



BOUNDARY COUNTY PLANNING AND ZONING

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STAFF REPORT
BOUNDARY COUNTY BOARD OF COUNTY COMMISSIONERS
FILE #23-0180, TEXT AMENDMENT REGARDING LAND USE CODE ENFORCEMENT
BOUNDARY COUNTY ZONING & SUBDIVISION ORDINANCE

Prepared By:	Clare Marley, AICP Acting Zoning Administrator Ruen-Yeager & Associates, Inc	
Project Description:	Continuation of public hearing: Boundary County has initiated an amendment to its subdivision and zoning codes to repeal current Section 4 “Enforcement” of the Boundary County Zoning and Subdivision Ordinance and adopt a new enforcement section establishing procedures, remedies, and penalties for addressing land use code violations. The proposed amendment would define violations and declare them to be a misdemeanor, set a process to review zoning complaints, seek compliance, and authorize various remedies to abate violations. The Planning and Zoning Commission at its January 25, 2024, public hearing recommended to the Board of County Commissioners approval of the amendment. On March 11, 2024, the County Commissioners tabled the hearing to allow for further consideration and additional public notice.	
Applicants:	Boundary County Board of Commissioners, Boundary County Planning and Zoning Commission	
Date Application Initiated:	November 30, 2023	
Hearing Dates:	Planning & Zoning Commission Board of County Commissioners	01/25/2024 03/11/2024 & 05/06/2024
Legal Notice Provided (BOCC):	Newspaper: Site Posting: Mailed to media & taxing districts:	02/22/2024 & 04/18/2024 N/A 02/21/2024 & 04/17/2024
P&Z Recommendation: BOCC Decision:	RECOMMENDED: APPROVAL PENDING	
Staff Report Attachments	Legal notice, draft ordinance, public comment, new public comment of 3/26/24.	

Project Summary

Staff report updated for May 6, 2024, public hearing. Changes are shown in bold.

The Boundary County Planning and Zoning Department is designated by the Boundary County Land Use Ordinance 9B18LOV2 as the entity assigned to receive and investigate zoning violation complaints. Since 2021, the department has logged about 50 complaints of alleged violations of flood codes, building placement permit requirements, land divisions, setbacks, and land uses. The majority of the alleged violations stem from failures to obtain placement permits, improper setbacks, or illegal junk yards.

While planning staff works with landowners to advise them of potential violations and set abatement schedules, there are a number of violations that cannot be resolved at the planning department level and must be forwarded to the county prosecutor for further action.

Planning staff met last summer with the county deputy prosecutor, sheriff, and undersheriff to review the log of unresolved zoning complaints and challenges presented by the current enforcement codes. The meeting resulted in a proposal to draft an update to the enforcement codes to provide better tools for staff, the County Commissioners, and the prosecutor in both the civil and criminal arenas. The proposed update also corrects and improves a number of current procedures. Planning staff provided a summary of the legal and sheriff’s department meeting to the Board of County Commissioners and the Planning and Zoning Commission. The P&Z reviewed an outline of the proposed changes and several drafts of the amendment that would repeal the current Section 4 of the local land use code and enact a new Section 4. The drafts were also forwarded to the county deputy prosecutor/civil counsel for review and comment. On November 30, 2023, the Planning and Zoning Commission by consensus agreed to move the proposed amendment to public hearing.

Below is a summary of the proposed changes:

<i>CURRENT SECTION 4 CODE</i>	PROPOSED SECTION 4
<i>Use of \$100 infraction</i>	All violations constitute misdemeanor; no violations would be deemed infractions.
<i>Enumerates all types of potential violations</i>	Simplifies to say any inaction or action contrary to land use law is a violation.
<i>Every “week” is a new and separate violation.</i>	Every “ day ” is a new and separate violation (matching certain state law).
<i>Allows a violation to continue if a fine is paid. Sheriff may be directed to respond first to a violation complaint.</i>	Removes this allowance. All complaints start with the planning department, and are forwarded to the prosecutor when unable to resolve. Language directing sheriff to respond first is removed. All matters must go to prosecutor for action (Land use violations only; other non-land use crimes must be reported to sheriff.)
<i>Some civil actions identified.</i>	Adds tools for: stop work; injunctions; civil action; withheld permits; recovery of costs; notice to title after court judgment.
<i>2-step violation letter via regular mail & then certified.</i>	Retained first notice by regular mail; second notice by certified mail. Voluntary compliance remains a stated goal.
<i>Different violations for different offenses.</i>	All violations treated the same.

CURRENT SECTION 4 CODE

PROPOSED SECTION 4

Landowner “response” required.

A “response” is insufficient; amended to require abatement, otherwise a response such as “thank you” would be sufficient.

