

**PLANNING COMMISSION AGENDA**  
**CITY COUNCIL CHAMBERS**

**JANUARY 10, 2006**

**THE PLANNING COMMISSION'S VISION OF ITS ROLE IN THE COMMUNITY**

The Planning Commission sees its role as the preparation and implementation of the Comprehensive Plan through which the Commission seeks to promote orderly growth, preserve the quality of Coeur d'Alene, protect the environment, promote economic prosperity and foster the safety of its residents.

**5:30 P.M. CALL TO ORDER:**

**ROLL CALL:** Bruning, Bowlby, Hill, Jordan, Razor, Messina, Souza, Tiffany Tenty (Student Representative), Dane Larsen (Student Alternate)

**APPROVAL OF MINUTES:**

October 11, 2005

**PUBLIC COMMENTS:**

**COMMISSION COMMENTS:**

**STAFF COMMENTS:**

**ADMINISTRATIVE ITEMS:**

1.     Applicant:     Thad and Darlene Turner  
       Location:     301 W. Walnut  
       Request:     Proposed 2-lot preliminary plat  
                      "Nelson Lots in Bratton Garden Tract Plat"  
                      ADMINISTRATIVE (SS-1-06)
  
2.     Applicant:     Mike Tilford  
       Request:     Modification to Riverstone West phasing plan  
                      ADMINISTRATIVE (I-1-06)

**PUBLIC HEARINGS:**

1.     Applicant:     City of Coeur d' Alene  
       Request:     Proposed ordinance for minimum lot frontage  
                      In cul-de-sacs and knuckles  
                      LEGISLATIVE, (O-1-06)
  
2.     Applicant:     DBH Properties, LLC  
       Location:     Northwest corner of Coeur d'Alene Avenue and 2<sup>nd</sup> Street  
       Request:     Proposed Custom manufacturing/warehouse storage  
                      special use permit in the C-34 (Commercial at 34 units/acre)  
                      zoning district  
                      QUASI-JUDICIAL, (SP-1-06)

3. Applicant: Chinook Properties, LLC  
Location: 980 W. Ironwood Drive  
Request: Proposed 15-unit Medical Office condominium plat in  
the C-17L (Commercial Limited) zoning district.  
QUASI-JUDICIAL, (S-1-06)

**ADJOURNMENT/CONTINUATION:**

Motion by \_\_\_\_\_, seconded by \_\_\_\_\_ ,  
to continue meeting to \_\_\_\_\_, \_\_\_, at \_\_ p.m.; motion carried unanimously.

Motion by \_\_\_\_\_,seconded by \_\_\_\_\_ , to adjourn meeting; motion carried unanimously.

***\*The City of Coeur d'Alene will make reasonable accommodations for anyone attending this meeting who requires special assistance for hearing, physical or other impairments. Please contact Shana Stuhmiller at (208)769-2240 at least 24 hours in advance of the meeting date and time.***



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**PLANNING COMMISSION MINUTES  
OCTOBER 11, 2005  
CITY COUNCIL CHAMBERS**

**COMMISSIONERS PRESENT**

John Bruning, Chairman  
Heather Bowlby  
Ryan Hill  
Brad Jordan  
Tom Messina  
Scott Rasor  
Mary Souza  
Tiffany Tenty, (Student Representative)

**STAFF MEMBERS PRESENT**

John Stamos, Associate Planner  
Marlene Musch Administrative Support II  
Warren Wilson, Deputy City Attorney  
Gordon Dobler, Growth Services Director/City Engineer

**COMMISSIONERS ABSENT**

Dane Larsen, (Alternate Student Representative)

**CALL TO ORDER**

The meeting was called to order by Chairman Bruning at 5:35 p.m.

**APPROVAL OF MINUTES:**

Motion by Razor seconded by Bowlby, to approve the amended minutes of the Planning Commission meeting on September 13, 2005.

**COMMISSION COMMENTS:**

Chairman Bruning asked Planning Director, Yadon for dates and times when the Planning Commission could meet with the arts consultant. Planning Director Yadon replied that the meeting was set for October 18th at 1:00 p.m. in the Council Chambers.

**STAFF COMMENTS:**

Associate Planner Stamos announced the upcoming meetings for the months of October and November, and discussed rescheduling some of the items for the second meeting in November because of election night.

Planning Director, Dave Yadon, passed out Planning Commission retreat priorities to the Planning Commission.

**PUBLIC COMMENTS:**

There were none.

**ADMINISTRATIVE ITEMS:**

1. Applicant: Joseph Rosen  
Location: N.W. corner of 6<sup>th</sup> and Harrison Avenue  
Request: Proposed 2- lot preliminary plat "Rosy's Short Plat"  
ADMINISTRATIVE, (SS-16-05)

Growth Services Director, Gordon Dobler, presented the staff report and then asked if the Commission had any questions, and none were asked.

**Motion by Razor, seconded by Souza, to approve item SS-16-05. Motion approved.**

**PUBLIC HEARINGS**

1. Applicant: Jordan, Hill, and Hall, Inc.  
Location: 119 W. Clayton  
Request: Proposed 47-unit Condominium Plat "Coeur d'Alene Elite Storage Center Plat" located in the C-17 zone QUASI-JUDICIAL, (S-9-05)

Commissioner Jordan declared a conflict of interest with this item and left the hearing.

Associate Planner Stamosos presented the staff report, gave the mailing tally as, 0 in favor, 0 opposed, and 2 neutral and answered questions from the Commission.

Commissioner Hill asked what was currently on the lot at present.

Associate Planner Stamosos replied that there is an abandoned single-family dwelling.

**Public Testimony open.**

Steve Syrcle, Applicant Representative, with Inland Northwest Consultants, 3712 S. Stach Road, Coeur d' Alene, commented that this is a Condominium type storage unit and is proposing 44 units not 47, he also stated that there is no existing vegetation on the site because everything has been cleared off.

Commission Razor asked if they already have a permit to build this facility.

Steve Circle replied, yes.

**Public Testimony closed.**

**Motion by Bowlby, seconded by Rasor, to approve Item S-9-05. Motion approved.**

**ROLL CALL:**

Commissioner Bowlby	Voted	Aye
Commissioner Hill	Voted	Aye
Commissioner Messina	Voted	Aye
Commissioner Rasor	Voted	Aye
Commissioner Souza	Voted	Aye

Motion to approve carried by a vote of 5 to 0 vote.

2. Applicant: North Star Child Development Center, Inc.  
Location: 1583 W. Dalton Avenue  
Request: Community Education special use permit in the R-12 (Residential at 12units/acre) zoning district QUASI-JUDICIAL, (SP-8-05)

Associate Planner Stamosos presented the staff report, gave the mailing tally as, 4 in favor, 1 opposed, and 2 neutral and there were no questions from the Commission.

**Public testimony open.**

Charley Johnson, Applicant Representative, 1763 E. Hanley Avenue, Dalton Gardens, expressed the need for this type of daycare for children with autism and special needs. This facility is integrating children with autism with peers that do not have developmental disabilities to help them lead a normal life. This operation is an Idaho non-profit corporation that will serve a maximum of 40 children ages 2 to 12, through a combination of pre-school, after school, and summer camp programs. He also stated that they plan to install a six (6) to eight (8) foot security fence around the playground area to buffer the noise to the neighborhood.

Chairman Burning asked about the after school programs and what hours that they would be open.

Mr. Johnson replied that anything after 6 p.m. would be inside of the building during the winter months, and that summer camps would more than likely be at another site.

Commissioner Jordan asked if they were leasing the building and if they were the only occupants.

Mr. Johnson replied that if they were approved, yes, that they would be the only occupants in the building.

Commissioner Bowlby asked Mr. Johnson if 40 would be the maximum number of children.

Mr. Johnson replied that they had 12 children currently on the waiting list, and that they would have no more than 40 in the future.

Commissioner Jordan stated that this is a great service for our community.

Student Representative Tenty thought that this was a great idea for this area, and that they need more of these types of daycares for grade school children.

**Public testimony closed.**

**Motion by Souza, seconded by Bowlby, to approve Item SP-8-05. Motion approved.**

**ROLL CALL:**

Commissioner Bowlby	Voted	Aye
Commissioner Hill	Voted	Aye
Commissioner Jordan	Voted	Aye
Commissioner Messina	Voted	Aye
Commissioner Rasor	Voted	Aye
Commissioner Souza	Voted	Aye

Motion to approve carried by a 6 to 0 vote.

- 3. Applicant: Art Bale
- Location: 1214 Mill Avenue
- Request: R-34 residential density special use permit In the C-17 (Commercial at 17units/acre) zoning district QUASI-JUDICIAL, (SP-9-05)

Commissioner Brad Jordan declared a conflict of interest and left the hearing.

Associate Planner Stamosos presented the staff report, gave the mailing tally as 0 in favor, 0 opposed, and 2 neutral and answered questions from the Commission.

Commissioner Bowlby asked how this would affect Mill Street, and would there be a street light.

Growth Services Director Dobler stated that because the Lacrosse Avenue frontage is only fifty feet in length with only a minor portion of undeveloped roadway that frontage improvements would not be required at this time. He also stated that future design and construction of the roadway is dependent on the connection to the "Riverwalk" development to the west, and there would not be a street light.

Commissioner Hill questioned the traffic report and the peak hour periods.

Growth Services Director Dobler stated that the peak hour period is 4:00 to 5:00 p.m.

**Public testimony open.**

Denny Davis, attorney for applicant Art Bale, 608 N.W. Boulevard, Coeur d'Alene thanked the Commission for there time. Mr. Davis discussed other businesses in the area that were adjacent or within walking distance of the property. He also stated that this project would be for tenants 55 years and older. He also discussed the parking and that it was a deciding factor for the number of units they would build.

Commissioner Souza expressed concerns regarding the density of R-34 instead of C-17.

Mr. Davis replied that they felt that the location of the property located adjacent to Northwest Boulevard, on a main street going into the downtown area and near Riverstone made it a good location for increased residential densities.

Commissioner Hill asked about plans for the centennial trail.

Growth Services Director Dobler stated that the trail is planned for the railroad right-of-way, and that the present location is temporary.

Commissioner Messina asked about the security gates.

Mr. Davis replied that with tenants 55 years and older that this is a security feature that people in this age group want.

Commissioner Bowlby was concerned about the landscaping of the project and what would be required.

Associated Planner Stamosos stated that the landscaping would have to meet the landscape ordinance requirements for parking lots, street trees and any other landscaping.

Commissioner Hill expressed concerns about traffic from the proposed use.

Growth Services Director Dobler replied that the existing streets could handle traffic volumes from this development and that left turn motions from Mill Avenue and LaCrosse Avenue could be difficult during high traffic periods, but during other times there should be no problems.

**Public testimony closed.**

**Motion by Razor, seconded by Messina, to approve Item SP-9-05. Motion approved.**

ROLL CALL:

Commissioner Bowlby	Voted	Aye
Commissioner Hill	Voted	No
Commissioner Messina	Voted	Aye
Commissioner Razor	Voted	Aye
Commissioner Souza	Voted	No

Motion to approve carried by a 3 to 2 vote.

4. Applicant: Bentwood Park, LLC  
Location: Property adjacent to 1625 Huntley Avenue  
Request: Proposed 4-lot subdivision "Bentwood Park 7<sup>th</sup> Addition"  
QUASI-JUDICIAL, (S-12-05)

Associate Planner Stamosos presented the staff report, gave the mailing tally as, 0 in favor, 1 opposed, and 2 neutral and answered questions from the Commission.

Commissioner Messina asked if the lots abutted 15<sup>th</sup> Street

Associate Planner Stamosos replied that some of the lots did not abut 15<sup>th</sup> Street and that if you look at the aerial photos in the staff report you can see where they are in relation to 15<sup>th</sup> Street..

