

ORDINANCE NO. 355
HEARING BODIES AND HEARING PROCEDURES
TITLE 2, CHAPTER 1
CASE NO. OA-115-05

AN ORDINANCE IN AND FOR THE UNINCORPORATED AREAS OF KOOTENAI COUNTY, IDAHO, ESTABLISHING: AUTHORITY, TITLE AND APPLICABILITY; A PLANNING AND ZONING COMMISSION, HEARING EXAMINERS AND ASSOCIATED DUTIES AND PROCEDURES; HEARING AND NOTICE PROCEDURES; REPEALING CONFLICTING PROVISIONS OF THE KOOTENAI COUNTY CODE and COUNTY ORDINANCES; and PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF KOOTENAI COUNTY, IDAHO:

SECTION: 2-1-1: Authority, Title and Applicability
 2-1-2: Planning and Zoning Commission
 2-1-3: Hearing Examiners
 2-1-4: Hearing Procedures
 2-1-5: Repealer, Severability, and Effective Date

2-1-1: AUTHORITY, TITLE and APPLICABILITY

- A. **AUTHORITY.** These regulations are authorized by Title 31, Chapter 7, and Title 67, Chapter 65 of *Idaho Code*; and Article 12, Section 2 of the *Idaho Constitution*, as amended or subsequently codified.
- B. **TITLE.** This Ordinance shall be known as the Hearing Bodies and Hearing Procedures Ordinance.
- C. **APPLICABILITY.** These regulations apply within the unincorporated areas of Kootenai County, and to all public hearings held pursuant to Kootenai County Ordinances authorized by *Idaho Code* Title 67, Chapter 65 (the Local Land Use Planning Act), except Area of City Impact Ordinances (Kootenai County Code, Title 8). This includes, but is not limited to, the Kootenai County Zoning, Subdivision, Conditional Zoning Development Agreement, Flood Damage Prevention, Site Disturbance, and Road Naming and Addressing Ordinances. These regulations also apply to the Kootenai County Building Ordinance and Title 2, Chapter 5 of the *Kootenai County Code* (establishing a Site Disturbance Appeals Board).

2-1-2: PLANNING AND ZONING COMMISSION:

- A. **ESTABLISHMENT.** A Planning and Zoning Commission (hereafter referred to as the Commission) is hereby established in and for the County pursuant to *Idaho Code* §67-6504. Such Commission shall consist of seven (7) members, appointed by the Chairman, and confirmed by a majority vote of the Board of County Commissioners (hereafter referred to as the Board). Members shall be selected without regard to political affiliation and shall serve without compensation, provided, however, that actual and necessary expenses shall be allowed if approved by the Board.
- B. **QUALIFICATIONS.** Planning Commission members shall meet the requirements of *Idaho Code* §67-6504.

- C. **TERMS OF OFFICE.** The terms of office for Planning Commission members shall conform to the requirements of *Idaho Code* §67-6504, and shall be three (3) years, or until their successors are appointed. Expired or vacant positions shall be filled within ninety (90) days. Terms shall begin on February 1 and conclude on January 31. No person shall serve more than two (2) full, consecutive terms without specific concurrence by two-thirds (2/3) of the Board, adopted by motion and recorded in the minutes.
- D. **REMOVAL OF MEMBERS.** Any member of the Commission may be removed for cause by a majority vote of the Board. Any member who is absent from any series of three (3) consecutive regular and/or special meetings and study sessions, without the formal consent of the Commission, or who fails to attend at least seventy five percent (75%) of such regular and special meetings and study sessions, in any one calendar year, may be removed by the Board. Any vacancy resulting from removal for cause or otherwise shall be filled within ninety (90) days by an appointment of a successor to fill the unexpired term of said office.
- E. **CHAIR.** Once every year, at the regular meeting held in February, or the first regular meeting thereafter, the Commission shall select one of its members as Chair of the Commission and one of its members as Vice Chair. In the case of the absence of the Chair and Vice Chair, the members present at any meeting shall select one member to act as Chair Pro Tempore.
- F. **MEETINGS:**
1. **Time of Meetings.** Once each year, the Building and Planning Director (hereafter referred to as the Director) shall publish the Commission's monthly meeting schedule for the following year. Special meetings may be called at any time by the Chair of the Commission or by the Director, subject to the notification requirements set forth herein.
 2. **Quorum.** A majority of the filled positions on the Commission shall constitute a quorum for the purpose of conducting the Commission's business, provided there are at least three (3) filled positions. For purposes of determining a quorum, a member who is present, but who cannot hear or deliberate on an application because of a conflict of interest, shall be counted as a member present for quorum purposes.
 3. **Record of Proceedings:** Records shall be kept of all Commission proceedings, and the Director shall provide such stenographic assistance as is necessary to keep the records.
 4. **Voting:** Each member of the Commission which does not have a conflict as defined by *Idaho Code* §67-6506, including the Chair, Vice Chair or Chair Pro Tempore, shall be entitled to one vote on each matter before the Commission.
- G. **POWERS AND DUTIES.** The Commission shall act in an advisory capacity to the Board, and shall perform such duties as may be imposed upon it by the Board.
- H. **PROCEDURAL RULES.** The Commission may adopt, such rules of procedure as it may deem necessary to properly exercise its powers and duties. Such rules shall be kept on file in the office of the Building and Planning Department (hereafter referred to as the Department) and a copy thereof shall be furnished to any person upon request.
- I. **LIABILITY.** Neither the Commission, nor any person connected with the Commission, shall incur any financial liability in the name of the County.