Assigns duty to sheriff to act on violations if a threat to health, safety, welfare.

Provides a process for temporary or permanent injunctions and stop work orders. Includes an opportunity for landowner to secure/weatherize structure while working to abate a violation. Authority for action on violations not assigned to the sheriff, but to the zoning administrator, prosecutor, or county commissioners, depending on the nature of the violation and remedies.

Treatment of continuing violations.

Violations that occur under previous code(s) and continue to be violations are subject to the remedies and penalties of new Section 4.

Lack of ability to recover costs

Through civil penalties and fees, the county would be able to recover costs for professional services, materials, court costs and other costs associated with the investigation and abatement of a violation.

Status of property when in violation not clarified

No permits are to be issued or approved for the use, division, or rezoning of property until violation is resolved.

Idaho Code §67-6511 requires the governing bodies confirm the rezone is consistent with the community’s adopted Plan: *(c) The governing board shall analyze proposed changes to zoning ordinances to ensure that they are not in conflict with the adopted plan, or would result in demonstrable adverse impacts upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction, the governing board may require the request to be submitted to the planning or zoning commission or, in absence of a commission, the governing board may consider an amendment to the comprehensive plan pursuant to the notice and hearing procedures provided in section 67-6509, Idaho Code. After the plan has been amended, the zoning ordinance may then be considered for amendment pursuant to paragraph (b) of this subsection.*

Authority

- Idaho Code §67-6511 (Local Land Use Planning Act)
- Boundary County Land Use Ordinance 9B18LOV2, Section 18, Amendments

Agency/Staff Comments

The County provided legal notice to the following agencies on January 3, 2024 for the Planning & Zoning Commission hearing and on February 21, 2024 **and April 17, 2024**, for the Board of County Commissioners’ hearing,: Bee Line Water Association, Boundary County Airport, Ambulance, Commissioners, Library, Road & Bridge, Boundary School #101, Cabinet Mountains Water District, City of Bonners Ferry, City of Moyie Springs, Curley Creek Fire District, Hall Mountain Fire District, Moravia Water System, Inc., North Bench Fire District, Paradise Valley Fire District, South Boundary Fire District, and Three Mile Water District.

No agency comments were submitted to the record at the time of this staff report.

No new agency comment was submitted to the record following the public notice for the resumption of the public hearing for May 6th.

Public Comments

At the time of the first staff report, the following written public comments were provided to the record:

John Poland: Mr. Poland thanked the Planning and Zoning Commission for work to address zoning code enforcement. He questioned the lack of infraction options for minor violations, which could mean the County would be less inclined to act because all violations would be misdemeanors and the county could issue variances as a result. A clear statement that each day is a separate offense is needed. He agreed with the remedy section for action by Commissioners, public official, or private citizen. Notice to title should be considered a last resort.

John Poland submitted written comment March 26, 2024, citing reasons that the code enforcement amendment should be adopted. A copy of the letter is attached.

Oral testimony at the 1/25/24 Planning and Zoning Commission hearing:

John Poland testified to his previous letter of support and asked for a correction to be made to a typographical/grammatical error at Section 4.5 (constitutes versus constitute). Adrienne Norris asked for clarification of civil actions and whether certain actions by a neighbor, such as cutting down trees, could be subject to zoning violations or civil action. The staff planner advised that in order for action to be taken under this code section, the matter would have to be a land use/zoning code violation. Mr. Poland asked for clarification on whether a stop work action is already in county code. Mr. Marley advised that the authority is in current code. Mr. Poland asked for clarification of civil actions.

Recommendation by the Planning and Zoning Commission:

The Planning and Zoning Commission following its January 25, 2024, public hearing voted to recommend to the Board of County Commissioners approval of the request to repeal current Section 4 “Enforcement,” of the Boundary County Zoning & Subdivision Ordinance and adopt a new Section 4 “Enforcement,” as proposed in File #23-0180, finding that the proposal IS in accord with the comprehensive plan and the criteria of Section 18 of the Boundary County Land Use Ordinance, based upon the findings and conclusions as written in the staff report.

The Chair declared the motion approved on a voice vote of 8-0-1, with Commissioner Fuller abstaining. Commissioner Fuller advised that he preferred keeping the infraction section in the code enforcement opportunities.

Review by county civil counsel:

Planning staff reviewed the drafts of the proposed ordinance amendment with civil counsel Tevis Hull, including the final draft that was eventually presented to the Planning and Zoning Commission. Current Civil Counsel Bill Wilson and County Prosecutor Andrakay Pluid also reviewed the draft ordinance with the planners after the Planning and Zoning Commission action of January. The attorneys suggested a revision of the code section regarding notice to title that requires court action prior to recording the notice. Mr. Wilson suggested that court action may not be necessary and could be redundant, since a court decision could be recorded, regardless. He suggested removing the phrase in brackets below.