**Public testimony open.**

Bruce Noble, 283 S. Sequia Ct., Post Falls, Idaho, Engineer representing Bentwood Park, LLC gave a history of the property. He explained that they purchased the 25 ft lots within the last year, and that all 4 lots if approved would have less than the required 75-feet of frontage on a public street.

Commissioners Razor asked where the building sites would be on these lots.

Mr. Noble stated that they would have to be in the north part of the lots because the Yellowstone Pipeline right-of-way goes through the middle of the lots.

Commissioner Razor asked Mr. Noble if he understands the buffer area.

Mr. Noble responded that he understands and that he would meet the standard requirements.

Commissioner Bowlby asked what the average frontage was for these lots.

Mr. Nobel responded that all 3 lots average 70.9 feet with the 4<sup>th</sup> lot being 74.5 feet. However, the average square footage of the proposed lots is 15,013 square feet and exceeds the required lot square footage of the R-3 zone by more than 3,500 square feet.

**Public testimony closed.**

**Motion by Bowlby, seconded by Souza, to approve Item S-12-05. Motion approved.**

ROLL CALL:

Commissioner Bowlby	Voted	Aye
Commissioner Hill	Voted	Aye
Commissioner Messina	Voted	Aye
Commissioner Razor	Voted	Aye
Commissioner Souza	Voted	Aye

Motion to approve carried by a 5 to 0 vote.

**ADJOURNMENT/CONTINUATION:**

Motion by Souza, seconded by Razor, to adjourn the meeting. Motion approved.  
The meeting was adjourned at 8:47 p.m.

Respectfully submitted by John Stamos, Associate Planner

Prepared by Marlene Musch, Administrative Support II



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**TO:** Planning Commission  
**FROM:** Christopher H. Bates, Project Manager   
**DATE:** January 10, 2006  
**SUBJECT:** **SS-1-06, Nelson Lots in Bratton Garden Tract Plat**

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**DECISION POINT**

Approve or deny the applicant's request for a two (2) lot residential subdivision.

**GENERAL INFORMATION**

1. Applicant: Thad & Darlene Turner  
PO Box 3625  
Coeur d'Alene, ID 83814
2. Request: Approval of a two (2) lot residential subdivision, in the southeast quarter of Section 11, T50N, R4W, BM. The newly created lots will be:  
  
Lot 1: 8,425 square feet  
Lot 2: 16,824 square feet
3. Location: North side of Walnut Avenue, directly north of the "B" Street.

**PERFORMANCE ANALYSIS**

1. Land Use: Proposed Lot 1 is vacant and there is an existing single family residence located on proposed Lot 2.
2. Zoning: Existing zoning for the subject property is R-12, which is a residential district that permits a mix of housing types at a density of not greater than 12 dwelling units/acre, and where 5500 square feet is the minimum lot size for sfd's.
3. Infrastructure: Utilities, Streets, & Storm Water Facilities

**Utilities:** Sewer & Water

The subject property has access to public sewer and water mains that are located in Walnut Avenue adjoining the southerly boundary of the subject property. Available information indicates that service laterals are available to the subject property, however, field verification will be necessary prior to construction on the site.

**Streets:** Walnut Avenue which adjoins the subject property is a fully developed street section. There is no existing sidewalk along any of the Walnut Avenue frontages, therefore, none will be required to be installed with any construction activity on the subject property.

**Lot Access:** Access to the subject property will be from Walnut Avenue and will be addressed at the time of development of the proposed vacant lot.

**Fire:** There is a hydrant adjacent to the subject property at the corner of "C" Street and Walnut Avenue that meets the distance spacing requirement of the Fire Department.

**Storm Water:** Street drainage is already contained in the existing City hard pipe system in the vicinity of the subject property and on-site runoff will be channeled into on-site landscaping.

**4. Proposed Conditions:**

None

**DECISION POINT RECOMMENDATION**

Approve the proposed plat in its submitted configuration.

# NELSON LOTS IN BRATTON GARDEN TRACT PLAT

## A REPLAT OF THE EAST 140 FEET OF LOT 3 & THE WEST 40 FEET OF LOT 2 BRATTON GARDEN TRACT PLAT

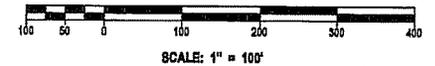
### SE 1/4 SECTION 11 T50N R4W B.M.

### CITY OF COEUR D' ALENE, KOOTENAI COUNTY IDAHO

### LEGEND

- CORNERS FOUND, REBAR 1/2 INCH DIAMETER.
- ◆ CORNERS FOUND, PIPE 1 INCH DIAMETER
- CORNERS SET, REBAR, 1/2 X 24 INCH WITH ID CAP
- CORNER SET, PIPE 1 X 30 INCH OVER FOUND 1/2 INCH DIAMETER REBAR, WITH ID CAP
- GOVERNMENT CORNERS FOUND AS SHOWN
- B = BHD BUILDING
- H = HOUSE

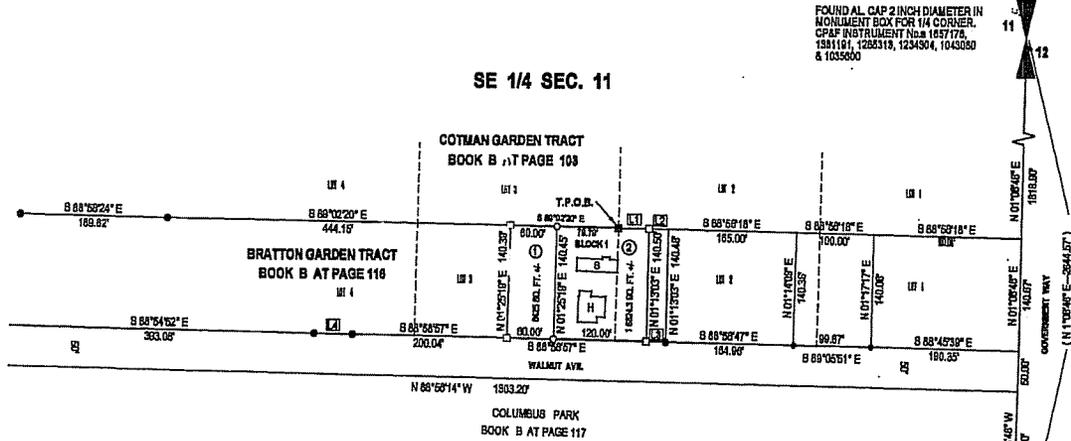
BASIS OF BEARINGS IS FROM THE IDAHO STATE PLANE COORDINATE SYSTEM FOR THE WEST ZONE OF IDAHO. I USED THE CITY OF COEUR D' ALENE GRID DATUM. THE BEARING FROM THE SE CORNER OF SECTION 11 TO THE W 1/4 OF SECTION 11 AS SHOWN, IS FROM CITY OF COEUR D' ALENE SURVEY GRID DATUM.



NOTE:  
THE SURVEY SHOWN HERE DOES NOT ATTEMPT TO SHOW ALL PHYSICAL FEATURES, EASEMENTS OF RECORD OR VIEW AS OF THIS DATE

NOTE:  
THERE IS A FENCE LINE ALONG THE NORTH LINE AND THE NORTHERLY PART OF THE EAST LINE. THE FENCE LINE ALONG THE WEST LINE IS 1 FOOT WEST OF THE SOUTH CORNER AND 1 FOOT EAST OF THE NORTH CORNER.

REFERENCES, KOOTENAI COUNTY IDAHO  
R-1 BRATTON GARDEN TRACT PLAT, BOOK B AT PAGE 118  
R-2 COTMAN GARDEN TRACT PLAT, BOOK B AT PAGE 103  
R-3 W.P.A. CITY OF CDA PLANNING SURVEY, CITY RECORDS, PLAT No. 25



SE 1/4 SEC. 11

COTMAN GARDEN TRACT  
BOOK B AT PAGE 103

BRATTON GARDEN TRACT  
BOOK B AT PAGE 118

COLUMBUS PARK  
BOOK B AT PAGE 117

PROPERTY LINES		
Id	Bearing	Distance
L1	S 88°52'18" E	30.71
L2	S 88°52'18" E	25.00
L3	S 88°52'18" E	25.00
L4	S 88°57'47" E	48.51

FOUND AL. CAP 2 INCH DIAMETER IN MONUMENT BOX FOR 1/4 CORNER. CP&P INSTRUMENT No. 1857178, 1881191, 1228319, 1234304, 1043080 & 1035800

FOUND AL. CAP 2 INCH DIAMETER IN MONUMENT BOX FOR SECTION CORNER. INSTRUMENT No. 1857188, 1357671, 1204470, 1151055 & 1056201



*[Handwritten Signature]*  
 REGISTERED LAND SURVEYOR  
 IDAHO  
 7772  
 STATE OF IDAHO  
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LAND SURVEYOR  
 GALE R. DAHLMAN  
 P.O. BOX 474  
 HAYDEN ID 83835  
 (208) 772-6955

**PLANNING COMMISSION  
STAFF REPORT**

DATE: JANUARY 10, 2006  
FROM: JOHN J STAMSOS, ASSOCIATE PLANNER  
SUBJECT: O-1-06 - ESTABLISH MINIMUM FRONTAGE REQUIREMENTS FOR LOTS ON CUL-DE-SACS AND KNUCKLES

**DECISION POINT:**

Determine whether the Planning Commission should recommend to the City Council that Municipal Code Section 16.20.230 should be amended to set a minimum lot frontage requirement for lots on cul-de-sacs and knuckles of 26-feet at the curb line of said lot.

**HISTORY:**

The City's subdivision ordinance currently requires that all lots approved in a preliminary plat must meet the minimum frontage requirements of the zoning district in which they are located, unless approved by the Planning Commission through deviations from standards.

**FINANCIAL ANALYSIS:**

The financial impact to the City will largely be limited to staff time spent implementing the ordinance changes and ensuring that the requirements of the ordinance are met.

**PERFORMANCE AND QUALITY OF LIFE ANALYSIS:**

In many cases, where a subdivision is designed with cul-de-sacs or knuckles, in order to layout the lots in an orderly and efficient manner some lots on the cul-de-sacs and knuckles have to be laid out with less than the minimum frontage in order to work. The Planning Commission has used the practice of approving these less than standard frontages with a finding to justify a deviation from standards for many years.

Rather than continuing this practice, staff is proposing that Section 16.20.230 of the Subdivision Ordinance be amended to approve these lots if they meet a minimum frontage standard of 26-feet at the curb. This would provide adequate access to these lots and allow for better layout of lots on cul-de-sacs and knuckles,

**DECISION POINT/RECOMMENDATION:**

Determine whether the Planning Commission should recommend to the City Council that Municipal Code Section 16.20.230 should be amended to set a minimum lot frontage requirement for lots on cul-de-sacs and knuckles of 26-feet at the curb line of said lot.

