

ORDINANCE NO. 411
CASE NO. OA-137-07
CONDITIONAL ZONING DEVELOPMENT AGREEMENTS

AN ORDINANCE OF KOOTENAI COUNTY, IDAHO, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, AMENDING TITLE 9, KOOTENAI COUNTY CODE, TO ADD A NEW CHAPTER RELATING TO THE EXECUTION OF CONDITIONAL ZONING DEVELOPMENT AGREEMENTS; ESTABLISHING AUTHORITY; STATING THE PURPOSE; ESTABLISHING INITIATION, JURISDICTION, TIME LIMITS, FORM OF AGREEMENTS, AND CRITERIA FOR APPROVAL; PROVIDING FOR RECORDATION OF APPROVED AGREEMENTS; REQUIRING COMPLIANCE WITH ALL TERMS, CONDITIONS, OBLIGATIONS, AND DUTIES SET FORTH IN APPROVED AGREEMENTS; PROVIDING MEANS FOR MODIFICATION AND TERMINATION OF AGREEMENTS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR RATIFICATION OF ACTIONS RELATING TO PREVIOUSLY APPROVED AGREEMENTS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING THAT ADOPTION OF THIS ORDINANCE SHALL HAVE NO EFFECT ON PROSECUTIONS MADE UNDER ANY PREVIOUSLY EFFECTIVE ORDINANCE; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF KOOTENAI COUNTY, IDAHO AS FOLLOWS:

SECTION 1. That Title 9, Kootenai County Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Title 9, Chapter 26, Kootenai County Code, and to read as follows:

9-26-1: AUTHORITY: The provisions of this chapter are authorized pursuant to the general authorities set forth in section 1-1-2 of this code and Idaho Code §§ 67-6511 and 67-6511A.

9-26-2: PURPOSE: Conditional zoning development agreements are a discretionary tool that may be used by the board of county commissioners as a condition of rezoning. Conditional zoning development agreements allow a specific project with a specific use to be developed on property in an area that is not appropriately zoned for proposed uses or conditionally allowed on the subject parcel.

9-26-3: DEFINITIONS: The definitions contained in section 9-2-2 of this title shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall apply:

AGREEMENT: A conditional zoning development agreement authorized under the terms of this chapter.

APPLICANT: Any person, corporation, partnership, or other legal entity, who owns, or has an ownership interest, in the real property which is the subject of a rezone request, or any representative thereof.

BOARD: The Board of County Commissioners of Kootenai County, Idaho.

HEARING EXAMINER: Any person serving as a hearing examiner for Kootenai County, as established in section 2-1-3 of this code.

9-26-4: INITIATION OF AGREEMENTS: An agreement may be initiated with the consent of the applicant for the rezoning of a particular parcel of land or collection of parcels of land through the following methods:

- A. On application by the applicant.
- B. By recommendation of the director.
- C. By recommendation of a hearing examiner.
- D. As required by the board.

9-26-5: JURISDICTION: In the event that a hearing examiner finds that a conditional zoning development agreement should be entered into, the hearing examiner shall retain jurisdiction of the matter, defer consideration of the rezone applied for and set a time limit for submittal of a proposed agreement. The hearing examiner shall then proceed as specified herein.

In the event of a determination by the board that an agreement should be entered into, the board may remand the matter to a hearing examiner for setting a time limit for submittal of a proposed agreement. The hearing examiner shall then proceed as specified herein.

9-26-6: TIME LIMITS: In the event of findings by the hearing examiner, or by requirement of the board to submit an agreement, all time limits required by the provisions of Idaho Code or this code may be stayed, modified, or extended upon affirmative decision of the hearing examiner or vote of the board. The hearing examiner or board may establish time limits for submittal of a proposed agreement. Failure by the applicant to comply with such time limits may be deemed to constitute just cause for termination of conditional zoning development agreement proceedings and denial of the zone change application.

9-26-7: FORM OF AGREEMENTS: An agreement shall be in the form required by the director. No agreement shall be accepted by the department which does not include the following:

- A. Legal name, title and addresses of the applicant, property owner and/or others with a direct vested interest in the conditional zoning development agreement and rezone request.
- B. A legal description of the property that is subject of the rezone request. Such legal description must be acceptable to the county.

