

COMMISSIONER REPORT
HISTORIC KOOTENAI LODGE ZONING DISTRICT REQUEST
OCTOBER 19, 2006

I. GENERAL INFORMATION

A. Review procedure:

The applicants, Kootenai Lodge Estates, LLC, are seeking to amend the Lake County Density Map and Regulations to create the Historic Kootenai Lodge Zoning District to fulfill the requirement of the Preliminary Plat Approval dated May 10, 2005 and April 10, 2006.

The Lake County Planning Board held a noticed public meeting on the proposed zoning district and regulations on October 11, 2006. At the meeting, the Board considered whether the proposed District is consistent with the Conditional Approval of the Historic Kootenai Lodge Condominium Subdivision issued by the Lake County Commissioners, the criteria for zoning regulations found in Montana Code Annotated, 76-2-203, and the requirements of the Density Map and Regulations. **At the conclusion of the meeting, the Planning Board made a recommendation to adopt the Zoning District and Regulations by a vote of 7-1 (John Fleming voted against the motion).** The recommendation of the Planning Board was contingent on final plat approval of the Historic Kootenai Lodge Subdivision. The proposal will be presented to the County Commissioners at a public hearing on November 1, 2006 at 10am.

At that hearing, the Commissioners are to consider the Planning Board's recommendation, public testimony, state law MCA 76-2-201 through 76-2-205, the Lake County Growth Policy, and the Conditional Approval of the Historic Kootenai Lodge Condominium Subdivision and make any amendments or revisions that they deem proper.

B. Project Personnel

Property owners: Kootenai Lodge Estates, LLC.

Project Consultant: Dave Degrandpre

C. Property and Area Description

The legal description of the Historic Kootenai Lodge Zoning District is as follows: Tract B (Remainder) of the Amended Plat of Lot 128, Swan Sites No. 1 Subdivision and lands in Lot 8, Section 11, Lots 1 and 4, Section 14, Township 26 North, Range 19 West, P.M.M., Lake County Montana, according to the map or plat thereof on file in the office of the Clerk and Recorder of Lake County, Montana. The subject parcel contains 40.9± acres and contains approximately 2,400 feet of shoreline. The entire property is owned by Kootenai Lodge Estates, LLC.

The property is bordered to the north, south and east by residential tracts of land within the Swan Sites Subdivision. The land use and development standards of

the surrounding properties are regulated by the Swan Sites Zoning District Regulations.

D. Project Description

On May 10, 2005 and April 10, 2006, the Lake County Board of Commissioners granted preliminary plat approval of the Historic Kootenai Lodge Condominium Subdivision with a condition that requires the developer to create and implement a zoning district that encompasses the subject property. The purpose of this requirement was to ensure compliance with the approved covenants and proposed measures that attempt to mitigate the impacts of the subdivision as defined in the approved Findings of Fact for the division.

The draft text of the Historic Kootenai Lodge Zoning District includes building setbacks, land use limitations and development restrictions.

Planning Staff proposed some modifications to the draft submitted by the Kootenai Lodge Estates LLC in an attempt make the regulations more clear for property owners, the developer, and the administrators. Other modifications proposed by staff were proposed to ensure compliance with the subdivision's DEQ approval, the Board of County Commissioner subdivision approval, the goals of the Lake County Growth Policy, and the criteria for creation of zoning regulations.

During the Planning Board meeting, representatives of Kootenai Lodge Estates LLC accepted the staff suggestions with some additional modifications, which were incorporated into the attached draft, dated October 19, 2006.

II. APPLICABLE LAW

A. STATE: 76-2-203, MCA Provides criteria and guidelines for zoning regulations.

(1) Zoning regulations must be:

(a) made in accordance with the growth policy; and

(b) designed to:

(i) lessen congestion in the streets;

(ii) secure safety from fire, panic, and other dangers;

(iii) promote public health and general welfare;

(iv) provide adequate light and air;

(v) prevent the overcrowding of land;

(vi) avoid undue concentration of population; and

(vii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) Zoning regulations must be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area.

MCA 76-2-205 requires the Board of County Commissioners to observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

- At the public hearing, the Board of County Commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.
- After the public hearing, the Board of County Commissioners shall review the proposals of the Planning Board and shall make any revisions or amendments that it determines to be proper.
- The Board of County Commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.
- The Board of County Commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county.
- Within 30 days after the expiration of the protest period, the Board of County Commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district. However, if 40% of the freeholders within the district whose names appear on the last-completed assessment roll or if freeholders representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202, MCA or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the Board of County Commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year.

B. LOCAL: Lake County Density Map and Regulations, effective October 2005

(1) Amendment requests shall include:

- (a) a description of how the amendment furthers the goals of the Lake County Growth Policy
- (b) a description of current easements and infrastructure in place within and leading to the closest city or town.
- (c) A description of steps to be taken to improve infrastructure so the area under consideration may be provided services in a cost effective and equitable manner.