**PLANNING COMMISSION  
STAFF REPORT**

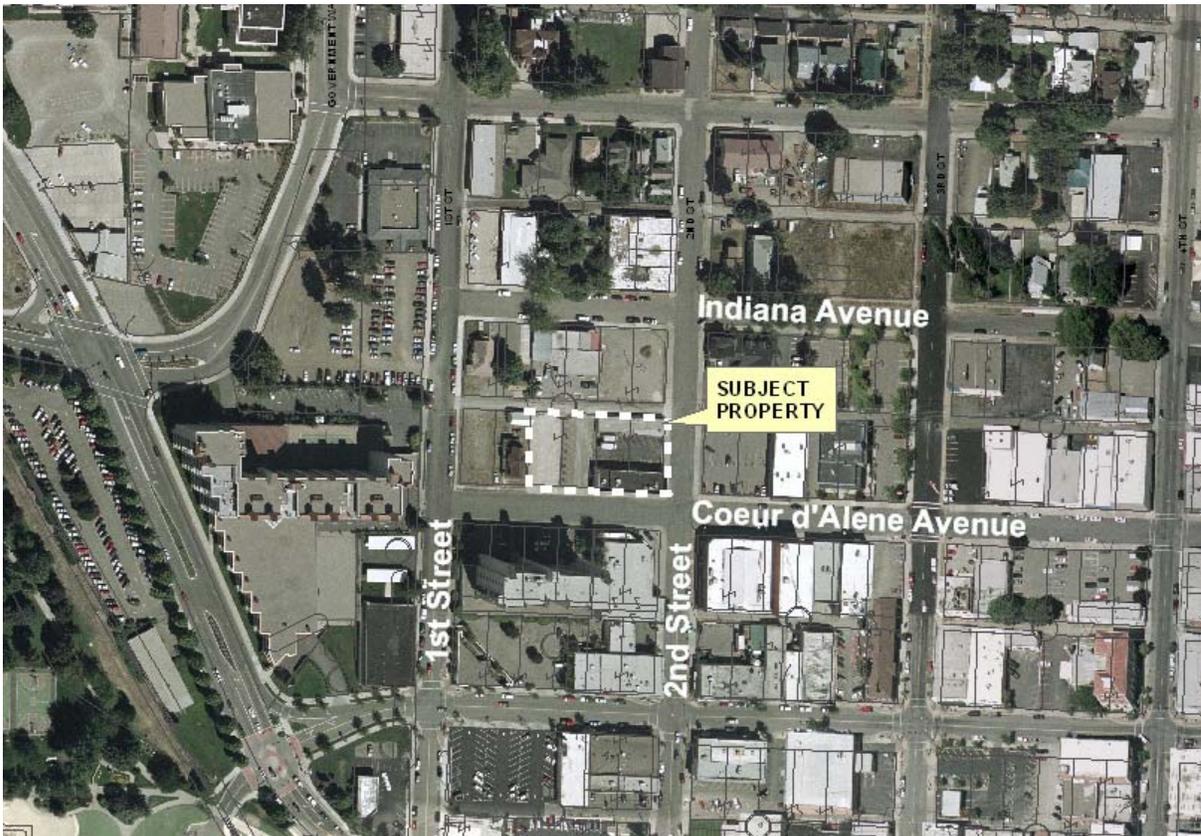
FROM: JOHN J. STAMOS, ASSOCIATE PLANNER  
DATE: JANUARY 10, 2006  
SUBJECT: SP-1-06 – REQUEST FOR A CUSTOM MANUFACTURING AND WAREHOUSE/STORAGE SPECIAL USE PERMIT IN A C-34 ZONING DISTRICT  
LOCATION: A +/- .5 -ACRE PARCEL AT THE NORTHWEST CORNER OF 2ND STREET AND COEUR D'ALENE AVENUE.

**DECISION POINT:**

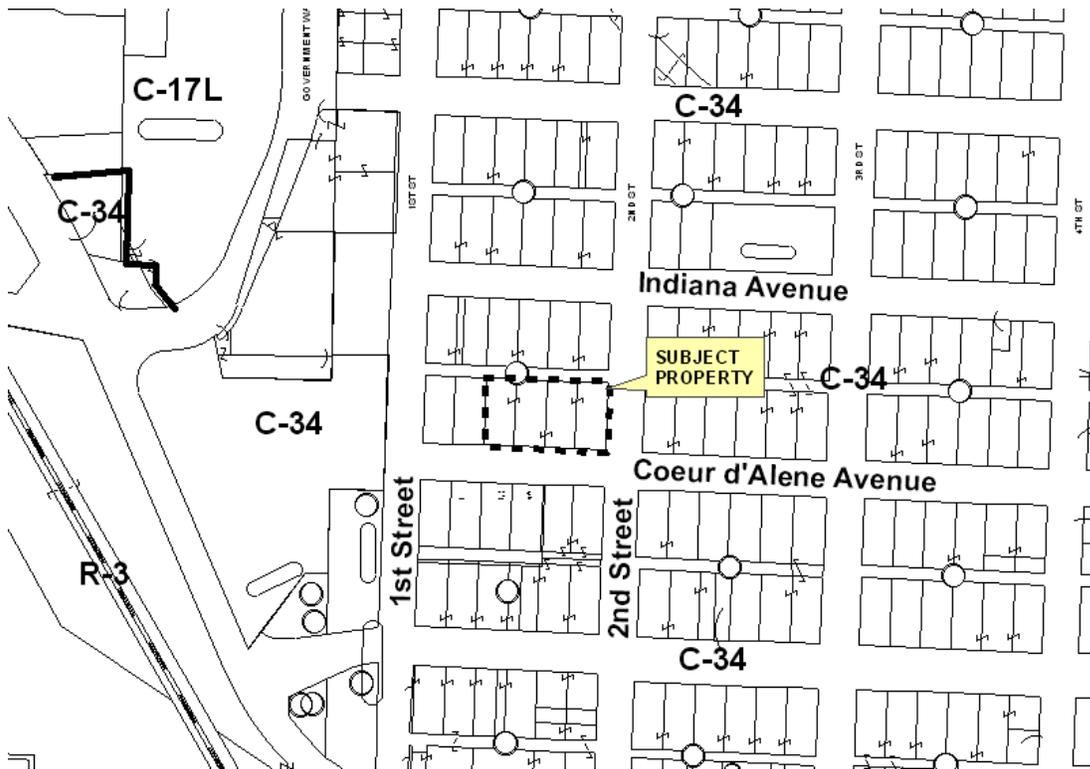
DBH Properties, LLC is requesting a Custom Manufacturing and Warehouse/Storage Special Use Permit in the C-34 (Commercial at 34 units/acre) zoning district to allow construction of a 23, 643 sq. ft. newspaper printing and warehouse facility.

**GENERAL INFORMATION:**

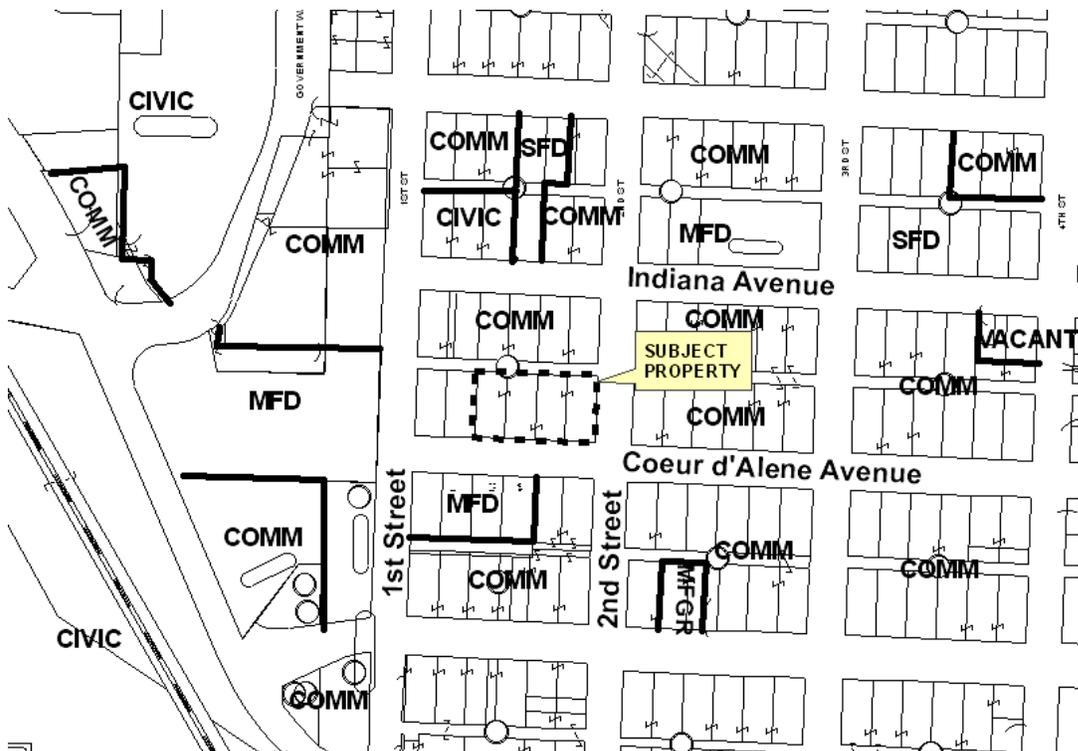
- A. Site photo.



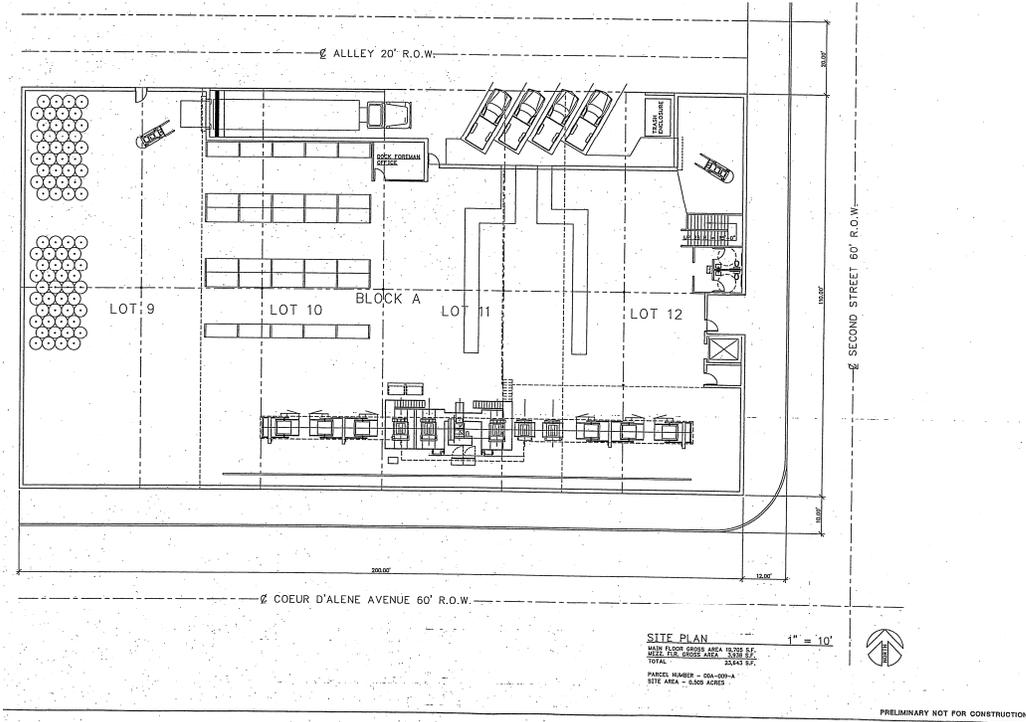
B. Zoning



C. Generalized land use pattern:



D. Site Plan



PRELIMINARY SITE PLAN

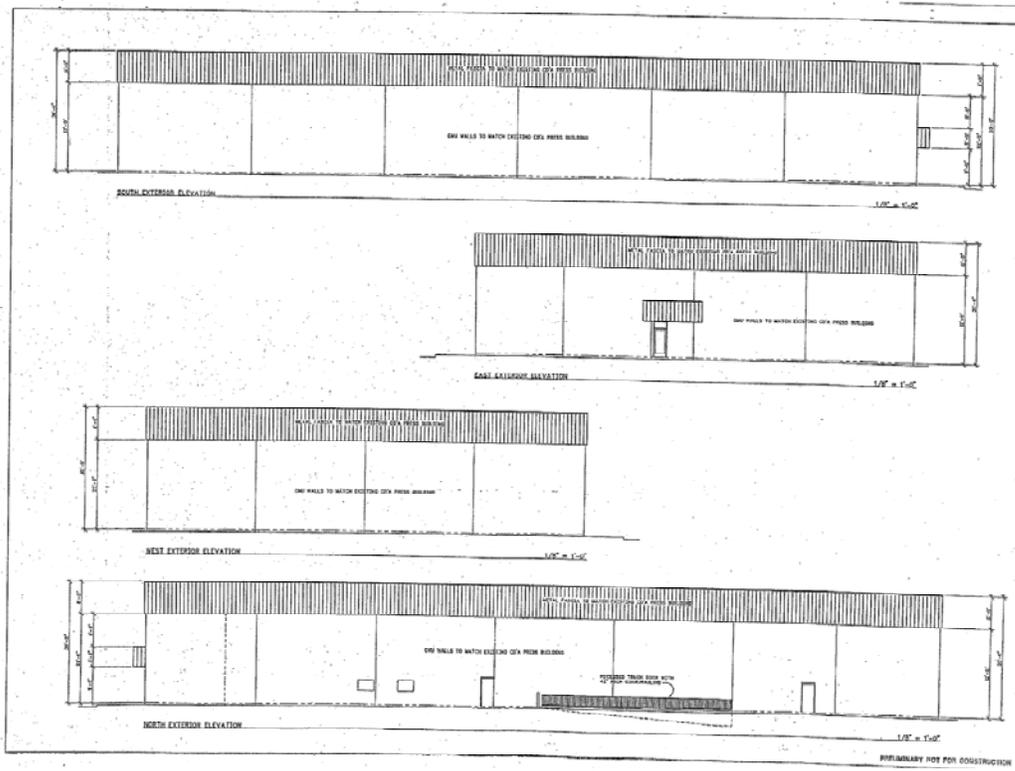
COEUR D'ALENE PUBLICATIONS  
 2ND ST. & COEUR D'ALENE AVE.  
 COEUR D'ALENE, IDAHO