2-1-3: HEARING EXAMINERS:

- A. ESTABLISHMENT.** The position of Hearing Examiner is hereby established in and for the County pursuant to *Idaho Code* §67-6520. One or more hearing examiners shall be appointed by the Chairman, and confirmed by a majority vote of the Board of County Commissioners, and shall serve at their discretion.
- B. QUALIFICATIONS.** Hearing Examiners include professionally trained or licensed planners, attorneys, engineers or architects experienced in the field of planning and zoning matters.
- C. MEETINGS:**
 - 1. **Time of Meetings.** Once each year, the Director shall publish the Hearing Examiners' monthly meeting schedule for the following year. Special meetings may be called at any time by a Hearing Examiner or the Director, subject to the notification requirements set forth herein.
 - 2. **Record of Proceedings.** A record shall be kept of all Hearing Examiner proceedings, and the Director shall provide such stenographic assistance as is necessary to keep the records.
- D. POWERS AND DUTIES.** Hearing Examiners shall act in the same advisory capacity to the Board as the Commission, and shall perform such duties as may be imposed upon them by the Board in accordance with *Idaho Code*.
- E. LIABILITY.** No Hearing Examiner shall incur any financial liability in the name of the County.

2-1-4: HEARING PROCEDURES

- A. HEARING NOTICE.** Notice of public hearings shall be provided as follows:
 - 1. **Notice of Meetings.** In addition to the public notice provisions of this Ordinance, notice of regular and special meetings, including the posting of agendas, shall be given in accordance with *Idaho Code* §67-2343.
 - 2. **Content.** The content of notices for public hearings shall conform to the requirements of *Idaho Code* Title 67, Chapter 65, and shall include the time and place of the hearing, a summary of the application or request, and a statement that written comments on an application must be submitted at least 10 days prior to the hearing, or at the hearing. Written comments are not accepted during the 10 days preceding a hearing. If a County hearing body has issued recommendations on the application, or made significant changes to a proposal, the notice shall also include a summary of those recommendations and/or changes.
 - 3. **Newspaper, other media, political subdivisions.** At least 28 days prior to a public hearing, a copy of the notice shall be published in a newspaper of general circulation in Kootenai County, and shall be made available to other newspapers, radio and television stations. At least 28 days prior to the hearing the notice shall also be mailed to all political subdivisions providing services within Kootenai County, including school districts.
 - 4. **Property Owners.** When notice of adjacent and nearby property owners is required by law, hearing notices shall be mailed, certified, at least 28 days prior to the hearing. The notice shall be mailed to property owners or purchasers of record within the land being considered, and within 300 feet of the exterior boundaries of that site, including any contiguous properties

under the same ownership. Kootenai County may also require that notice be provided to other areas that may be affected by the proposed change. Additional procedures for notification of property owners may be established by the Department.

5. **Site Posting.** Where on-site posting of a hearing notice is required by law, the notice shall be posted on the premises that is the subject of the application, at least 21 days prior to the hearing. If the site is inaccessible, the access driveway to the site shall be posted where it adjoins a public or private road.
6. **Alternate Forms of Notice.** When notice is required to two hundred (200) or more property owners or purchasers of record, notice may be provided through a display advertisement at least four (4) inches by two (2) columns in size, in the official newspaper of Kootenai County, published at least 28 days prior to the hearing. Notices of the hearing must also be posted at the external boundaries of the site adjoining public or private roads. If the site is not located on a road, the access driveway(s) to the site shall be posted where they adjoin public or private roads.