RECOMMENDED FINDINGS
HISTORIC KOOTENAI LODGE ZONING DISTRICT
OCTOBER 19, 2006

The proposal was evaluated in consideration of the criteria set forth in the Conditional Approval of the Historic Kootenai Lodge Condominium Subdivision issued by the Lake County Commissioners, the criteria for zoning regulations found in Montana Code Annotated and the requirements of the Density Map and Regulations. Based upon this evaluation, the Planning Board has made these findings on the attached version of the Proposed Historic Kootenai Lodge Zoning District, dated October 19, 2006.

The Planning Board recommends the following findings be adopted by the Lake County Board of County Commissioners in support of the October 19, 2006 draft **of the Proposed Historic Kootenai Lodge Zoning District:**

1. The Historic Kootenai Lodge Zoning District is designed in accordance with the Lake County Growth Policy adopted on August 19, 2003. Specifically it meets the following objectives:

- a. Chapter 3:

Goal 8. Protect the natural resources and the character of Lake County.

The zoning regulations include setback provisions to protect waterways, and vegetative buffer requirements to ensure newly planted and existing vegetative buffers are not substantially disturbed. These measures are meant to ensure that buildings are not constructed on the lakeshore and streambanks where erosion can occur in order to reduce the potential for sedimentation that can have a negative impact on water quality and aquatic life.

- b. Chapter 4:

Goal 1. Protect surface and groundwater resources before, during and after development.

The zoning regulations include setback provisions which require on-going maintenance of existing vegetation. Language requiring stormwater management and water and sewer capacity be addressed when development occurs would ensure maximum protection of groundwater resources.

Goal 9. Protect the area's scenic resources, which are an integral part of our high quality of life and an economic asset.

The zoning regulations contain a provision requiring that all nighttime outdoor lighting be downward pointed and side shielded to prevent glare from leaving the property. The purpose of this regulation is to protect views of the night sky, which can be considered a scenic resource.

The zoning regulations also require that buildings be set back from property lines and that vegetation within those setbacks be maintained. This provision will help to buffer development on the property from the views of neighboring landowners in order to protect the area's scenic resources.

Goal 5. Protect important wildlife habitat and migration corridors.

During the preliminary plat approval process, letters of review by representatives of the United States Fish and Wildlife Service, Montana Department and Fish, Wildlife and Parks and Flathead Lake Biological Station indicated that the most important wildlife habitat within the district includes the lakeside/riverside area and the Johnson Creek stream corridor. The zoning regulations require that these areas be protected by 80-foot building setbacks for new structures as well as the maintenance of historic and newly planted vegetative buffers. These provisions are intended to protect continued use of the high quality wildlife corridors and waters within the zoning district by fish and wildlife

2. The Historic Kootenai Lodge Zoning District is designed to lessen congestion in the streets. This criterion is addressed in Section IV.A *Land Use Restrictions* which prohibits commercial enterprises, funneling of non-residents to Swan Lake and the Swan River, fractional and interval ownership of the homes, the short term rental of homes and prohibiting additional structures to be built. All of these measures will result in limiting the amount of traffic leading to and within the zoning district.
3. The Historic Kootenai Lodge Zoning District will secure safety from fire, panic and other dangers, and will promote health and general welfare. These criterion is addressed in the following sections of the zoning document: Section IV.C. *Building Setbacks*, which require that all structures be located outside of the 100-year floodplain for Johnson Creek and at least 80 feet from any water body, in part to minimize danger to lives and property from flooding. Section IV.B. *Development Restrictions*, limits development of the property to a maximum of 24 boat slips upon review and approval, to limit dangers associated with excessive aquatic traffic. Finally, Section IV.G. *Water and Sewer Facilities*, requires that all homes and facilities be connected to adequate public water and sewer systems to ensure that safe water and sewer facilities are available to the future residents.
4. The Historic Kootenai Lodge Zoning District will provide adequate light and air; prevent overcrowding and avoid undue concentration of the population. These criterion are addressed in the following sections of the zoning document: Section IV.B. *Development Restrictions*, limits development of the property to a maximum of 42 dwelling units, one community center/lodge with food service, pool facility, the barn to be used as a maintenance facility for the units, and a not-for-profit museum to be built within the 40.9-acre zoning district. Because the remainder of the property will be kept in landscaped common area, adequate light and air will be provided. Additionally, Section IV.A. *Land Use Restrictions* prohibits the funneling of non-residents to the lake or river, the short term rental of homes and the fractional and interval ownership of homes.
5. The Historic Kootenai Lodge Zoning District will facilitate the adequate provision of transportation, water, sewer, schools, parks, and other public requirements. The zoning district is part of a conditionally approved subdivision plan. The overall

development plan and complimentary zoning regulations addresses and/or relates to the following infrastructure and other public requirements:

- Internal roadways to be built to Lake County's specifications,
- Off-site roadways to be widened and resurfaced,
- Public water and sewer systems,
- An expected positive financial impact on area schools,
- Access to water bodies, a swimming pool, and acres of green space,
- Stormwater collection, filtration and retention systems,
- Land for emergency service providers and water supplies for fire protection,
- A central mail collection facility,
- Electrical and communication infrastructure, and
- Garbage collection provided by a private solid waste hauler.