ATWOOD • HINGZMAN  
 ENGINEERS

2006-0001  
 1/10/06  
 1" = 10'

C1.0

E. Building elevations



EXTERIOR ELEVATIONS

COEUR D'ALENE PUBLICATIONS  
 2ND ST. & COEUR D'ALENE AVE.  
 COEUR D'ALENE, IDAHO

ATWOOD • HINGZMAN  
 ENGINEERS

2006-0001  
 1/10/06  
 1/8" = 1'-0"

A1.0

- E. Applicant/ Owner DBH Properties  
P.O. Box 6200  
Coeur d'Alene, ID 83816
- F. Existing land uses in the area include Residential - single-family, multi-family, civic, commercial - retail sales and service and custom manufacturing.
- G. The subject property contains a parking lot and a commercial service use.

**PERFORMANCE ANALYSIS:**

- A. Zoning:

The requested uses are allowed by Special Use Permit in the C-34 zone.

Evaluation: The subject property is located in a C-34 zoning district.

- B. **Finding #B8A: That this proposal (is) (is not) in conformance with the Comprehensive Plan policies.**

- 1. The subject property is within the existing city limits.
- 2. The City Comprehensive Plan Map designates this area as Stable Established and within the Coeur d'Alene Center, as follows:

**Stable Established:**

"These areas represent the locations where the character of neighborhoods has largely been established and, in general, should be maintained. The street network, number of building lots and general land use are not planned to change greatly within the planning period."

**Coeur d'Alene Center:**

Coeur d'Alene's Downtown Business District.

- Encourage high intensity pedestrian oriented retail, service, and residential uses.
- Encourage clustered parking.
- Encourage design that is sensitive to the character of the district.

Page 28 - All requests for zone changes, special use permits etc., will be made considering, but not limited to:

- 1. The individual characteristics of the site;
- 2. The existing conditions within the area, and
- 3. The goals of the community.

**Significant policies for consideration:**

- 4C: "New growth should enhance the quality and character of existing areas and the general community."

- 6A: "Promote the orderly development of land use at locations that are compatible with public facilities and adjacent land uses."
- 6B: "Pursue a policy of year-round economic stability."
- 15G: "City government should be responsive to the needs and desires of the citizenry."
- 42A: "The physical development of Coeur d'Alene should be directed by consistent and thoughtful decisions, recognizing alternatives, affects and goals of citizens"
- 42A2: "Property rights of citizens should be protected in land use decisions."
- 46A: "Provide for the safe and efficient circulation of vehicular traffic."
- 51A: "Protect and preserve neighborhoods both old and new."
- 51A5: "Residential neighborhood land uses should be protected from intrusion of incompatible land uses and their effects."
- 62A: "Examine all new developments for appropriateness in regard to the character of the proposed area. Inform developers of City requirements and encourage environmentally harmonious projects."
- 62C: Encourage the rehabilitation of the downtown business district to provide a more pleasant living and working atmosphere."

Evaluation: The Planning Commission must determine, based on the information before them, whether the Comprehensive Plan policies do or do not support the request. Specific ways in which the policy is or is not supported by this request should be stated in the finding.

**B. Finding #B8B: The design and planning of the site (is) (is not) compatible with the location, setting, and existing uses on adjacent properties.**

The proposed building is in the Central Business District in an area of commercial and apartment development and, as part of the development review process, the design of the proposed building must be approved by the City's Design Review Commission.

**C. Finding #B8C: The location, design, and size of the proposal are such that the development (will) (will not) be adequately served by existing streets, public facilities and services.**

**WATER:**

Water is available to the subject property.

Evaluation: There is currently no service to lot #12 but there are 1" services to 117 and 119 Coeur d'Alene Avenue. There is an 8" PVC main on 2<sup>nd</sup> St. and a 12" PVC main on Coeur d'Alene Avenue. There is also a 6" Fire Hydrant on the southwest corner of the intersection connected to the 8" main.

The existing facilities should be sufficient to support the proposed development.

Submitted by Jim Markley, Water Superintendent

**SEWER:**

Sewer is available to the subject property.

Evaluation: This property is connected to public sewer in the alley of the block between Coeur d'Alene Avenue and Indiana Avenue. The public sewer line is of adequate size and capacity to support the Special Use Permit.

Submitted by Don Keil, Assistant Wastewater Superintendent.

**STORMWATER:**

City code requires a stormwater management plan to be submitted and approved, prior to any construction activity on the site.

Evaluation: The impervious area adjoining the subject property is managed by the existing City hard pipe storm system. Any site requirements will be addressed during the building permit review of the subject property.

**TRAFFIC:**

The ITE Trip Generation Manual does not address this specific use, however, since the proposed use is already in progress on an adjacent property and no congestion problems have arisen, it is apparent that the existing streets can manage the traffic volumes generated by the facility.

**STREETS:**

All of the streets adjoining the subject property are fully developed. Any alterations that may be necessary will be addressed at the time of building permit issuance on the subject property.

**APPLICABLE CODES AND POLICIES:**

**STREETS:**

An encroachment permit shall be obtained, prior to any work being performed in the existing right-of-way.

Submitted by Chris Bates, Engineering Project Manager

**FIRE:**

The Fire Department will address issues such as water supply, fire hydrants, fire department access, City of Coeur d'Alene daycare requirements, etc., prior to any site development.

Submitted by Dan Cochran, Deputy Fire Chief

**POLICE:**

The Police department was contacted and had no concerns.

Submitted by Steve Childers, Captain Police Department

**E. Proposed conditions:**

None.

**F. Ordinances and Standards Used In Evaluation:**

Comprehensive Plan - Amended 1995.

Municipal Code.

Idaho Code.

Wastewater Treatment Facility Plan.

Water and Sewer Service Policies.

Urban Forestry Standards.

Transportation and Traffic Engineering Handbook, I.T.E.

Manual on Uniform Traffic Control Devices.

**ACTION ALTERNATIVES:**

The Planning Commission must consider this request and make appropriate findings to approve, deny or deny without prejudice. The findings worksheet is attached.

[F:staffrptsSP106]

**JUSTIFICATION OF SPECIAL USE PERMIT  
DBH PROPERTIES, LLC  
COEUR D'ALENE PRESS PRODUCTION FACILITY**

**A. A description of your request;**

The Coeur d'Alene Press has been publishing and printing the paper in downtown Coeur d'Alene for decades. Over the years, as the community has grown the need for space has grown as well. The last addition was done in the early 80's, and now the need for more space exists.

The Hagadone Corporation has owned the subject property for many years. It presently houses the offices of Blue 541 and a parking lot. The structures on the four lots will be razed and a new production facility is proposed, per the attached drawings.

The new facility will operate with the same basic systems that are in the present facility. This involves the production of a printing plate, the printing of the paper, and the inserting and packaging of the finished product for pick-up by carriers. The new equipment is merely faster and utilizes the latest printing technology.

**B. Show the design and planning of the site and if it is compatible with the location, setting and existing uses on the adjacent properties;**

Please see the attached site plan. The existing and adjacent uses primarily involve commercial activity. The receipt of newsprint and inserts will be transferred from the present location on the south side of Coeur d'Alene Avenue to the north side of the same street. The same is true of the carrier pickup of finished product.

**C. Show the location, design and size of the proposal, and will it be adequately served by existing streets, public facilities and services;**

The new proposed location will be served from the same arterials and streets that the existing location has for many years. The access for shipments and pick-up of papers, will be improved with deliveries from the northern alley. This will keep trucks from needing to back into position from the city streets, as they presently do.

**D. Any other justifications that you feel are important and should be considered by the Planning Commission;**

It is important that the printing operation be near the publishing side of the newspaper operation. This is not a new use to the neighborhood, and so the resultant effect of the project in the new facility will negligible. We feel fortunate that this adjacent piece of property is available for this continued and existing use.

Parking for the parcel will be accommodated at our parking facility to the west on 1<sup>st</sup> Street.

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**COEUR D'ALENE PLANNING COMMISSION  
FINDINGS AND ORDER**

**A. INTRODUCTION**

This matter having come before the Planning Commission on January 10, 2006, and there being present a person requesting approval of ITEM SP-1-06, a request for a Custom Manufacturing and Warehouse/Storage Special Use Permit in the C-34 (Commercial at 34 units/acre) zoning district

LOCATION: A +/- .5 -acre parcel at the Northwest corner of 2nd Street and Coeur d'Alene Avenue.

APPLICANT: DBH Properties, LLC

**B. FINDINGS: JUSTIFICATION FOR THE DECISION/CRITERIA, STANDARDS AND FACTS RELIED UPON**

**(The Planning Commission may adopt Items B1 to B7.)**

- B1. That the existing land uses are Residential - single-family, multi-family, civic, commercial - retail sales and service and custom manufacturing.
- B2. That the Comprehensive Plan Map designation is Stable Established
- B3. That the zoning is C-34 (Commercial at 34 units/acre)
- B4. That the notice of public hearing was published on, December 24, 2005, and, January 3, 2005, which fulfills the proper legal requirement.
- B5. That the notice of public hearing was posted on the property on, December 28, 2005, which fulfills the proper legal requirement.
- B6. That 136 notices of public hearing were mailed to all property owners of record within three-hundred feet of the subject property on December 24, 2005, and \_\_\_\_\_ responses were received: \_\_\_\_ in favor, \_\_\_\_ opposed, and \_\_\_\_ neutral.
- B7. That public testimony was heard on January 10, 2006.
- B8. Pursuant to Section 17.09.220, Special Use Permit Criteria, a special use permit may be approved only if the proposal conforms to all of the following criteria to the satisfaction of the Planning Commission:

B8A. The proposal **(is) (is not)** in conformance with the comprehensive plan, as follows:

B8B. The design and planning of the site **(is) (is not)** compatible with the location, setting, and existing uses on adjacent properties. This is based on

**Criteria to consider for B8B:**

1. Does the density or intensity of the project "fit " the surrounding area?
2. Is the proposed development compatible with the existing land use pattern i.e. residential, commercial, residential w churches & schools etc?
3. Is the design and appearance of the project compatible with the surrounding neighborhood in terms of architectural style, layout of buildings, building height and bulk, off-street parking, open space, and landscaping?