- C. An affidavit by the owner of the parcel agreeing to submission of the use and property for an agreement upon the adoption of an order by the board approving the requested rezone of the subject parcel.
- D. The current use of the property for which the conditional zoning development agreement is sought.
- E. The proposed specific use of the property for which the conditional zoning development agreement is sought and an explanation of how the proposed use is permitted or conditionally permitted in the zone for which application has been made.
- F. A project summary report, which shall include:
 - 1. A narrative description of the proposed density, amenities, improvements or other uses sought, including, but not limited to: height, setbacks, size, and location of all proposed structures or activities on the property.
 - 2. The estimated time of start and completion of all proposed development activities. This may be simplified by devising a timeline that splits development activities into phases.
 - 3. Plans for use and reuse of property after proposed project completion.
 - 4. A narrative description of physical and environmental effects, constraints, or limitations of the proposed development, including infrastructure demands, and proposals for mitigation of identified physical and environmental effects, constraints or limitations.
 - 5. Economic benefits gained or lost from proposed development.
 - 6. Conceptual site plans, with some representation of scale showing the approximate location of any proposed structures, perimeter buffer treatment (as required), road improvements, conceptual drainage strategy, and other proposed usage information. Exhibits on general soil types, topography, slope, vegetation, drainages, and other pertinent land characteristics may also be required.
- G. Signed letters of application, approval, or pre-approval from any applicable federal, state, or local agencies involved in the permitting process for the specific use proposed. Letters shall include any written agreements made with agencies to perform specific action. If letters of application, approval, or pre-approval are not provided, acknowledgement and consent to comply with all applicable federal, state and local laws, rules, regulations, and standards shall be substituted.
- H. A statement by the owner of the property that failure to comply with the commitments in the agreement shall be deemed consent to rezone the property to the pre-existing zone. Rezoning of the subject parcel will occur at the time of termination of the agreement and

shall comply with the notice and hearing procedures set forth in Idaho Code § 67-6509. The costs of such rezone shall be paid by the applicant, owner and/or developer.

- I. Signatures of all applicants, owners, developers, or lawfully authorized agents, shall be notarized, and in the case of lawfully authorized agents, properly executed powers of attorney in a form acceptable to the county's legal counsel shall be presented to the director and shall be made part of the agreement.
- J. A clause that the commitment shall run with the land and be binding on the heirs, assigns, and successors in interest of the owner and/or developer.
- K. Any other matter mutually agreeable to the parties. This may include, but is not limited to, performance bonding or other fiscal guarantees.

9-26-8: APPROVAL OF AGREEMENTS: The board may require an agreement to be executed to allow a rezone in order to ensure implementation of the project as represented by the applicant and to promote the general health, safety, comfort, convenience, and welfare of the citizens of Kootenai County. A conditional zoning development agreement shall not allow a use of the property that is not a permitted or conditionally permitted use in the zone requested.

- A. Conditional zoning development agreements may be recommended for approval by a hearing examiner, and may be approved by the board, only after public hearings complying with the notice and hearing procedures set forth in Idaho Code § 67-6509.
- B. The hearing examiner may recommend, and the board may add, conditions, terms, duties or obligations to the development agreement.

9-26-9: RECORDATION OF AGREEMENTS: Following approval of a conditional zoning development agreement and adoption of a companion ordinance rezoning the subject property by the board, the agreement shall be recorded in the office of the county recorder at the expense of the property owner or applicant. The recorded agreement shall take effect and be in force upon adoption of the approval order or publication of the ordinance rezoning the subject property, whichever occurs later. The agreement, and all conditions, terms, duties or obligations included therein, shall run with the land and shall be considered to be continuing obligations of the owner, all subsequent owners and any other person acquiring an interest in the property.

9-26-10: DUTY TO COMPLY WITH TERMS OF AGREEMENT: Any owner, subsequent owner, and any other person acquiring an interest in property that is restricted by an agreement adopted pursuant to this chapter, shall comply with all terms, conditions, obligations and duties contained in the agreement.

9-26-11: MODIFICATION OF AGREEMENTS: No substantial modification of an agreement may be made without approval of the board unless the modification is required by changes in state or federal laws, rules, or regulations. An agreement may be modified by the board without a public hearing complying with the notice and hearing procedures of Idaho Code § 67-6509 only upon an affirmative recommendation from the hearing examiner that the

proposed modification is not a substantial change to the terms and conditions of the agreement, or that the modification is required by changes in state or federal laws, rules, or regulations. After recordation of a conditional zoning development agreement, any party bound by the agreement may seek to modify the agreement. Requests for modification of a conditional zoning development agreement shall comply with the procedures set forth in this chapter, and may also follow any procedures contained in the original agreement which are consistent with those set forth in this chapter. The hearing examiner may recommend to the board, and the board may approve, a substantial modification of a previously adopted agreement based upon the following criteria:

- A. A public hearing is held which complies with the notice and hearing procedures set forth in Idaho Code § 67-6509.
- B. A finding that the circumstances surrounding the agreement currently in effect have changed and that the proposed modification will:
 - 1. Preserve the enjoyment of a substantial property right of the owner;
 - 2. Not be detrimental to the public welfare; and
 - 3. Not be injurious to other property in the surrounding neighborhood.