6. The Historic Kootenai Lodge Zoning District gives reasonable consideration to the character of the district, gives reasonable consideration to the peculiar suitability of the property for particular uses, and will encourage the most appropriate use of the land. The zoning district will be limited to 42 homes, one community center/lodge with food service, pool facility, the barn to be used as a maintenance facility for the units, and a not-for-profit museum to be built within the 40.9-acre zoning district. Setback criteria and vegetation maintenance regulations provide consideration to the character of the district and conserve the value of the current and future structures. These setbacks are more stringent than those found within the Swan Sites Zoning District. The zoning regulations limit the number of boat slips due to concern with excessive traffic in a fairly shallow aquatic environment. The regulations also limit the location of the structures in relation to natural resources and wildlife habitat. The use of the homes and property are regulated by prohibiting fractional and interval ownership, short term home rental and funneling. Additionally, the zoning regulations prohibit the use of the property and its facilities for commercial purposes. All of the above provisions, are made in light of the suitability of the area for specific uses, as well as to continue the historic and appropriate use of the property as a recreational retreat.

7. The following criteria are utilized to review amendments to the Lake County Density Map and Regulations.

A. Description of current easements and infrastructure in place within and leading to the closest city or town.

Currently few easements and limited infrastructure exist within the zoning district. A 60-foot publicly dedicated easement for access and utilities is located adjacent to the property on Sunburst Drive to the east. Sunburst Drive connects to South Ferndale Drive, which also is located within a 60-foot easement. South Ferndale Drive then runs east to connect to Montana Highway 83. Within 10 miles of the property and zoning district are the unincorporated towns of Bigfork, which is accessed from Highway 529, and Swan Lake, which is located along Highway 83. An historic easement for power generation also exists on the northern portion of the property extending from Sunburst Drive to Johnson Creek.

The closest fire station is located approximately 4 miles from the property. The closest ambulance is currently located in Bigfork and the Lake County Sheriff, whose office provides law enforcement services, is located in Poison. School children in the area attend the Swan River School and Bigfork High School.

B. Description of steps to be taken to improve infrastructure so the area under consideration may be provided services in a cost effective and equitable manner.

Under the terms of the application and subsequent approval for the Historic Kootenai Lodge Subdivision, infrastructure on the property and within the zoning district will include properly designed and constructed roadways, utilities and water and sewer systems. All roads and the one bridge within the zoning district will be built and maintained without the use of public funds. A public sewer system will be built by the owners of the Kootenai Lodge property and then transferred to the Kootenai Lodge/Lake County Water and Sewer District so that the system installation and operation and maintenance will not financially impact other property owners. The sewer system will serve the zoning district residents and include additional capacity to allow off-site property owners to connect if they wish, with priorities for connection established by Lake County. Water will be provided to residents of the zoning district through a public water system that will be built, owned and operated by the public water and sewer district.

As a condition of approval, the landowners are required to widen and pave South Ferndale Drive and Sunburst Drive from Highway 83 to the southern boundary of the property and zoning district. These roadway improvements will have no financial impact on other taxpayers.

The developer will also donate a parcel of land to Lake County that is located within 1.5 miles of the zoning district at the intersection of Broken Leg Road and Highway 83. The parcel is intended for use as an air ambulance helispot, a satellite fire station and a satellite office for the Lake County Sheriff's Search and Rescue Division. The Bigfork Fire and Ambulance Service and the Lake County Sheriff have approved the location of this parcel. It is anticipated that when these emergency service agencies choose to make use of the parcel, emergency response times in the area will be significantly decreased. In addition to the donated parcel, the landowners have agreed to install on-site water facilities for fire protection in accordance with the requests of the Ferndale Volunteer Fire District.

School children residing within the zoning district are not expected to have a negative impact on the public schools, as stated by the Swan River and Bigfork School Superintendents in February of 2005 and documented in the preliminary plat application for the Historic Kootenai Lodge Subdivision.

PLANNING BOARD RECOMMENDATION
HISTORIC KOOTENAI LODGE ZONING DISTRICT
OCTOBER 19, 2006

The Lake County Planning Board finds the attached October 19, 2006 version of the Historic Kootenai Lodge Zoning District would meet the criteria and guidelines for zoning regulations under 76-2-203 MCA and comply with the Lake County Growth Policy, the conditions of the Preliminary Approval of the Historic Kootenai Lodge Condominium Subdivision issued by the Lake County Commissioners, and the requirements of the Density Map and Regulations. **Therefore, the Board recommends the Lake County Board of Commissioners adopt this proposal to create the Historic Kootenai Lodge Zoning District and Regulations upon final plat approval of the Historic Kootenai Lodge Subdivision.**