B8C The location, design, and size of the proposal are such that the development **(will) (will not)** be adequately served by existing streets, public facilities and services. This is based on

**Criteria to consider B8C:**

1. Is there water available to meet the minimum requirements for domestic consumption & fire flow?
2. Can sewer service be provided to meet minimum requirements?
3. Can police and fire provide reasonable service to the property?

**C. ORDER: CONCLUSION AND DECISION**

The Planning Commission, pursuant to the aforementioned, finds that the request of **DBH PROPERTIES, LLC** for a Custom Manufacturing and Warehouse/Storage special use permit, as described in the application should be **(approved)(denied)(denied without prejudice)**.

Special conditions applied are as follows:

Motion by \_\_\_\_\_, seconded by \_\_\_\_\_, to adopt the foregoing Findings and Order.

ROLL CALL:

Commissioner Bowlby	Voted _____
Commissioner Hill	Voted _____
Commissioner Jordan	Voted _____
Commissioner Messina	Voted _____
Commissioner Razor	Voted _____
Commissioner Souza	Voted _____

Chairman Bruning Voted \_\_\_\_\_ (tie breaker)

Commissioners \_\_\_\_\_ were absent.

Motion to \_\_\_\_\_ carried by a \_\_\_\_ to \_\_\_\_ vote.

\_\_\_\_\_  
CHAIRMAN JOHN BRUNING

**PLANNING COMMISSION  
STAFF REPORT**

FROM: JOHN J. STAMSOS, ASSOCIATE PLANNER  
DATE: JANUARY 10, 2006  
SUBJECT: S-1-06 – 15-UNIT “IRONWOOD MEDICAL CONDOMINIUM”  
PRELIMINARY PLAT CONDOMINIUM SUBDIVISION  
LOCATION – +/- 2.24-ACRE PARCEL NEAR THE INTERSECTION OF  
IRONWOOD DRIVE AND IRONWOOD PLACE

**DECISION POINT:**

- A. Chinook Properties, LLC is requesting Preliminary Plat approval of “Ironwood Medical Condominiums”, a 15-unit condominium subdivision in the C-17L (Commercial Limited at 17 units/acre) zoning district.

The proposed development includes:

15 condominium units in a three story building with basement.

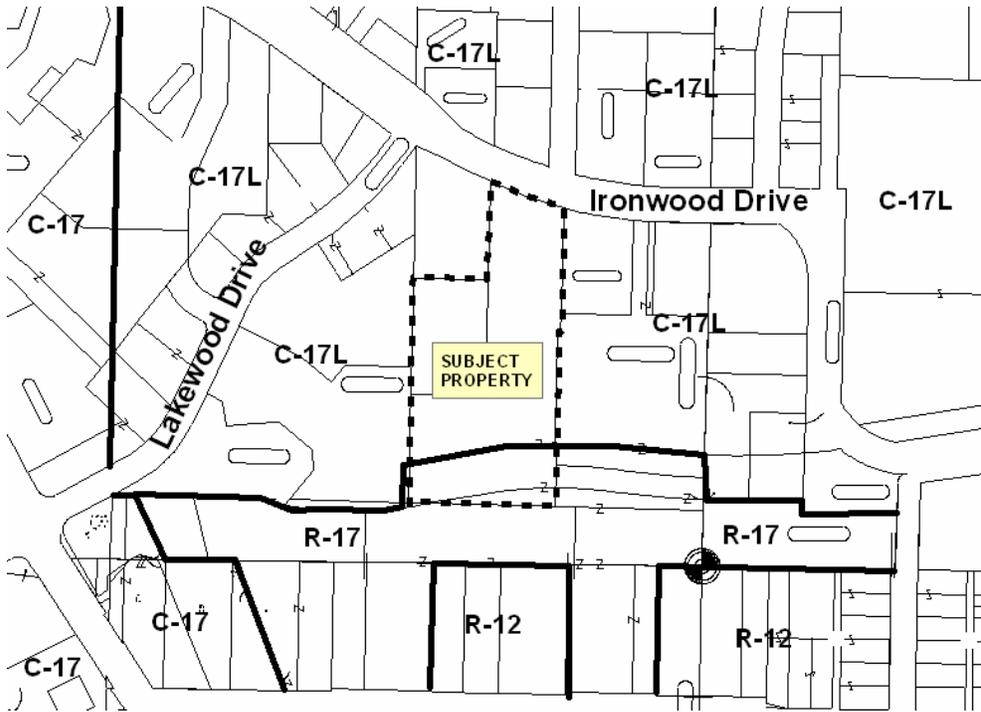
**Note: Building permits have already been issued for this project.**

**GENERAL INFORMATION:**

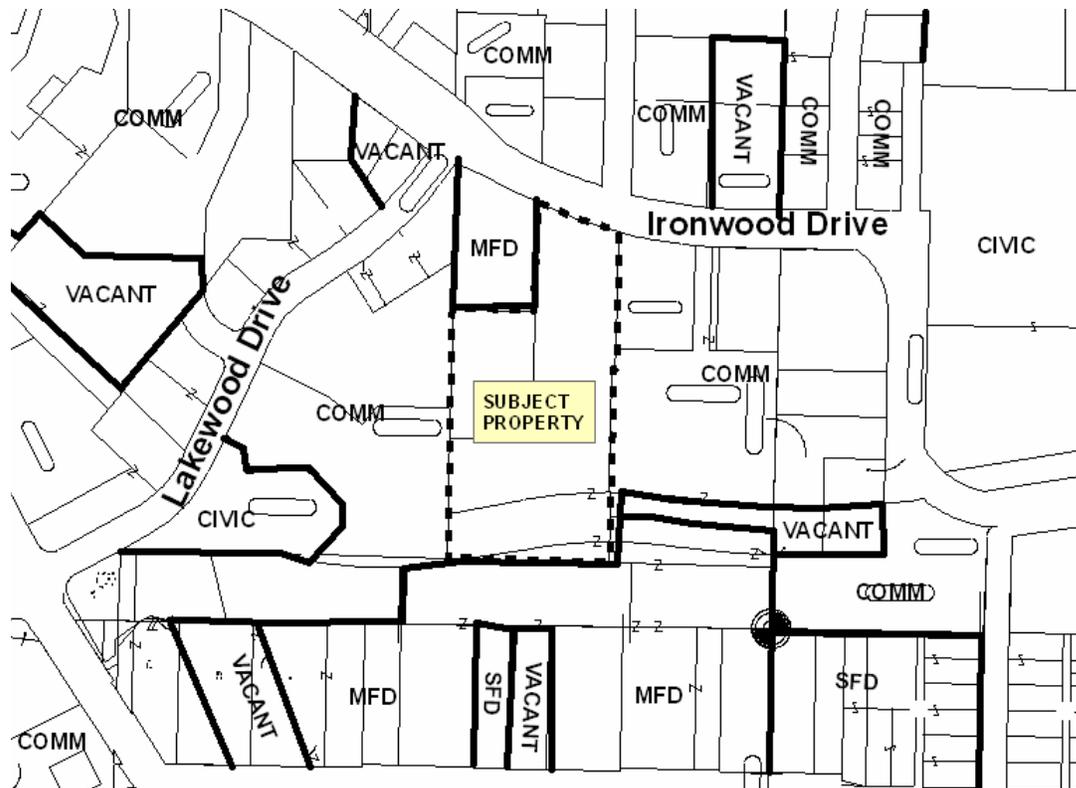
- A. Site photo



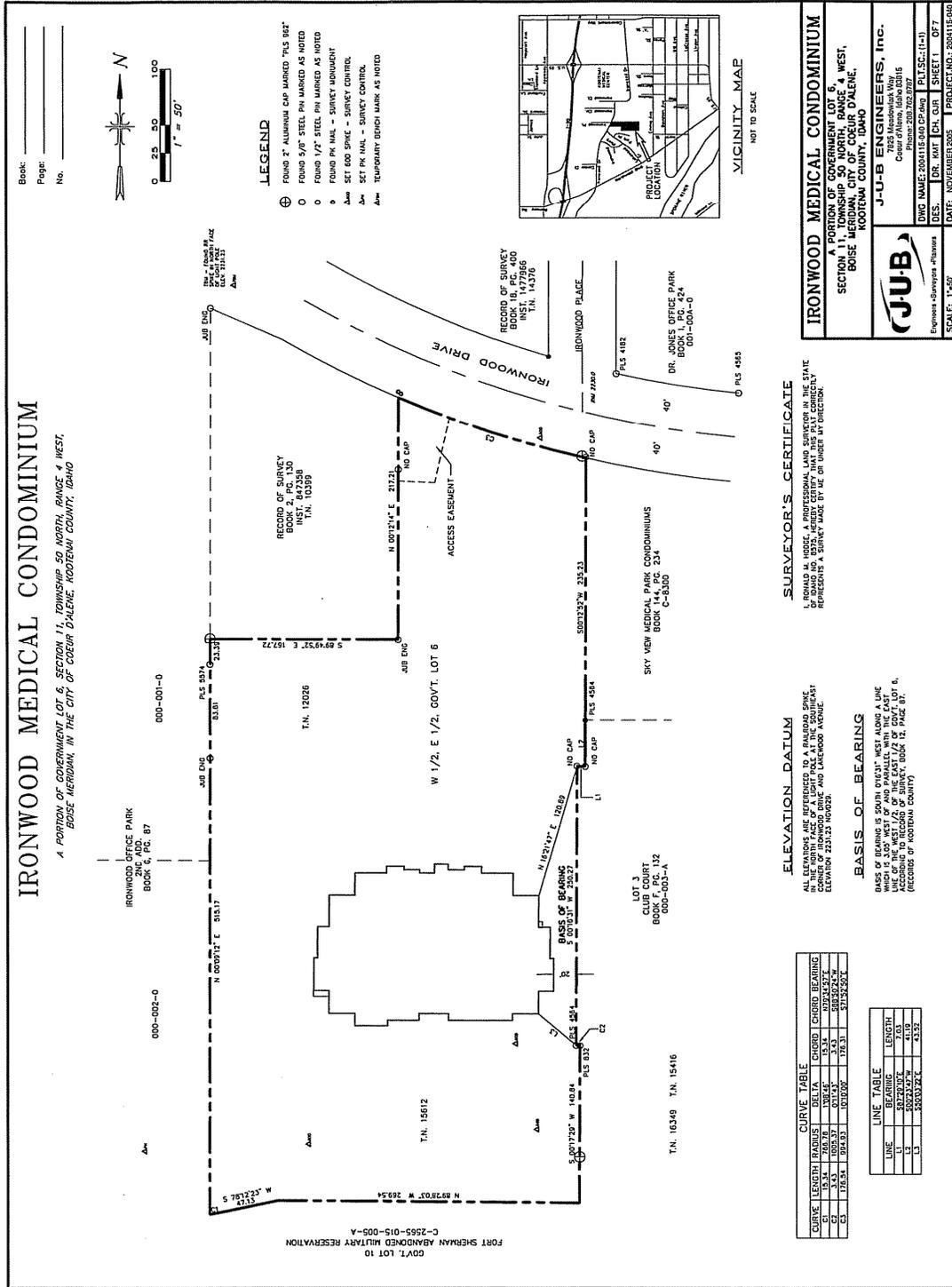
B. Zoning:



C. Generalized land use pattern:



D. S-1-06 "Ironwood Medical Condominium" preliminary plat



- E. Applicant/ Owner: Chinook Properties, LLC  
1677 East Miles Avenue  
Hayden Lake, ID 83835
- F. Land uses in the area include residential - single-family, multi-family, commercial sales and service and vacant land.
- G. The subject property is vacant.

**PERFORMANCE ANALYSIS:**

- A. **Finding #B8A: That all of the general preliminary plat requirements (have) (have not) been met, as attested to by the City Engineer.**

Per Gordon Dobler, City Engineer, the preliminary plat submitted contains all of the general information required by Section 16.12.020 of the Municipal Code, General Requirements.