B. CHANGES OR ADDITIONS TO APPLICATIONS. Once hearing notices have been mailed and/or published, the Applicant may not modify the content of the application, or submit additional items, until the hearing. The Applicant may, however, withdraw the application and resubmit it after the new or modified items are submitted. If withdrawn, the application shall not be rescheduled for a public hearing until the additional items have been received.

C. AGENCY/ PUBLIC COMMENTS. Written comments from agencies and the public must be received at least 10 days prior to the hearing, or must be submitted at the hearing. Written information is not accepted during the 10 days preceding a hearing.

D. TYPES OF HEARINGS. For the purposes of this chapter, a legislative hearing is held for applications or proposals of a general nature, such as those affecting county wide ordinances or plans. Quasi-judicial hearings are held for situation or site specific requests, including applications for zone changes, subdivisions, conditional use permits, variances, and appeals of Department decisions.

E. MANDATORY PROCEDURES FOR ALL HEARINGS. In every legislative or quasi-judicial hearing to which this Ordinance applies, the hearing body (including the Planning and Zoning Commission, Hearing Examiner, Board of County Commissioners, and Site Disturbance Appeals Board) shall:

1. Accept a report from staff, including an evaluation of the request, proposed findings of fact, and, if applicable, recommended conditions;
2. Require that every person wishing to testify properly identify themselves for the record;
3. Mark every exhibit and enter it into the record;
4. Maintain a transcribable record in accordance with *Idaho Code* §67-6536;
5. Accept no additional information or testimony into the record after the close of the public hearing;

6. Provide decisions and recommendations in writing in accordance with *Idaho Code* §67-6519 or §67-6520, and §67-6535; and
7. Base decisions and recommendations on the standards and criteria set forth in the *Kootenai County Comprehensive Plan*, applicable County ordinances, *Idaho Code*, and Federal law.

F. DISCRETIONARY PROCEDURES FOR ALL HEARINGS. In every legislative or quasi-judicial hearing to which this Ordinance applies, the hearing body may:

1. Require witnesses to state their position in writing before the hearing;
2. Limit the time that each witness may speak;
3. Take notice of its own knowledge and experience as to a particular issue;
4. Require that witnesses be sworn;
5. Continue a hearing to allow time for submission and/or review of new information.

G. MANDATORY PROCEDURES FOR QUASI-JUDICIAL HEARINGS. In every quasi-judicial hearing to which this Ordinance applies the hearing body shall:

1. Require that its members declare any potential conflicts, or economic interests in the proposed action, in accordance with *Idaho Code* §67-6506. A member with a conflict may not deliberate on, nor participate in the proceeding or action;
2. Allow the Applicant to present the application or request;
3. Receive information, recommendations and testimony from witnesses;
4. Allow rebuttal testimony from the Applicant;
5. Make a decision on the proposal based only on the information in the official record. Once a hearing is closed, the hearing body shall only allow new testimony, including written testimony, by reopening the hearing. The public shall have an opportunity to review and testify on any new information that is received, and the Applicant shall have an opportunity to respond to new information and rebut new testimony;
6. Provide decisions and recommendations in writing in accordance with *Idaho Code* §67-6519 or §67-6520, and §67-6535;
7. Unless otherwise approved by the Applicant, make a recommendation and/or decision within 5 weeks of the close of the public hearing, or in the case of the Board, within 5 weeks of the receipt of a hearing body recommendation. If the Board chooses to hold a public hearing on an application, the Board shall make a decision within 5 weeks of the close of the final public hearing. In the event a hearing body fails to carry out its responsibilities according to these regulations, the Board shall assume their duties;

H. DELIBERATIONS. The hearing body may discuss and vote on an application or issue at the same meeting at which testimony is taken, or at a later meeting.

I. CONFLICTING REQUIREMENTS. In instances of conflict between the provisions of this Ordinance and state law, the provisions of *Idaho Code* shall take priority.

2-1-5: REPEALER, SEVERABILITY, and EFFECTIVE DATE

A. REPEAL OF EXISTING ORDINANCES. The provisions of this Ordinance repeal and replace Title 2, Chapter 1, of the *Kootenai County, Idaho County Code*, and any other conflicting sections of County ordinances or the *Code*, including those in the Kootenai County Zoning, Subdivision, Conditional Zoning Development Agreement, Flood Damage Prevention, Site Disturbance, Road Naming and Addressing, Building, and Site Disturbance Appeals Board Ordinances. The following conflicting sections shall be modified as follows:

