

**MINUTES
PUBLIC HEARING**

**KOOTENAI COUNTY
PLANNING AND ZONING COMMISSION**

MARCH 23, 2023

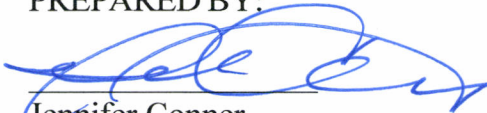
Planning Commissioners Present:

Madeline David
David Dean
Paul Glader
David Levine
Cheri Zao
John Malloy
Leander James

Staff Members Present:

David Callahan
Pat Braden
Reba Grytness
Jennifer Conner

MINUTES
PREPARED BY:



Jennifer Conner
Deputy Clerk

MINUTES
REVIEWED BY:



Madeline David
Chair



The Planning and Zoning Commission is an advisory board to the Board of County Commissioners.

Call to Order:

Chair David called the Public Hearing to order for March 23, 2023 at 6:00 p.m.

Roll Call of Planning and Zoning Commissioners:

Present: Malloy, Dean, Zao, James, Levine, Glader and David

Change to the Agenda:

Chair David asked if anyone had changes to the agenda. No changes to the agenda were requested.

Poll for Conflict of Interest:

Chair David polled the commissioners to see if anyone believed the agenda item would create a conflict of interest for them. Commissioner James stated that he lives within the reservation boundary, but he will consider the proposal in an unbiased manner. Civil Deputy Prosecuting Attorney Pat Braden stated that he does not believe that Commissioner James has a conflict of interest since his property would be downzoned if the rezoning were to be enacted. No conflicts were identified.

Chairman's Remarks:

Chair David stated that the Public Hearing tonight will address ORA22-0001 Coeur d'Alene Tribal Rezoning, a request by the Coeur d'Alene Tribe to consider an areawide rezone from Rural to Agricultural for land within the Tribal Boundary.

Chair David recapped the normal Public Hearing process that would be used during the hearing.

- Director Callahan will provide an overview of the proposed changes and answer questions that the Planning Commissioners may have.
- Next, the hearing will be opened for public comments.
- Once all comments have been heard, the commissioners will move to deliberations.

Chair David asked Director Callahan to begin his presentation.

Director Callahan indicated that the staff report had a few typographical errors that he wanted commissioners to be aware of. Specifically he said that in places where the report says "county" the word should be "country". Director Callahan further explained that this matter was brought to him by the Coeur d'Alene Tribe almost two years ago. He presented the issue to the Board of County Commissioners on July 15, 2021 and received unanimous approval to pursue the request. He believes this has been an iterative process and therefore what is before the Commission tonight is different from that originally discussed with the Board of County Commissioners. This request is a legislative matter and is consequently properly before the Planning Commission. The rezone request covers a large area and the Tribe's objective is to preserve agricultural and timber lands and to address water resource concerns. While the Future Land Use Map designation of Country allows some sub-division under very specific conditions, the Map, completed in 2007, is due for updating following the 2020 Comprehensive Plan Update.

Rezoning would provide more certainty for landowners who currently face consistent Tribal opposition to

subdivision proposals. Director Callahan reviewed some of the options available to the Planning Commission, and reviewed the required findings needed in any decision for change. Director Callahan suggested that if the Planning Commission decides it does not favor this request, it would be helpful if it explained the reasons behind that decision.

Director Callahan turned the factual presentation over to Aaron Qualls of SCJ Alliance, who prepared the Comprehensive Plan Consistency Analysis for the request. Mr. Qualls stated that this proposal is to rezone 20 acre and larger parcels from Rural to Agricultural zoning. Subdivision is not allowed in the Agricultural zone. Roughly 50% of the land in question is owned outright by the Tribe or through Tribal Trust status. Of the 406 parcels of 20 acres or larger, 74 are under Tribal ownership while 332 parcels are privately owned. As a sovereign nation, the Tribe has the authority to challenge uses that threaten tribal political integrity, economic security, or health and welfare within the reservation. Future Land Use maps designate most of the land either Scenic or Resource Recreation with an area in the north designated as Country. Country designation includes agricultural activities compatible with rural residential development and residential subdivisions that allow residential and non-residential uses.

Questions from Commissioners were answered by Director Callahan and Mr. Qualls.

Chair David opened the public comment session and provided the following guidelines for those members of the public who would be speaking.

