

BLAINE COUNTY PLANNING & ZONING COMMISSION
PUBLIC HEARINGS on February 28, March 21, and April 11, 2019

REGARDING THE APPLICATION OF:

Blaine County to Revise Title 9 , Chapter 35,
and Title 10, Chapters 4 and 5 of the Blaine
County Code, regarding the Community Housing
Overlay District

FINDINGS AND RECOMMENDATION

**I. REGARDING TEXT AMENDMENTS TO ZONING ORDINANCE REGULATIONS
INITIATED BY BLAINE COUNTY:**

Zoning and Subdivision Regulations – Text Amendments related to Community Housing Overlay District. Public hearing and consideration of county-initiated amendments to Blaine County Code, Title 9, Chapter 35, and Title 10, Chapters 4 and 5. Amendments may include, but are not limited to, deleting requirement for central water and central sewer systems, related water and sewer application requirements, adding a requirement for ongoing maintenance and monitoring of any decentralized systems, reducing minimum density in a CH-PUD, clarifying the types of modifications that may be approved in a CH-PUD, clarifying uses and processes, clarifying ownership provisions, and deleting biennial chapter review requirement.

II. APPLICABLE REGULATIONS:

(Included below or made a part hereof by reference)

- Idaho Code, Title 67, Chapter 65, Local Land Use Planning Act
- Blaine County Code, Title 8, Comprehensive Plan
- Blaine County Code, Title 9, Zoning Regulations, Chapter 31, Amendments
- Blaine County Code, Title 10, Subdivision Regulations, Chapter 1, Section 9, Amendments

III. GENERAL INFORMATION:

1. The Board of County Commissioners initiated this text amendment on January 29, 2019.
2. **Notice of the February 28, 2019**, hearing was provided as follows:
 - 1) Published in the Idaho Mountain Express on February 13, 2019;
 - 2) Public service announcement request to area media sent February 12, 2019;
 - 3) Sent to all Blaine County political subdivisions on February 12, 2019;
 - 4) Posted in at least five (5) public places on February 12, 2019, as evidenced by affidavit in file;
 - 5) Mailed to incorporated cities in County pursuant to Area of City Impact Agreements on January 29, 2019; and,
 - 6) The draft of the proposed amendments was made available on the county web site on February 13, 2019.

► **Finding:** Upon motion by Commissioner Pynn, second by Commissioner Murphy, and by a vote of 6 to 0 (Commissioner Ranill absent), the Commission finds notice to be in compliance with applicable regulations, I.C. §67-6509 and §9-31-4 of the Zoning Ordinance.

The February 28, 2019, hearing was continued on the record to March 21, 2019. Additional notice for the March 21 hearing was provided by agendas posted on March 14, 2019.

► **Finding:** Upon motion by Commissioner Pynn, second by Commissioner Murphy, and by a vote of 7 to 0, the Commission finds notice adequate.

The March 21, 2019, hearing was continued on the record to April 11, 2019 at 6:00 PM. Additional notice was provided by agendas posted on April 2, 2019. Draft amendments were posted to the County website on April 2, 2019.

► **Finding:** Upon motion by Commissioner Pynn, second by Commissioner Giannettino, and by a vote of 6 to 0 (Commissioner Murphy absent), the Commission finds notice adequate.

3. **Exhibits:** The following exhibits were attached to the staff report and are incorporated by reference:

A Exhibits - Application/Staff Materials

- A-1: DRAFT Amendments to Title 9, Chapter 35, Community Housing Overlay - revised following 3/21/19 hearing
- A-2: DRAFT Amendments to Title 10, Chapters 4 and 5 - revised following 3/21/19 hearing
- A-3: SCPHD policies 795, 799 and 887
- A-4: Notes regarding monitoring/maintenance of septic systems and wells

B Exhibits - Agency Comments

- B-1: SCPHD presentation from February 28, 2019
- B-2: Email correspondence from Craig Paul, SCPHD
- B-3: Blaine Co. Public Water System water quality summary, SCPHD

(NOTE: a copy of the draft amendments and a request to comment were sent to Idaho DEQ Twin Falls Regional Office and to IDWR Southern Regional Office on February 13, 2019. No comments were received from either agency.)

D Exhibits - Public Comment

- D-1: Bob Erickson, rec'd February 27, 2019
- D-2: Lawrence Schoen, rec'd March 18, 2019
- D-3: Citizens for Responsible Development, rec'd March 19, 2019
- D-4: Sarah Michael, rec'd March 20, 2019

► **Note regarding Findings:** The findings for Title 9 begin on page 3; the findings for Title 10 begin on page 6.

IV. GENERAL TEXT AMENDMENT CRITERIA FOR TITLE 9

A. Idaho Code §67-6511(a) and Blaine County Code §9.31.4 (A):

Commission shall evaluate the facts and circumstances of the proposed to determine:

- *The nature and extent of the amendment;*
- *The reasons therefor;*
- *Whether it is in accordance with the Comprehensive Plan;*
- *The effects on potable water sources; and,*
- *The impacts of the proposal upon the delivery of services by any political subdivision providing services, including school districts, within the County.*

The "nature and extent" of the proposal and the "reasons therefor" are not actually criteria for evaluation, but rather are to be well understood by the Commission as part of their review.