9-26-12: TERMINATION OF AGREEMENTS: A conditional zoning development agreement may be terminated by the board without the consent of the breaching party for failure to comply with any term, condition, obligation or duty contained in the agreement. Such termination shall take place after a public hearing on the termination, at which time testimony shall be taken to establish non-compliance with the agreement. The public hearing shall comply with the notice and hearing procedures set forth in Idaho Code § 67-6509. A conditional zoning development agreement may contain termination procedures, including, but not limited to, notification of the persons bound by the agreement of the alleged violation and establishing a reasonable time to remedy the violation prior to the initiation of termination proceedings.

Upon termination of the agreement, the property which was the subject of the agreement shall revert to the zone applicable as of the date of submittal of the rezone request which resulted in the adoption of the agreement. If no such zone then exists, the zone then in effect which most closely conforms to the characteristics and requirements of the prior existing zone, as determined by the director, shall apply. At that time, all uses of the property which are not permitted within the subsequently applied zone following termination of the agreement shall immediately cease. The owner of the property may apply for a conditional use permit for the parcel if the applied-for use is a conditionally permitted use within the subsequently applied zone. A conditional zoning development agreement shall stipulate that the costs incurred to rezone the property upon termination of the agreement be paid by the applicant, owner and/or developer of the property.

9-26-13: ENFORCEMENT OF AGREEMENTS: Conditional zoning development agreements may be enforced by the county through any means deemed to be appropriate,

including but not limited to, specific enforcement, injunctive relief, or damages for violation of any provision of this chapter or of any agreement approved pursuant to the provisions of this chapter. The foregoing enforcement options available to the county shall not be deemed exclusive.

9-26-14: RATIFICATION OF PRIOR ACTIONS: All actions of the board, the Kootenai County Planning and Zoning Commission, hearing examiners, directors, and/or their designees, concerning any conditional zoning development agreements approved on or after July 7, 1993 are hereby ratified.

SECTION 2. Kootenai County Ordinance No. 189, adopted on July 7, 1993, and all other provisions of any Kootenai County ordinance, whether codified or uncoded, which conflict with the provisions of this Ordinance, are hereby repealed.

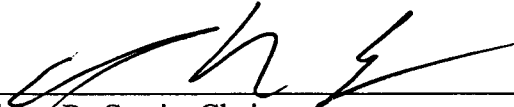
SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 4. Neither the adoption of this Ordinance nor the repeal of any ordinance shall, in any manner, affect the prosecution for violation of such ordinance committed prior to the effective date of this Ordinance or be construed as a waiver of any license or penalty due under any such ordinance or in any manner affect the validity of any action heretofore taken by the Kootenai County Board of Commissioners or the validity of any such action to be taken upon matters pending before the Kootenai County Board of Commissioners on the effective date of this Ordinance.

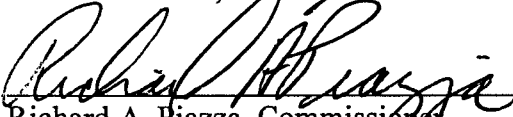
SECTION 5. This Ordinance shall take effect and be in full force from and after its passage, approval, and publication in the Coeur d'Alene Press.

ADOPTED this 31st day of January 2008.

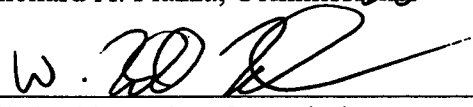
**KOOTENAI COUNTY
BOARD OF COMMISSIONERS**



Elmer R. Currie, Chairman




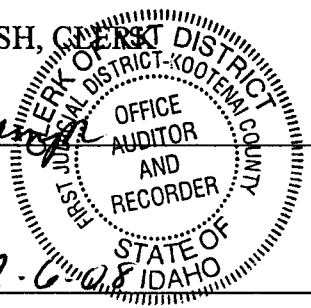
Richard A. Piazza, Commissioner



W. Todd Tondee, Commissioner

ATTEST:

DANIEL J. ENGLISH, CLERK
By: 
Deputy Clerk



Publication Date: 2-6-08

CERTIFICATION

I hereby certify that the attached Notice of Ordinance Adoption contains a true and complete summary of Ordinance No. 411 of Kootenai County, Idaho, and the attached summary provides adequate notice to the public of the contents of said Ordinance.

DANIEL J. ENGLISH, CLERK

BY: 
Deputy Clerk

