental ordinance is this requirement, the site plan drawn to scale. Changing this will provide some relief to the property owner as drawing to scale may require a significant amount of effort. As the permit is intended to review existing structures already built, this change is a reasonable request.

The Planning Commission added the change listed in letter e above finding that proof of adequate potable water supply and a sewage disposal method may come from additional sources including grandfathered systems, systems inspected by a septic tank pumper, and water from purchased sources such as bottled water.

## Appendix A: Private Road Standards Manual SECTION 0: PURPOSE AND AUTHORITY

It is the purpose of this manual to provide consistent standards for construction of new private roads built in Bonner County and reconstruction or renovation of existing private roads for subdivisions, in Bonner County. All construction shall conform to the standards set forth in this manual. Any exceptions to the standards herein may be approved by the Board at final plat approval.

**STAFF:** There have been several requests this year to not follow the paving or hard surfacing requirements due to the rural nature of the land where divisions may be occurring. The interest is to maintain the rural character of the area by maintaining gravel roads. Staff has reviewed this idea extensively and chooses to leave this decision to the Board as the final plat is approved.

The Planning Commission requested this section be sent back to the Planning Department for additional language. As this requirement is in an appendix, it was requested that the Planning Department provide suggested language for allowing waivers of the road standards. The planning department presents the additional language as follows:

The Board of County Commissioners is authorized to waive requirements of Appendix A upon satisfaction of the criteria of this section. The purpose of granting a waiver under the provisions of these regulations shall be to ensure that an applicant is not unduly burdened as opposed to merely inconvenienced by the Private Road Standards. The Board shall not approve any waiver(s) except finding that all of the following apply:

1. The granting of the waiver will not result in impacts that are detrimental to the public safety, health or welfare or injurious to other property.

2. Granting the waiver shall substantially secure the objectives, standards and requirements of these regulations.
3. A practical hardship, or unnecessary and unreasonable expense, would result from strict compliance with the foregoing regulations.
4. The purpose of these Private Road Standards may be served to a greater extent by an alternative proposal, or where such requirements are redundant and clearly unnecessary for the land division in a particular area.

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### Public Comment:

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Marty Taylor, Sewel and Associates, commented that multi-family dwelling should be plural – multifamily dwellings.

There were no other comments received.

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

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

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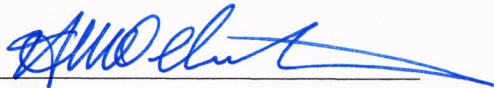
**Conclusions of Law:**

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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 2:50 p.m.

Respectfully submitted, this 1<sup>st</sup> day of November, 2018,



Milton Ollerton, Planning Director