- 2-5-3.C. Delete last sentence.
- 2-5-3.D. Delete entire paragraph.
- 2-5-4.A-E. Replace entire section A-E with "Hearing Procedures- The conduct of public hearings, and public notice requirements shall conform to Title 2, Chapter 1 of this *Code*."
- 6-1-10.C. Forth sentence- Replace with "The conduct of public hearings, and public notice requirements shall conform to Title 2, Chapter 1 of this *Code*."
- 9-11A-1.B.2. Replace with "The conduct of public hearings, and public notice requirements shall conform to Title 2, Chapter 1 of this *Code*."
- 9-11A-2.B.1. Replace with "The conduct of public hearings, and public notice requirements shall conform to Title 2, Chapter 1 of this *Code*."
- 9-11A-3.B.10. Replace with "The conduct of public hearings, and public notice requirements shall conform to Title 2, Chapter 1 of this *Code*."
- 9-13-6.B.2. Replace with "The conduct of public hearings, and public notice requirements shall conform to Title 2, Chapter 1 of this *Code*."
- 9-13A-11. First paragraph- Replace "*Idaho Code* 67-6509" with "Title 2, Chapter 1 of this *Code*."
- 11-1-5.B.5. Last sentence- Replace with "The conduct of public hearings, and public notice requirements shall conform to Title 2, Chapter 1 of this *Code*."
- 11-1-5.B.8.&9. Delete both paragraphs and replace with "The conduct of public hearings and public notice requirements shall conform to Title 2, Chapter 1 of this *Code*. The hearing body may recommend, and the Board may issue conditions of approval."
- 11-2-8.D. Second paragraph, fifth sentence, replace ". . . and shall give legal public notice, as well as due notice to the parties, in interest. The Appeals Board shall decide the matter within five (5) days of completion of the appeal hearing." with "The conduct of public hearings, and public notice requirements, shall conform to Title 2, Chapter 1 of this *Code*."

Kootenai County Subdivision Ordinance Section 2.01.C.1.i.

Replace with "The conduct of public hearings, and public notice requirements, shall conform to Title 2, Chapter 1 of this Code."

Kootenai County Subdivision Ordinance Section 5.02, third sentence:

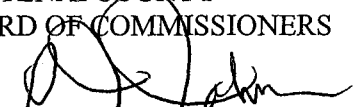
Replace "Section 2.01.C.1 of this Ordinance, and any other applicable County ordinances" with "Title 2, Chapter 1 of this Code."

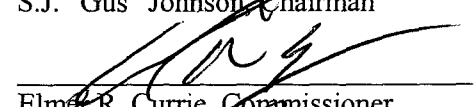
Any other conflicting sections that are repealed, will be replaced with the following: "The conduct of public hearings, and public notice requirements, shall conform to Title 2, Chapter 1 of this Code."

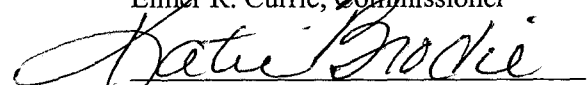
- B. **SEVERABILITY.** Should any section, clause, or provision of this Ordinance be declared by a court of appropriate jurisdiction to be invalid, the same shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the part declared to be invalid. Any remaining provisions shall be read to give effect to the spirit of this Ordinance prior to removal of the provisions declared invalid.
- C. **EFFECTIVE DATE.** This Ordinance shall take effect and be in full force upon its passage, approval, and publication in one (1) issue of the *Coeur d'Alene Press*.

APPROVED this 19th day of May, 2005.

KOOTENAI COUNTY
BOARD OF COMMISSIONERS

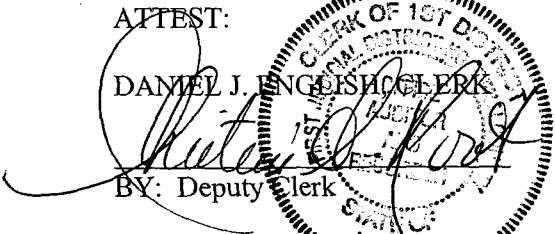

S.J. "Gus" Johnson, Chairman

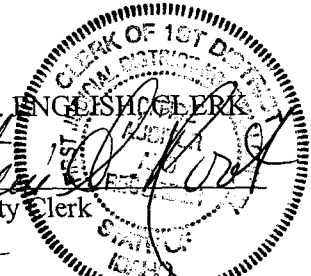

Elmer R. Currie, Commissioner


Katie Brodie, Commissioner

ATTEST:

DANIEL J. ENGLISH, CLERK


BY: Deputy Clerk



Publication Date: Tuesday, May 24, 2005