4.6.7. Notice to title: In addition to any other actions authorized herein, the County may file with the recorder's office a notice to title notifying of a zoning, subdivision, or use violation that has been determined

[by the court] to be in violation of County land use codes. After the violation has been resolved, the landowner shall pay a fee to Boundary County for the costs to file and release the notice to title.

- **Commissioners** to review the revision and determine whether **they wish to amend the language as proposed and direct staff to prepare a revised ordinance with the change.**

Commissioners’ discussion: In tabling the proposed amendment for further consideration, the Board of Commissioners discussed the level of penalties proposed, civil and criminal remedies, potential for future overzealous enforcement, and the possible need to update the land use codes beforehand.

Standards Analysis of Applicable Codes and Comprehensive Plan	
Idaho Code, §67-6511 & 67-6509	<p>(a) Requests submitted to the planning and zoning commission shall be evaluated to determine the extent and nature of the amendment requested. Particular consideration shall be given to the effects of any proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction.</p> <p>(b) After considering the comprehensive plan and other evidence gathered through the public hearing process, the zoning or planning and zoning commission may recommend and the governing board may adopt or reject an ordinance amendment pursuant to the notice and hearing procedures provided in section 67-6509.</p> <p>(c) The governing board shall analyze proposed changes to zoning ordinances to ensure that they are not in conflict with the policies of the adopted comprehensive plan. If the request is found by the governing board to be in conflict with the adopted plan, or would result in demonstrable adverse impacts upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction, the governing board may require the request to be submitted to the planning or planning and zoning commission or, in absence of a commission, the governing board may consider an amendment to the comprehensive plan pursuant to the notice and hearing procedures provided in section 67-6509, Idaho Code. After the plan has been amended, the zoning ordinance may then be considered for amendment pursuant to paragraph (b) of this subsection.</p>

Draft Motions, Board of County Commissioners – Text Amendment	
Motion to Approve	I move to approve the request to repeal current Section 4 “Enforcement,” of the Boundary County Zoning & Subdivision Ordinance and adopt a new Section 4 “Enforcement,” as proposed in File #23-0180, and direct staff to prepare written findings and a decision for Board of Commissioners’ consideration, finding that the proposal IS in accord with the comprehensive plan and the criteria of Section 18 of the Boundary County Land Use Ordinance, based upon the findings and conclusions as written in the staff report (or as amended).
Motion to Table	I move to table or continue the hearing to <i>[insert date, time and place]</i> to allow further consideration of the proposed amendment or to allow review and approval of written findings and decision.
Motion to Deny	I move to deny the request to repeal current Section 4 “Enforcement,” of the Boundary County Zoning & Subdivision Ordinance and adopt a new Section 4 “Enforcement,” as proposed in File #23-0180, finding that the proposal IS NOT in accord with the comprehensive plan and the criteria of Section 18 of the Boundary County Land Use Ordinance, based upon the following findings and conclusions. (STATE REASONS). I further move to direct staff to prepare written findings and a decision for Board of Commissioners’ consideration.

Draft findings and conclusions for discussion/adoption:

1. Property Rights are addressed at Section 1 of the Plan and goals are provided at Section 14.2.
 - a. *Adoption of laws and regulations allowing “widest use” of land with assurance surrounding land uses are not unduly infringed upon.*
 - b. *Enactment of laws or land use decisions shall not constitute taking of private property.*
 - c. *Coordinate with state and federal actions.*
 - d. *All to be treated honestly and politely.*
2. Community Design goals are provided at Section 14.11 of the Plan.
 - a. *Encourage best use of land*
 - b. *Consideration of adequate transportation when lands are subdivided*
 - c. *Design practices to retain natural vegetation*
 - d. *Consider concerns of adjacent landowners*
3. Land Use goals are provided at Section 14.14 of the Plan.
 - a. *Establish zone districts recognizing values of ag and timber land, resources, centering areas for commercial and residential where infrastructure exists*
 - b. *Develop compatible uses within districts*
 - c. *Process to abate nuisances and unlawful uses*
4. Notice of the text amendment was properly provided in the newspaper of record and to taxing districts and the media at least 15 days prior to the public hearing.
5. The Boundary County Planning and Zoning Commission recommended to the Board of County Commissioners approval of the code enforcement text amendment following their January 25, 2024, public hearing.
6. **The Board of County Commissioners heard the proposed code enforcement amendment March 11, 2024, and continued the hearing to allow for further consideration and additional public comment. Additional public notice published April 18, 2024, in the newspaper of record and notice was provided to taxing districts and the media April 17, 2024.**