- Each member of the public may speak for up to 3 minutes.
- Members of the public should provide their name and address for the official record.
- The public comment period is not a debate or discussion of issues. Commissioners may ask questions of commenters for clarification purposes, but will not engage in back and forth discussion

Public Comments:

In favor:

Tyrel Stevenson, Legislative Director with the Coeur d'Alene Tribe: The groundwater supply in this area is threatened. It is important to the Tribe to conserve natural resources and the character of the land. The Tribe is including its own land in the rezone request. The Tribe wants to partner with the County to avoid litigation regarding land division.

Gene James, Tribal member: The Tribe has one option it is willing to support: to rezone all the land, including Tribal land. Tribal members want to work with local governments. They were the first ones here and want to preserve the land. They have no other place to go and cannot relocate. This is what their ancestors fought to keep for them. He understands what the property owners are feeling. The tribe has felt like this for centuries. They are not interested in offering only their land.

Margaret Sijohn, Tribal member: We want to preserve the natural resources. She received a letter there was a water restriction, which has never happened before.

Opposed:

Rand Wichman: The information on line is poorly organized with multiple maps. Keeping Kootenai presented a third map. The criteria is arbitrarily based on parcel size and status of current use taxation. He represents Kootenai Properties which owns just under 2000 acres and wants to be left out of the rezone.

Dave Lampert: His family homesteaded in 1909. The farmland is steep, and rocky with shallow soil. In the future it will be economically unfeasible to farm. A zone change could cost his family hundreds of

thousands of dollars. He agrees with protecting the land, but he is not protected.

Herb Milhorn: He owns 800 acres in the proposed rezone area. He's never seen government seriously consider taking away owners property rights, which do not belong to the County but to the property owner.

Sandy Young: The ninth circuit court states that it is unlawful to rezone in this way. The Board of County Commissioners approved going ahead with the rezone proposal for land owned by the Tribe only, and to see if others wanted to join in. The current proposal was never the Board's intention. The Tribe is not subject to County rules, so they are not losing anything.

(Pat Braden stated that the court case referenced by Ms. Young dealt with a tribe trying to exercise jurisdiction on someone building a structure on non-tribal land without tribal approval, and the ninth circuit found they did not have jurisdiction. The case does not apply to this rezone request.)

Jennifer Demar: She wants to subdivide to have her kids be able to afford a house.

Zoom participants:

Laurie Warren: She has 80 acres in Black Rock. She says it is our right to do what we want with our property. People have to invest in their own properties. Family heritage is the bottom line.

Joel Seale: He owns 20 acres with his parents and intended to sub-divide. The Comprehensive Plan states that downzoning is not recommended. What do land owners get out of this negotiation? He is not opposed to everything, but the family exemption should still be considered.

At the conclusion of the comment period Commissioner Levine made a motion to close the public hearing for ORA22-0001 Coeur d'Alene Tribal Re-zoning at 7:08 p.m. The motion was seconded by Commissioner Zao. All voted aye by a voice vote.

Commissioners took a short break and reconvened at 7:20 PM

Deliberations: ORA22-0001 Coeur d'Alene Tribal Re-zoning

Chair David opened the deliberation period by reviewing the purpose of the rezone request which is to preserve agricultural land, timber land, open spaces, natural resources and existing rural character and asked Commissioner Zao to open the discussion.

Commissioner Zao had questions about available water resources, and the impact of development on water in this area.

Commissioner Levine indicated that this decision is a difficult one since he generally is against down-zoning and believes in the importance of property rights. He added that the State does provide exceptions to address health, safety and general welfare concerns. Since this land is within the Tribal Reservation boundary, he believes considering their interest in preserving the land is important and may justify this exception.

Commissioner James spoke to the need to avoid litigation, the need to create certainty and to the reality that the status quo does not benefit anyone.

Commissioner Glader had further questions about the Country designation and impact of that designation on the Commission's eventual recommendation.

Commissioner Malloy questioned why the County is dealing with this rezone request if the tribe has authority in subdivision decisions.

Civil Deputy Prosecuting Attorney Braden requested a count of those landowners who have voluntarily expressed to have their property rezoned.

Due to the amount of information requested by Commissioners, a motion to continue deliberations to April 6, 2023 at 1:30 p.m. was made by Commissioner Levine and seconded by Commissioner Glader.

Roll Call Vote:

Malloy: Yes; Dean: No; Zao: Yes; James: Yes; Levine: No; Glader: Yes; and David: Yes

The motion was approved by a five to two vote.

Deliberations will continue on April 6, 2023 at 1:30 p.m.

Adjournment:

A motion to adjourn was made by Commissioner Malloy and seconded by Commissioner Glader. All voted aye by voice vote. Adjourned at 8:08 p.m.