- **Nature and extent:** During the Commission's hearing on March 21, 2019, a straw poll indicated unanimous agreement that the changes related to allowing decentralized water and sewer systems within CH-PUDs should be removed from the proposal. Other proposed amendments are limited to those intended to make the chapter clearer and less vulnerable to legal challenge. These proposed changes are summarized below. See revised Exhibit A-1 for the actual draft amendments.

Summary of proposed amendments NOT related to water and sewer infrastructure:

9-35-1: Purpose and Provisions: Adding explanatory language intended to clarify that the provisions of this chapter supersede underlying zoning/overlay requirements, and specifying the types of modifications to standards that can be approved in a CH-PUD.

9-35-4: Developer Benefits: Changing from "allowable" to "permitted, accessory and conditional" in order to be clearer, and specifying types of modifications that can be approved (similar to 9-35-1).

9-35-5: Permitted Uses: Clarifying language - "are permitted" is clearer than "may be allowed."

9-35-7: Conditional Uses: Clarifying language related to process. Clarifies that all types of residential uses (listed under 9-35-5: Permitted Uses) don't require a separate CUP process. Other uses, however, do require a CUP process, per Chapter 25: Conditional Use Permits.

9-35-12. B. 1.: Ownership/Land Control: Clarifying that a long term lease is considered an "interest" in a property.

9-35-13: Special Provisions: Deleting subsection *E. Chapter Review*. Biennial reviews of the chapter are difficult to accomplish due to lack of resources/staff time.

- *Reasons therefore:* These amendments are being proposed to make the chapter clearer and less vulnerable to legal challenge. These are mostly non-substantive, clarifying types of amendments. The provision for regular (every two years) review of the chapter is deemed unnecessary and is a time burden.

➤ **Findings are made on the following criteria:**

- *Whether it is in accordance with the Comprehensive Plan;*

► **Finding:** The Commission considered various goals and policy statements of the Comprehensive Plan to make their recommendation.

The following specific Desired Outcomes (goals and policy statements) of **Chapter 2, Housing**, are set forth below:

A. Location of Housing

Desired Outcome: housing that is located close to jobs and services. Cooperation between the County and its cities is a high priority when planning for new growth. Such cooperation is essential to the success of housing policies.

A-3: The majority of new housing should be located close to job centers, particularly in the incorporated cities where municipal infrastructure, other services and amenities are available.

A-5: Denser housing should be located in or near areas where municipal infrastructure and services such as water, sewer, and/or transit exist or are planned

C. Housing Affordability

Desired Outcome: adequate housing opportunities for Blaine County residents and workers in all wage ranges and income levels. Organizations providing community housing are well supported in their efforts to fund, enhance, expand and diversify affordable housing.

C-6: Consider additional areas for the Community Housing Overlay District or other zoning tools that increase allowable density for affordable housing where community housing planned unit developments would be appropriately located in proximity to jobs and adequate infrastructure.

C-7: Provide additional flexibility in the development review process when community housing is proposed.

► **Finding:** These policy statements express that housing and especially community/affordable housing is an important goal. To the extent that the language of Chapter 35 can be made clearer and less vulnerable to legal challenges, that language should be clarified. Such revisions would be supported by the Comprehensive Plan.

Several of these statements also reference the adequacy of infrastructure and the availability of municipal infrastructure, which would include central sewer. These policy statements were considered in the Commission’s direction to staff to delete any changes to the requirement for central water and sewer infrastructure.

The following specific Desired Outcomes (goals and policy statements) of Chapter 5, Natural Environment, are set forth below:

E. Water and Water Use

Desired Outcome: Conservation and careful utilization of water resources to ensure adequate quantity and quality is a top priority.

- E-12: Consider state and federal water quality standards to be minimum requirements. Encourage IDWR and IDEQ to continue regular monitoring of both ground and surface water.*
- E-13: Continue to review and regulate any use of potential contaminants within mapped wellhead protection areas.*
- E-14: Consider re-establishing the Blaine County Onsite Wastewater Management Program to monitor and protect groundwater from contamination by private wastewater treatment systems.*
- E-15: Support water policies at state and local levels that direct the majority of growth into incorporated cities, the Areas of City Impact and areas with central water and sewer infrastructure.*

► **Finding:** Water quality is stated as a top priority. The entire CH Overlay District is within the wellhead protection district. It is upstream of nine public water supply wells. Item E-15 supports most growth in areas with central infrastructure. The above policy statements were considered in the Commission's direction to staff to delete any changes to the requirement for central water and sewer infrastructure, finding the effects on potable water sources is uncertain and potentially negative.

Section 9, Land Use – Land Use Classifications/Residential (1994 Comprehensive Plan):

- *“Allowing increased density for affordable housing provides a financial benefit to a developer as well as a social benefit to the community. As long as the density increase results, in part, in affordable housing units for the community, the higher densities would be compatible with the goals established in this Comprehensive Plan.”*

► **Finding:** This provision summarizes benefits of affordable housing that support increased densities. It does not speak directly to infrastructure provision, however. The Commission directed staff to delete any changes to the requirement for central water and sewer infrastructure.

