



Comments on the Kootenai County Comprehensive Plan

Submitted by Terry J. Harris

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1. Regarding the Goals and Policies preface paragraphs in each Chapter.

Kootenai Environmental Alliance has deep concern with the specific language the Planning Commission has inserted as a preface to the Goals and Policies in each and every Chapter. We believe we understand the intent of the Commission, but we don't think the language has expressed the intent appropriately, and indeed, we believe that part of the language is actually inconsistent with Idaho law.

We recognize that the intent of the paragraphs is to make clear to everyone that it is the development regulations – the zoning map, zoning ordinance, subdivision ordinance, site disturbance ordinances, shoreline development ordinances, etc. – that govern land development in Kootenai County. We agree that despite much confusion to the contrary, the Comprehensive Plan is not a document which, standing alone, has any particular legal significance on the development of any specific parcel. Idaho Law is quite clear on this point. “A comprehensive plan is not a legally controlling zoning law, it serves as a guide to local government agencies charged with making zoning decisions.” Giltner Dairy LLC v. Jerome County, 145 Idaho 630 (2008), quoting Evans v. Teton County, 139 Idaho 71, 76, 73 P.3d 84, 89 (2003) (citations omitted). See also Balser v. Kootenai County Board of Commissioners, 110 Idaho 37, (1986), and Bone v. City of Lewiston, 107 Idaho 844, (1984).

The problem in the Planning Commission's amendment is in the second paragraph which states:

The Policies and Implementation Strategies within the plan are not intended to be used as a basis to determine whether any particular land use application is consistent with the goals set forth in this Plan. Development regulations will require the recommending body and/or decision maker in approving a project to find that the project is in compliance with all applicable development regulations, with such a finding deemed to be a finding that the project is in accordance with the goals set forth in this plan

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Unfortunately, the Planning Commission’s wording isn’t strictly true in all cases as a matter of Idaho law. Although the paragraph is possibly acceptable for special use permits (Idaho Code § 67-6512), subdivision permits (Idaho Code § 67-6513), planned unit development permits (Idaho Code § 67-6515), variance permits, (Idaho Code § 67-6516), and building permits, (Idaho Code § 67-6517), it is NOT true for rezoning or conditional use permits in Kootenai County.

To amend the zoning map in a rezoning application, the comprehensive plan *must* be considered. See § 67-6511(b). In other words, it is not *only* the development regulations that need to be considered in a project requiring rezoning, and it would be incorrect, or at the very least circular, to have such a project “deemed” in accordance with the goals of the Plan.

Moreover, Idaho Code § 67-6511 requires the governing board to establish one or more zones or zoning districts within its jurisdiction and provides that “[t]he zoning districts shall be in accordance with the **policies** set forth in the adopted comprehensive plan.” (Emphasis added.) Therefore, the Planning Commission’s first sentence, obviating the need to comply with the Plan’s policies, is incorrect. More to the point, the policies and narrative in the Plan provide important context to the goals of the Comprehensive Plan, and such text cannot simply be deemed superfluous by this paragraph. The Planning Commission seems to be attempting to control the legal scope of the Plan through this language, but such an attempt should be left to the State’s legislative body, not the Commission.

To correct the mistake, and so that the Plan comports with Idaho Law, we suggest simply that the second paragraph in each of the Goals and Policies preface be deleted.

2. Regarding whether the Comprehensive Plan is too “regulatory”

Previous Planning Commission testimony from representatives of “Citizens for Balance,” “North Idaho Building Contractors,” and “Concerned Businesses of Northern Idaho” and others have made the claim that the draft comprehensive plan is “too regulatory,” “too specific,” with “too many goals and policies,” and that Comprehensive Plans are supposed to be “general” in nature. However, there is no basis in Idaho law for these claims. In fact, Idaho Code §67-6508, which governs comprehensive planning, leaves “desirable goals and objectives” to the discretion of the local entity. In fact, the statute anticipates that the Plan may contain matters beyond those enumerated in the section:

§ 67-6508. PLANNING DUTIES. It shall be the duty of the planning or planning and zoning commission to conduct a comprehensive planning process designed to prepare, implement, and review and update a comprehensive plan, hereafter referred to as the plan....The plan shall

consider previous and existing conditions, trends, desirable goals and objectives, or desirable future situations for each planning component...

...Nothing herein shall preclude the consideration of additional planning components or subject matter.

Some of the hearing testimony referred to Balser v. Kootenai County Board of Commissioners, 110 Idaho 37 (1986), but reliance on the case is inapposite. The case holds only that an existing (conflicting) zoning ordinance takes precedence over comprehensive plan. Balser at 39-40. The case says nothing about the level of detail required or otherwise desirable in a County's comprehensive plan. Moreover, the Court notes "the determination of whether a zoning ordinance is 'in accordance with' the comprehensive plan is one of fact." Balser at 39, citing Bone v. City of Lewiston, 107 Idaho 844 (1984). In reality, a more detailed and less ambiguous comprehensive plan will provide more guidance to the factfinder in making such a factual determination.

Besides, the Planning Commission has deleted literally dozens of the policies complained of. The policies that remain are typically those that require procedural "coordination" or "cooperation" or "collaboration" with other entities and plans, or are simply policies of encouragement, not regulation. Indeed, the Commission has made it crystal clear where enactment of development regulations would be required before the policies could be implemented by inserting the words "Enact development regulations which..." in each instance.