- B. **Finding #B8B: That the provisions for streets, alleys, rights-of-way, easements, street lighting, fire protection, planting, drainage, and utilities (are) (are not) adequate where applicable.**

**SEWER:**

Sanitary sewer is available to the subject property.

Evaluation: This property is connected to public sewer within Ironwood Drive. Both the lateral connection and the public sewer line are of adequate size and capacity to support this subdivision.

Comments submitted by Don Keil, Assistant Wastewater Superintendent.

**WATER:**

City water is available to the subject property.

Evaluation: There is currently a 12" PVC main in Ironwood Dr. and if this abuts 980 Ironwood Dr., there is a 12" PVC main into the property with 2 – 2" service stubs and 1 fire hydrant. The facilities should be sufficient to accommodate the proposed development.

Comments submitted by Jim Markley, Water Superintendent.

**STORMWATER:**

City Code requires a stormwater management plan to be submitted and approved prior to any construction activity on the site.

Evaluation: On-site stormwater was addressed during the building permit review process and will be completed with the construction of the structure on the subject property.

TRAFFIC :

The ITE Trip Generation Manual estimates the project may generate approximately 100 trips during the peak hour periods.

Evaluation: Due to the varied nature of the office/condo type facility, the traffic volumes may fluctuate on a daily basis. The adjacent and connecting streets all have signal controlled intersections, as well as the three (3) lane Ironwood Drive road section that can accommodate 9,000 – 15,000 vehicles daily.

STREETS:

The proposed subdivision is bordered by Ironwood Drive on the north. The current right-of-way width and existing street meets City standards.

Evaluation: No additional street improvements will be required with the proposed development.

APPLICABLE CODES AND POLICIES

UTILITIES

All required utility easements shall be dedicated on the final plat.

Comments submitted by Chris Bates, Engineering Project Manager

FIRE:

Any issues have and will be addressed during the permit process.

Submitted by Dan Cochran, Deputy Fire Chief

POLICE:

The Police department was contacted and had no comments.

Submitted by Captain Steve Childers

C. **Finding #B8C: That the preliminary plat (is) (is not) in conformance with the Comprehensive Plan as follows:**

1. The subject property is within the existing city limits.
2. The City Comprehensive Plan Map designates this area as a Transition Area and Community Service Node, as follows:

**Transition Areas:**

“These areas represent the locations where the character of neighborhoods is in transition and, overall, should be developed with care. The street network, the number of building lots and general land use are planned to change greatly within the planning period.”

**Community Service Node:**

"These nodes established as the primary areas where significant community sales and service activities should be concentrated."

**Page 28** – All requests for zone changes, special use permits etc., will be made considering, but not limited to:

- A. The individual characteristics of the site;
- B. The existing conditions within the area, and
- C. The goals of the community.

**Significant policies:**

- 4C: "New growth should enhance the quality and character of existing areas and the general community."
  - 6A: "Promote the orderly development of land use at locations that are compatible with public facilities and adjacent land uses."
  - 6A6: "Encourage access to land uses with bicycle paths and/or pedestrian sidewalks."
  - 42A: "The physical development of Coeur d'Alene should be directed by consistent and thoughtful decisions, recognizing alternatives, affects and goals of citizens
  - 42A2: "Property rights of citizens should be protected in land use decisions."
  - 46A: "Provide for the safe and efficient circulation of vehicular traffic."
  - 51A: "Protect and preserve neighborhoods both old and new."
  - 51A5: "Residential neighborhood land uses should be protected from intrusion of incompatible land uses and their effects."
  - 62A: "Examine all new developments for appropriateness in regard to the character of the proposed area. Inform developers of City requirements and encourage environmentally harmonious projects."
- Evaluation: The Planning Commission must determine, based on the information before them, whether the Comprehensive Plan policies do or do not support the request. Specific ways in which the policy is or is not supported by this request should be stated in the finding.

**D. Finding #B8D: That the public interest (will) (will not) be served.**

The request will provide a new choice for people looking for condominium office space in an established commercial area and will allow individuals to own their office space rather than renting or leasing.

Evaluation: The Planning Commission must determine, based on the information before them, whether the request will or will not serve the public interest.

- E. **Finding #B8E: That all of the required engineering elements of the preliminary plat (have) (have not) been met, as attested to by the City Engineer.**

A preliminary utility design was submitted indicating that all proposed lots could be served.

- F. **Finding #B8F: That the lots proposed in the preliminary plat (do) (do not) meet the requirements of the applicable zoning district.**

This is a condominium plat that will provide for individual ownership of the office spaces and common ownership of all common areas. The building is under construction and, through the building permit process; compliance with all zoning ordinance requirements was accomplished, prior to issuance of a building permit.

Evaluation: The Planning Commission must determine if all lots in the proposed plat meet the requirements of the C-17L zoning district.

- G. **Finding #B9: That the proposal (would) (would not) adversely affect the surrounding neighborhood at this time with regard to traffic, neighborhood character, and existing land uses.**

The request is in an area that is zoned C-17L, in an area of predominately commercial and multi-family land uses, designated on the Comprehensive Plan as a Community Service Node, and adjacent to Ironwood Drive, which is designated in the Transportation Plan as an Urban Collector.

Evaluation: The Planning Commission must determine what affect the request has on traffic, neighborhood character, and existing land uses.

- H. Proposed conditions:

None.

- I. Ordinances and Standards Used In Evaluation:

Comprehensive Plan - Amended 1995.  
Transportation Plan  
Municipal Code.  
Idaho Code.  
Wastewater Treatment Facility Plan.  
Water and Sewer Service Policies.  
Urban Forestry Standards.  
Transportation and Traffic Engineering Handbook, I.T.E.  
Manual on Uniform Traffic Control Devices.  
Coeur d'Alene Bikeways Plan

#### **ACTION ALTERNATIVES:**

The Planning Commission must consider this request and make appropriate findings to approve, deny or deny without prejudice. The findings worksheet is attached.

[F:pcstaffrptsS-1-06]

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**COEUR D'ALENE PLANNING COMMISSION  
FINDINGS AND ORDER**

**A. INTRODUCTION**

This matter having come before the Planning Commission on January 10, 2006, and there being present a person requesting approval of ITEM S-1-06: a request for preliminary plat approval "Ironwood Medical Condominiums", a 15-unit condominium subdivision in the C-17L (Commercial Limited at 17 units/acre) zoning district.

APPLICANT: Chinook Properties, LLC

LOCATION – +/- 2.24-acre parcel near the intersection of Ironwood Drive and Ironwood Place

**B. FINDINGS: JUSTIFICATION FOR THE DECISION/CRITERIA, STANDARDS AND FACTS RELIED UPON**

**(The Planning Commission may adopt Items B1-through7.)**

- B1. That the existing land uses are residential - single-family, multi-family, commercial sales and service and vacant land.
- B2. That the Comprehensive Plan Map designation is Transition
- B3. That the zoning is C-17L (Commercial Limited at 17 units/acre).
- B4. That the notice of public hearing was published on December 24, 2005, and January 3, 2006, which fulfills the proper legal requirement.
- B5. That the notice was not required to be posted on the property.
- B6. That 301 notices of public hearing were mailed to all property owners of record within three-hundred feet of the subject property on December 23, 2005, and \_\_\_\_\_ responses were received: \_\_\_\_ in favor, \_\_\_\_ opposed, and \_\_\_\_ neutral.
- B7. That public testimony was heard on January 10, 2006.
- B8. Pursuant to Section 16.10.030A.1, Preliminary Plats: In order to approve a preliminary plat, the Planning Commission must make the following findings:

B8A. That all of the general preliminary plat requirements **(have) (have not)** been met as attested to by the City Engineer. This is based on:

B8B. That the provisions for streets, alleys, rights-of-way, easements, street lighting, fire protection, planting, drainage, and utilities **(are) (are not)** adequate where applicable. This is based on

B8C. That the preliminary plat **(is) (is not)** in conformance with the Comprehensive Plan as follows:

B8D. That the public interest **(will) (will not)** be served based on

**Criteria to consider for B8D:**

1. Does this request achieve the goals and policies of the comp plan?
2. Does it provide for orderly growth and development that is compatible with uses in the surrounding area?
3. Does it protect the public safety by providing adequate public utilities and facilities to mitigate any development impacts?
4. Does it protect and preserve the natural beauty of Coeur d'Alene?
5. Does this have a positive impact on Coeur d'Alene's economy?
6. Does it protect property rights and enhance property values?

B8E. That all of the required engineering elements of the preliminary plat **(have) (have not)** been met, as attested to by the City Engineer. This is based on

B8F That the lots proposed in the preliminary plat **(do) (do not)** meet the requirements of the applicable zoning district for the following reasons:

**Criteria to consider for B8F:**

1. Do all lots meet the required minimum lot size?
2. Do all lots meet the required minimum street frontage?
3. Is the gross density within the maximum allowed for the applicable zone?

B9. That the proposal **(would) (would not)** adversely affect the surrounding neighborhood at this time with regard to traffic, neighborhood character, and existing land uses because

**Criteria to consider for B9:**

1. Can the existing street system support traffic generated by this request?
2. Does the density or intensity of the project "fit " the surrounding area?
3. Is the proposed development compatible with the existing land use pattern? i.e. residential, commercial, residential w churches & schools etc.
4. Is the design and appearance of the project compatible with the surrounding neighborhood?

**C. ORDER: CONCLUSION AND DECISION**

The Planning Commission, pursuant to the aforementioned, finds that the request of **CHINOOK PROPERTIES, LLC** for preliminary plat of approval as described in the application should be **(approved) (denied) (denied without prejudice)**.

Special conditions applied to the motion are:

Motion by \_\_\_\_\_, seconded by \_\_\_\_\_, to adopt the foregoing Findings and Order.

ROLL CALL:

Commissioner Bowlby	Voted _____
Commissioner Hill	Voted _____
Commissioner Jordan	Voted _____
Commissioner Messina	Voted _____
Commissioner Razor	Voted _____
Commissioner Souza	Voted _____

Chairman Bruning Voted \_\_\_\_\_ (tie breaker)

Commissioners \_\_\_\_\_ were absent.

Motion to \_\_\_\_\_ carried by a \_\_\_\_ to \_\_\_\_ vote.

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CHAIRMAN JOHN BRUNING

УШУЗ - УСУ РМЕЛО

# Let the Courts Guide You: Planning and Zoning Consistency

By Brian W. Ohm

The idea that local land-use decisions should be consistent with an independently adopted local comprehensive plan is a fundamental concept of planning practice.

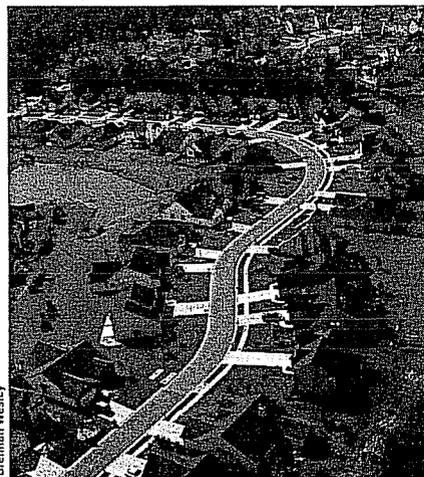
An increasing number of states have adopted legislation requiring consistency between certain land-use regulations, such as zoning and subdivision ordinances, and a local comprehensive plan. Many states also have adopted legislation that requires other decisions (including sewer extensions, the creation of tax increment finance districts or redevelopment districts, etc.) to be consistent with a comprehensive plan. In California, for example, the State Office of Planning and Research identifies 38 statutory or administrative code provisions that require consistency between a certain action and the comprehensive plan (or “general plan” as defined under California law).