All of the above policy statements express that housing and especially community/affordable housing is an important goal. To the extent that the language of Chapter 35 can be made clearer and less vulnerable to legal challenges, that language should be clarified. Such revisions would be supported by the Comprehensive Plan.

- *The effects on potable water sources;*

► **Finding:** The entire CH Overlay District is within the wellhead protection district. It is upstream of nine public water supply wells. The Commission directed to staff to delete any changes to the requirement for central water and sewer infrastructure, finding the effects on potable water sources is uncertain and potentially negative. None of the remaining proposed amendments would affect potable water quality.

- *The impacts of the proposal upon the delivery of services by any political subdivision providing services, including school districts, within the County.*

► **Finding:** Political subdivisions were mailed notice and invited to comment on the proposed amendments on February 12, 2019. Only South Central Public Health District has provided comment and input. Additional services by SCPHD and by County staff would be required related to ongoing monitoring and maintenance of decentralized infrastructure. The Commission directed staff to delete any changes to the requirement for central water and sewer infrastructure, finding potential negative impacts on the delivery of services.

The remaining proposed amendments would not change density or buildout numbers from those currently allowed in the CH Overlay, so the effect on delivery of services would be unchanged.

B. Idaho Code §67-6511(b) and Blaine County Code §9.31.4 (B):

If the proposal is in conformance with the Plan and it is found that the proposal will not result in demonstrable adverse impacts upon the delivery of services, the Commission may recommend adoption of the amendment.

C. Idaho Code §67-6511(c) and Blaine County Code §9.31.4 (C):

If the proposal is not in conformance with the Plan, or will result in demonstrable adverse impacts upon the delivery of services, the Commission may consider whether it is appropriate to amend the Comprehensive Plan. Notice procedures provided in Idaho Code Section 67-6509 must be adhered to in recommending an amendment to the Comprehensive Plan.

► **Finding:** No amendment to the Comprehensive Plan is recommended.

V. GENERAL TEXT AMENDMENT CRITERIA FOR TITLE 10

Idaho Code §67-6513 and Blaine County Code §10-1-9:

- *Amendments may be made to existing subdivision regulations in accordance with the notice and hearing procedures provided under Section 67-6509. (IC §67-6513).*

► **Finding:** Public notice was provided as noted on page 1 of this report and is in compliance.

- *Subdivision regulations “may provide for mitigation of the effects of subdivision development on the ability of political subdivisions of the state, including school districts, to deliver services without compromising quality of service delivery to current residents or imposing substantial additional costs upon current residents to accommodate the proposed subdivision.” (IC §67-6513).*

- *Amendments may be made to the subdivision regulations for the purpose of "providing the public health, safety and welfare", following required notice and hearing procedures. (BC §10-1-9)*

► **Finding:** The proposed amendments to the subdivision regulations are non-substantive and intended to clarify process and to identify the types of standards that may be modified through the CH-PUD process in Title 9. See Exhibit A-2 for the actual draft amendments. The proposed Title 10 amendments would not have adverse impacts on service delivery as any modifications in a CH-PUD must be acceptable to the applicable fire district and the county engineer. As such, no adverse impact is foreseen on the health, safety and welfare of the public.

VI. GENERAL TEXT AMENDMENT CRITERIA FOR BOTH TITLES

Idaho Code §67-6528, Applicability of Ordinances:

"The state of Idaho, and all its agencies, boards, departments, institutions, and local special purpose districts, shall comply with all plans and ordinances adopted under this chapter unless otherwise provided by law. In adoption and implementation of the plan and ordinances, the governing board or commission shall take into account the plans and needs of the state of Idaho and all agencies, boards, departments, institutions, and local special purpose districts. ..."

► **Finding:** To account in a more informed way for the State's "plans and needs," political subdivisions including state agencies South Central Public Health District, Idaho DEQ and Idaho Department of Water Resources received notice and a copy of the proposed amendments on February 13, 2019. SCPHD has been involved in the Commission's hearing and with staff. However, no comments were received from IDEQ or IDWR.

VII. RECOMMENDATION

► **RECOMMENDATION:** Upon a motion by Commissioner Pynn, a second by Commissioner Ranill, and a vote of 6 to 0 (Commissioner Murphy absent), the Planning and Zoning Commission recommends that the proposed Text Amendments to Title 9, Chapter 35 and Title 10, Chapters 4 and 5 be granted as modified - specifically, that all amendments related to central water and sewer infrastructure shall not be included, and - upon consultation with legal counsel - deleting "applicable overlay districts" from 9-35-1 and defining "long term lease" in 9-35-12, finding the remaining amendments are in accordance with the Comprehensive Plan and will not negatively impact potable water, delivery of services, or the health, safety and welfare of the public.

IT IS SO ORDERED on this 25th day of April, 2019.

BLAINE COUNTY PLANNING AND ZONING COMMISSION



By: Rachel Martin, Chair