The state legislation that requires consistency often uses terms such as “consistent with,” “in conformity with,” or “not in conflict with” interchangeably. However, the statutes requiring consistency usually offer little guidance about how to determine whether a decision is consistent with a local comprehensive plan. The state planning office also developed the following general rule for consistency determinations, which the California courts accept:

An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.

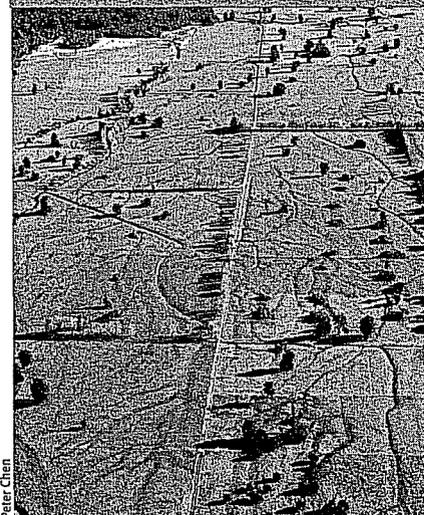
More specific guidance for how to apply the legislative requirement for consistency is often left to the determination of the courts.

This issue of *Zoning Practice* explores some of the case law developed by the courts as they interpret statutory requirements for consistency. It focuses primarily on cases arising



Brennan Wesley

⊕ When the goal is to prevent non-contiguous development patterns (top) and protect rural character (bottom), the land-use map and the policies of the land-use element should be consistent to achieve that goal.



Peter Chen

in California, Maine (two pioneers with legislative requirements for zoning/planning consistency since the early 1970s), Florida, and Washington.

What is striking is the relative paucity of reported court decisions in some states with consistency requirements. However, states such as California and Florida, which expressly provide for citizen enforcement of consistency determinations, seem to generate the most cases. The impact of these determinations can be important. A zoning ordinance that is inconsistent with the comprehensive plan at the time it is enacted is “invalid when passed” as determined by *Leshar Communications v. City of Walnut Creek*, 52 Cal. 3d 531 (1990); see the similar conclusion in *Price v. Payette County Board of Commissioners*, 131 Idaho 426; 958 P.2d 583 (1998). The following are some general rules developed by state courts to guide consistency determinations.

## IS THE PLAN COMPLETE?

When courts review cases for consistency determinations, the review is not intended to second-guess the merits of the policies that appear in a local comprehensive plan. Judicial review is focused on compliance with state law. Before a court can make a consistency determination, attention needs to be paid to whether the comprehensive plan is complete and adequate. In other words, does the comprehensive plan comply with the applicable procedural and substantive legal requirements? For example, if state law requires that a comprehensive plan include a housing element, does the plan, in fact, have such an element? In *Neighborhood Action Group v. County of Calaveras*, 156 Cal. App. 3d 1176,

## ASK THE AUTHOR JOIN US ONLINE!

From December 2 to 23, go online to participate in our "Ask the Author" forum, an interactive feature of *Zoning Practice*. Brian W. Olam will be available to answer questions about this article. Go to the APA website at [www.planning.org](http://www.planning.org) and follow the links to the Ask the Author section. From there, just submit your questions about the article using an e-mail link. The author will reply, and *Zoning Practice* will post the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of *Zoning Practice* at announced times. After each on-line discussion is closed, the answers will be saved in an online archive available through the APA *Zoning Practice* web pages.

### About the Author

Brian W. Olam is an attorney and a professor in the Department of Urban & Regional Planning, University of Wisconsin—Madison, and a land-use law specialist with the University of Wisconsin Extension.

1184 (1984), the California Court of Appeals held that a finding of consistency based on an inadequate general plan was a legal impossibility. Challenges to the adequacy of the comprehensive plan, however, require some connection between the particular approval and the claimed inconsistency in the plan; see *Garat v. Riverside*, 2 Cal. App. 4th 259 (1991).

Another important principle is that all elements of a general plan have equal legal status. For example, in *Sierra Club v. Board of Supervisors of Kern County*, 126 Cal. App. 3d 698 (1981), the California Court of Appeals struck down a provision in the general plan that stated if there is a conflict between the land-use element and the open space element, the land-use element controls. Recognizing the comprehensive nature of comprehensive planning, the court found that no element is legally subordinate to another.

### "SHALL" VS. "SHOULD"

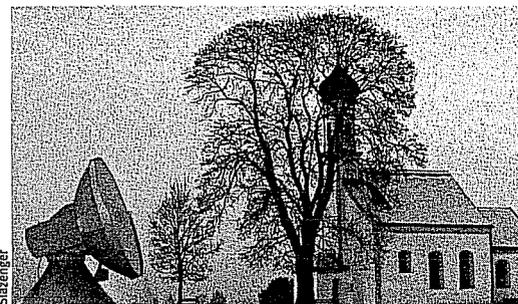
Assuming a local comprehensive plan meets all the procedural and substantive requirements of state law, courts then focus on whether a local determination of consistency (or inconsistency) is supported by the facts. When reviewing consistency determinations, courts will pay attention to how a policy is written. For example, courts acknowledge distinctions in local policies between the use of "shall" or "must," which courts define as a mandatory policy, and "should" or "may," which courts view as a discretionary policy.

One example is the Supreme Judicial Court of Maine's decision in *Adelman v. Town of Baldwin*, 2000 ME 91; 750 A.2d 577. The case involved a citizen challenge to the town's approval of an application to construct a tele-

vision tower. The citizens argued that an amendment to the town's zoning ordinance, which added communication towers as a conditional use in the highlands and rural areas, was inconsistent with the town's comprehensive plan. In support of their argument, the citizens relied on four sections of the comprehensive plan that referenced restricting development in the highlands and protecting the rural character of the community. The court found that the citizens did not prove the ordinance amendment was inconsistent with the town's comprehensive plan. The court noted that the sections of the comprehensive plan cited by the citizens did not mandate action but merely suggested recommended conduct. Three of the four sections used the permissive term "should" and none of sections used mandatory language such as "must" or "shall." The court, therefore, found these sections did not prohibit the construction of a communications tower. The court

also noted four other sections of the comprehensive plan that could be interpreted to encourage the development of the communications tower.

Another example is the California Court of Appeals decision in *Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Board of Supervisors*, 62 Cal. App. 4th 1332 (1998). The case involved a challenge by a city, a land conservancy, and a citizen group to the county's approval of a low-density residential subdivision of 566 lots on 7,868 acres. While the proposed development was consistent with the land-use map of the general plan, the court found that the proposed development was clearly inconsistent with the "fundamental, mandatory, and specific" policy of the land-use element of the county's general plan. The policy at issue stated that low-density residential uses "shall be further restricted to lands contiguous to community regions and rural centers . . . and shall not be assigned to

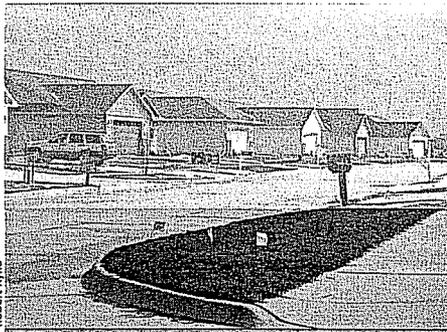


Sven Slazenger

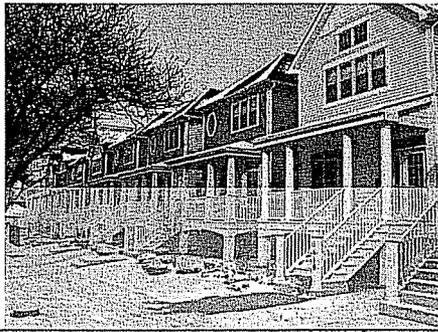


Duncan Walker

Does your comprehensive plan mandate action or merely suggest recommended conduct? For example, while zoning may allow the construction of telecommunications facilities in rural areas, the preservationist goals of the comprehensive plan may use language—often discretionary language such as the word "should"—that undermines its very purpose. Such inconsistencies can lead to costly and time-consuming legal battles.



Robert Killo



Michael Davidson

Residential densities are a recurring issue in both zoning ordinances and comprehensive plans. But are the documents in line with one another on this issue? Left: Essentially garages with attached single-family houses. Right: Single-family homes built in the style of new urbanism. Cars go behind the houses.

lands which are separated from community regions or rural centers by the rural residential land-use designation. . . .” Community regions and rural centers were specified town by town in the county’s plan.

A final example is the Florida Court of Appeals decision in *Pinecrest Lakes, Inc. v. Shidel*, 795 So. 2d 191 (Fla. App. 2001). The case in Martin County involved a 136-unit multifamily development proposal on 21 acres, with a density of 6.5 units per acre. The Martin County comprehensive plan designated the area as “medium-density residential” with a maximum of eight units per acre. The county determined that the proposed development was consistent with the county comprehensive plan. The adjacent land owners—and ultimately the courts—disagreed. The adjacent land was developed at a density of 0.94 units per acre. The Martin County comprehensive plan had a tiering policy to address how new development would be added to existing single-family residential communities. The tiering policy of the plan required that the new development include a transition zone equal in depth to the first block of lots in the existing development of “comparable density and compatible density unit types.” The court found that the new development was inconsistent with the county’s comprehensive plan because the two-story apartment buildings were not “comparable and compatible” to the existing single-family homes. Since the plan stated that a density transition zone “shall” be established, the court found that a transition zone was a mandatory requirement and not a discretionary guide.

The nature of the policy (discretionary versus mandatory, general versus specific), therefore, can be a critical factor for consistency

determinations. Using “may” in comprehensive plans can provide greater discretion in consistency determinations whereas “shall” can provide greater legal weight to the directive of the policy.

#### THE ABSENCE OF SPECIFIC POLICY

While the nature of policy language is important for consistency determinations, the absence of a specific policy enabling a particular aspect of a project is not necessarily grounds for a finding of inconsistency. In *City of Old Town v. Dimoulas*, 2002 ME 133, 803 A.2d 1018, the Supreme Judicial Court of Maine held that the absence of language in a comprehensive plan expressly allowing a specific use in a certain area does not necessarily mean the use is not allowed and that some amount of that use is not inconsistent with the city’s comprehensive plan. *Dimoulas* involved a neighborhood grocery store that had operated for several years in a residential area. The store property was zoned as residential, and neighborhood grocery stores were allowed in residential zones. The Dimoulases decided to add tables and chairs where customers could eat deli and bakery items purchased at the store. However, the city determined the addition of tables and chairs brought the store outside the definition of a neighborhood grocery store. The Dimoulases requested that the city rezone the property to a commercial zone. The city denied the request. As allowed under Maine law, the Dimoulases then presented the rezoning request to the voters in a referendum. The voters approved the rezoning. In response, the city initiated a lawsuit seeking to declare the rezoning void because it failed to comply with the city’s comprehensive plan. The city identified several sections of its com-

prehensive plan that it contended the rezoning violated. The court noted that these provisions did not prohibit commercial development. The city also argued that the absence of a statement affirmatively allowing commercial development should be interpreted to mean that no commercial development is permitted. The court disagreed, citing general descriptive language in the plan that referenced commercial activity in the area where the store was located.

Another example is *No Oil, Inc. v. City of Los Angeles*, 196 Cal. App. 3d 223 (1988). In that case, the California Court of Appeals found oil drilling to be consistent with the designation “open space for the managed production of resources” in a comprehensive plan. The court’s decision was based in part on the absence of specific contradictory language in the plan that would lead the court to find that oil drilling was not the “managed production” of a natural resource.

#### CONSISTENCY, NOT PERFECTION

*Dimoulas* is an example of the approach followed by many courts that generally look for “harmony” or “compatibility” between the action taken and the comprehensive plan when reviewing consistency determinations. These types of consistency issues can be a challenge when dealing with mixed use development projects. For example, a future land-use map may designate an area for residential development. A community may also want to promote some neighborhood commercial development in the area. The community should have policies and standards allowing for neighborhood commercial in the area even though the precise area for the neighborhood commercial is not mapped. Despite the residential designation on the plan, a neighborhood commercial project should be compatible with the comprehensive plan, given the policy language providing for that use. Courts recognize that comprehensive plan maps are usually general in nature and are not to provide a precise parcel specific map. See, generally, *Las Virgenes Homeowners Assoc. v. County of Los Angeles*, 177 Cal. App. 3d 312 (1987).

The quest for harmony is also prominent when there are multiple policies that may apply to a project. Achieving consistency with all the policies may be difficult. In *Sequoyah Hills Homeowners Assoc. v. City of Oakland*, 23 Cal. App. 4th 704 (1993), the California Court of Appeals recognized that a

project need not be in perfect conformity with each and every comprehensive plan policy if the plan text provides for flexibility of interpretation. In such cases, courts will look at the reasonableness of the local government's action. An example is the Maine Supreme Judicial Court's decision in *La Bonta v. City of Waterville*, 528 A.2d 1262 (1987), which involved a challenge by residents to the rezoning of a parcel in their neighborhood from residential to commercial for the construction of a 170,000-square-foot shopping center. The residents focused their argument on the comprehen-

#### POLICIES AND PRECEDENCE OF THE PLAN

Some courts acknowledge the integrative nature of comprehensive planning. Comprehensive plans are intended to provide consistent policy direction for multiple community functions such as transportation, housing, land use, parks, open space, and utilities. Consistency determinations, therefore, need to balance designations in the community's future land-use map with other plan policies and considerations that further refine what is appropriate in the context of the issues and concerns identified in a community's plan. Simply evaluating consistency against future land-use designations may be

range specified in the plan. The court upheld the challenge because the court found the rezoning inconsistent with the city's comprehensive plan. The plan designated a range of residential densities for a relatively undeveloped area of the city. To implement these plan recommendations, the city rezoned the area for residential development at the highest densities allowed in the density ranges. The Community Council, a neighborhood planning organization that has authority to reject rezonings under Washington law, denied the rezonings as inconsistent with the comprehensive plan.

While the community council acknowledged that the rezoning conformed to the density ranges in the comprehensive plan, it argued that it should be at a lower density within those ranges consistent with other provisions in the comprehensive plan. The council based its consistency argument on the comprehensive plan's designation of level of service on roadways in the area as "D-," combined with policies that existing single-family neighborhoods should be protected from encroachment from more intense uses, that land-use densities should be encouraged that would not intensify vehicular congestion, and that restrictions would be considered on land development and density as a viable means of



ⓐ Should the absence of a statement in the comprehensive plan affirmatively allowing commercial development in a residential area be interpreted to mean that no commercial development is permitted? If so, what happens when the owners of a neighborhood grocery store lawfully permitted in residential districts add tables and chairs for customers to eat items purchased at the store, essentially defining the store outside the definition of neighborhood grocery store?

sive plan's stated goal of protecting residential neighborhoods. However, the court rejected the residents' argument as an overly narrow and inflexible reading of the comprehensive plan. The court focused on the plan's emphasis on expanding economic opportunity in the city and providing adequate space for commercial development. The plan also specifically identified commercial development along the arterial street where the development was proposed and identified residential areas to be protected—the residential area in the vicinity of the proposed development was not one of them. The court found the rezoning struck a reasonable balance among the multiple goals of the city's comprehensive plan.

Similarly, the California courts follow a standard whereby a city council's finding of a project's consistency with the plan will not be reversed by a court if, based on the evidence before the council, a reasonable person could have reached the same conclusion; see *No Oil, Inc. v. City of Los Angeles*, 196 Cal. App. 3d 223 (1987).



ⓑ Does this strip mall violate the comprehensive plan's stated goal of protecting nearby residential neighborhoods or support its emphasis on expanding economic opportunity in the city and providing adequate space for commercial development? The courts may have to decide.

insufficient when there are other mitigating factors identified in the plan.

One example is the Washington Supreme Court's decision in *City of Bellevue v. East Bellevue Community Council*, 138 Wn. 2d 937, 983 P.2d 602 (1999), involving a neighborhood organization's challenge to the city's rezoning of an area consistent with the highest density

controlling traffic congestion. The court agreed, noting that the city had flexibility within the density range to use a different zoning designation that would be consistent with these other policies.

Another example is the Court of Appeal of California decision in *Napa Citizens for Honest Government v. Napa County Board of*

*Supervisors*, 91 Cal. App. 4th 342 (2001), in which the court held that the county's amendment of a specific plan for an industrial area near its airport was inconsistent with the county's general plan. The industrial land use was in an area designated in the general plan for industrial uses. However, the circulation element of the general plan identified traffic problems and the housing element identified a housing shortage. According to the court,

The County cannot state a policy of reducing traffic congestion, recognize that an increase in traffic will cause unacceptable congestion and at the same time approve a project that will increase traffic congestion without taking affirmative steps to handle that increase. It also cannot

state goals of providing adequate housing to meet the needs of persons living in the area, and at the same time approve a project that will increase the need for housing without taking affirmative steps to handle that increase.

As a result, the court found that the amendment would frustrate the general plan's goals and policies, and hence, was not consistent with the general plan.

**COMPREHENSIVE PLANNING VS. SPECIFIC IMPLEMENTATION TOOLS**

As the Supreme Court of California noted in *Leshar Communications, Inc. v. City of Walnut Creek*, 52 Cal. 3d 531, 541 (1990), zoning and

planning consistency requires that local communities amend zoning ordinances to conform to the plan, and not vice versa: "The tail does not wag the dog." Nevertheless, because of the general nature of comprehensive plans, consistency issues can arise when more than one zoning district may be consistent with the land-use categories designated in a comprehensive plan. Zoning/planning consistency does not eliminate the need to comply with standards and requirements found in the applicable zoning ordinances. A developer may propose a rezoning that is consistent with the comprehensive plan to permit a project that is not consistent with the existing zoning for the property. Just because a landowner demonstrates that a pro-

**CLARK COUNTY, WASHINGTON, URBAN PLAN DESIGNATION TO ZONE CONSISTENCY CHART**

(Shaded areas indicate allowed zones in each designation)

- PLAN**
- UL Urban Low-Density Residential
- UM Urban Medium-Density Residential
- UH Urban High-Density Residential
- NC Neighborhood Commercial
- CC Community Commercial
- CG General Commercial
- MU Mixed Use
- EC Employment Center
- ML Light Industrial
- MH Heavy Industrial
- A Airport
- PF Public Facilities
- ZONE**
- R1 Single-Family Residential Districts
- R Residential Districts
- OR Office-Residential Districts
- C Commercial Districts
- CL Commercial Districts
- CH Commercial Districts
- MX Mixed-Use District
- OC Office Campus District
- BP Business Park District
- ML Industrial Districts
- MH Industrial Districts
- U University District
- A Airport District

PLAN ZONE	UL	UM	UH	NC	CC	CG	MU	EC	ML	MH	A	PF
R1-20												
R1-10												
R1-7.5												
R1-6												
R1-5												
R-12												
R-18												
R-22												
R-30												
R-43												
OR-15												
OR-18												
OR-22												
OR-30												
OR-43												
C-2												
C-3												
CL												
CH												
MX												
OCIBP												
ML												
MH												
U												
A												

This table is located in the land-use element of the comprehensive plan for Clark County, Washington.

posed use is consistent with a comprehensive plan, the consistency requirement does not mean the landowner is presumptively entitled to the planned use.

In *Board of County Commissioners of Brevard County v. Snyder*, 627 So. 2d 469 (Fla. 1993), the Florida Supreme Court addressed a situation where 29 different zoning classifications were considered potentially consistent with a residential use classification on the comprehensive plan's future land-use map. The property

owners filed an application to rezone one-half acre of property to a zoning classification that would allow the construction of 15 residential units per acre. The rezoning was consistent with the residential use classification in the comprehensive plan. The developer indicated that he only intended to build five or six units. A number of citizens opposed the request. The county denied the rezoning without stating a reason. The developer challenged the denial on the basis that the rezoning was consistent with the county's comprehensive plan. The court determined that local government should have the discretion to decide that the maximum development density should not be allowed provided that the governmental body approves some development that is consistent with the plan and the government's decision is supported by substantial, competent evidence. The proposed use may, by zoning ordinance, continue to be more limited than the future use contemplated by the comprehensive plan. In the standard articulated by the court in *Snyder*, a landowner seeking to rezone property has the burden of proving the proposal is consistent with the comprehensive plan and complies with all the procedural requirements of the zoning ordinance. The burden then shifts to the community to demonstrate that maintaining the existing zoning classification accomplishes a legitimate public purpose.

Related issues may arise when a community has adopted a new comprehensive plan, but has not yet updated its ordinances to be

## Issues may arise when a community has adopted a new comprehensive plan, but has not yet updated its ordinances to be consistent with the plan.

consistent with the plan. In *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 947 P.2d 1208 (1997), the Washington Supreme Court held that when preexisting zoning regulations explicitly prohibit uses allowed in the comprehensive plan, the more specific preexisting zoning regulations govern the land-use decision. This provides an incentive for communities to update their ordinances within a reasonable period of time following the enactment of a comprehensive plan.

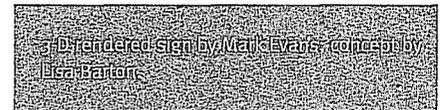
This is different than the case where, even though a local government has not enacted a new zoning district referenced in a newly adopted comprehensive plan, the local government may be able to approve a development as consistent with the plan when that development is proposed under other ordinances that are consistent with the plan. In *Pinecrest Homeowners Association v. Glen A. Cloninger & Associates*, 151 Wn.2d 279, 87 P.3d 1176 (2004), the Washington Supreme Court examined the application of a plan amendment adopted by the Spokane City Council that the city determined should take effect immediately. The city, however, had not yet enacted the new mixed-use zoning district described in the plan amendment. Nevertheless, the city determined that a development proposal that used existing zoning districts allowing mixed use was consistent with the city's amended comprehensive plan. The court upheld the city's action against a challenge by a neighborhood group.

### CONCLUSION

This issue of *Zoning Practice* begins to examine some of the case law developed nationally as courts address issues related to consistency determinations. The cases highlighted are intended as a guide to help planners think about such determinations. However, one must exercise caution when generalizing the meaning of consistency. While the concept that certain actions should be consistent with a comprehen-

sive plan is well accepted in the field of planning, variations in state enabling laws and judicial precedent make it difficult to develop universally acceptable rules to guide consistency determinations. As recognized by the Nebraska Supreme Court, "To determine whether an ordinance complies with a comprehensive plan is not a mechanical test;" see *Giger v. Omaha*, 232 Neb. 676; 442 N.W.2d 182 (1989). Nonetheless, the evolving jurisprudence reported above is instructive. Courts give deference to local determinations of consistency, though not always. As a result, courts are constantly helping to refine what is meant by consistency and the role of comprehensive planning.

Digital copies of California's general plan guidelines and select zoning/planning consistency matrices are available to *Zoning Practice* subscribers by contacting Michael Davidson, editor, *Zoning Practice*, at the American Planning Association, 122 South Michigan Avenue, Suite 1600, Chicago, IL 60603, or by sending an e-mail to [mdavidson@planning.org](mailto:mdavidson@planning.org).



### VOL. 22, NO. 11

*Zoning Practice* is a monthly publication of the American Planning Association. Subscriptions are available for \$65 (U.S.) and \$90 (foreign). W. Paul Farmer, AICP, Executive Director; William R. Klein, AICP, Director of Research.

*Zoning Practice* (ISSN 1548-0135) is produced at APA. Jim Schwab, AICP, and Michael Davidson, Editors; Julie Von Bergen, Assistant Editor; Lisa Barton, Design and Production.

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