

Re: [EXT SENDER] Re: [EXT SENDER] Request for comment**JG** Jake Gabell <jake.gabell@bonnercountyid.gov>

Wed, 20 Dec 2023 2:05:07 PM -0800 •

To "Reg Crawford" <reg@project7b.org>

Cc "luke" <luke.omodt@bonnercountyid.gov>, "stevenbradshaw" <steven.bradshaw@bonnercountyid.gov>, "asia Williams" <asia.williams@bonnercountyid.gov>

Good afternoon Reg,

It appears to me that your concerns are regarding how the code itself is written. The Planning Commission, and ultimately the Board of County Commissioners, are charged with making these types of significant changes to the revised code. I suggest you present your concerns to either of those boards and request a code change.

Respectfully,

Jake Gabell, Director

Bonner County Planning Department
1500 Highway 2, Suite 208
Sandpoint, ID 83864
Phone: 208-265-1458

On Wed, Dec 20, 2023 at 6:41 AM Reg Crawford <reg@project7b.org> wrote:

Good Morning,

I finally had some time and wanted to circle back to these codes you provided in which MLDs are being approved below allowable density based on a shared well.

1. Bonner County Revised Code (BCRC) 12-623 (B) falls under Subdivision Design Standards. Nowhere in Minor Land Division code §12-660 does it reference §12-623. The county has continually argued that MLDs are not subject to Subdivision Design Standards.
2. Urban Services is defined in BCRC 12-821. Again, nowhere in Minor Land Division code §12-660 does it reference §12-821. However, it is referenced in §12-623 (A), which once again is under Subdivision Design Standards. Again, Minor Land Divisions are not subject to Subdivision Design Standards.

Furthermore BCRC §12-821 is a definition of ALL Urban Services:

URBAN SERVICES: Publicly or privately maintained water supply and distribution systems; sewage collection, treatment and disposal systems (not to include individual septic tanks and drainfield systems or community septic tanks and drainfield systems, unless subject to an approved sewer management agreement); electric power and telephone utilities; **and** hard surfaced roads constructed to the standards set forth in title 2 of this code.

BCRC §12-800 11.a. in Rules of Language states:

11. Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:
 - a. "And" indicates that all connected items, conditions, provisions or events apply.

The "and" therefore indicates that all items following the colon after Urban Services are enumerations of conditions that are all connected. A new definition for Urban water cannot be

created by isolating it from connected items.

3. IDEQ does **NOT** consider a shared well to be "privately maintained water supply and distribution system," which is a definition created by planning by improperly isolating the term from the definition of Urban Services.

Please contact Anna Moody with IDEQ. She confirmed that IDEQ utilizes IDAPA 58.1.08. IDEQ considers Community Water Systems to be those that are subject to regulation under IDEQ. A shared well does not fall under this, unless there are multiple shared wells reaching multiple households which meet the requirements of regulation by IDEQ.

Idaho Administrative Procedures Act (IDAPA) does define a community system. Under which, the Idaho Department of Environmental Quality regulates Idaho Rules for Public Drinking Water Systems:

15. Community Water System. A public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents. See also the definition of a Public Drinking Water System in these rules. (3-24-22)

4. In July Idaho District Court determined in the Coolin case that MLDs were indeed subject to LLUPA. Bonner County disagreed and at the November reconsideration hearing, Bill Wilson made the case that the Minor Land Division Code was developed to specifically avoid LLUPA regulation and requested an additional hearing to argue the issue further. By applying Subdivision Code to Minor Land Divisions, planning is contradicting Mr. Wilson's argument and is in agreement that MLDs are subject to Subdivision regulations.

5. As stated in a previous email, MLD0054-22 was clearly not staff error in stating the properties will be served by individual wells. The application, staff report, and BOCC memo all clearly identified individual wells, yet the application was approved below allowable density.

I hope this shortened version of the argument will bring some attention to this creative loophole being used within the MLD approval process. Please email or call if you have any further comments to make on MLD0054-22 or the other upcoming MLDs where this code path plans to be used.

Finally, while I have not been listening to the BOCC meetings here in Mexico, I did read the Bee article which stated that now public comments will only be accepted AFTER the full agenda (minus Commissioner reports) are completed. As of the July Coolin court decision, MLDs do fall under LLLUPA and to further remove the public's ability to comment on these prior to their approval on consent agenda furthers the gap between the current decision and BOCC actions.

Thank you for your consideration of these points.

Reg

---- On Fri, 01 Dec 2023 14:46:53 -0500 **Jake Gabell** <jake.gabell@bonnercountyid.gov> wrote

Good morning Reg,

Bonner County Revised Code (BCRC) 12-623 (B) states:

A water supply shall be provided per at least one of the following:

1. Lots to be served by an individual well on each lot: Applicants shall demonstrate how the aquifer proposed for water supply has sufficient production capability to provide drinking water to all applicable lots and that a location is available within each lot for installation of a well without conflicting with proposed sewage systems on or adjacent to the proposed lot.

2. Lots to be served by a new water system serving from two (2) to nine (9) lots: Documentation by an Idaho licensed professional engineer or professional geologist that the sources proposed for water supply have sufficient production capability to provide drinking water to the lots in the proposed subdivision.

3. Lots to be served by a new public drinking water system: Division of environmental quality written approval of an engineering report prepared by an Idaho licensed professional engineer demonstrating that an adequate water supply is available to meet the estimated demand for water from the lots in the proposed subdivision.

4. Lots to be served by connection to an existing public or private water system: A letter from the owner of the system indicating it has sufficient reserve production capacity to supply water to the lots in the proposed subdivision.

Urban Services is defined in BCRC 12-821:

URBAN SERVICES: Publicly or privately maintained water supply and distribution systems; sewage collection, treatment and disposal systems (not to include individual septic tanks and drainfield systems or community septic tanks and drainfield systems, unless subject to an approved sewer management agreement); electric power and telephone utilities; and hard surfaced roads constructed to the standards set forth in title 2 of this code.

A shared well that complies with the provisions of this title can be used to establish a density of 1 lot per acre in many zoning districts, see BCRC 12-412 "Urban Water Only". A shared well is considered by Bonner County and Idaho DEQ to be a privately maintained water supply and distribution system.

Both of the minor land division applications you mentioned in your email were seeking to establish a 1+ acres per lot density through the use of a shared well as described above. The collective reports for MLD0054-22 and MLD0037-23 contain a condition of approval to require compliance with BCRC 12-623. The BOCC memo for MLD0054-22 incorrectly stated that the properties are to be served by individual wells and septic, which appears to be a staff error.

Respectfully,

Jake Gabell, Director

Bonner County Planning Department
1500 Highway 2, Suite 208
Sandpoint, ID 83864
Phone: 208-265-1458

On Fri, Dec 1, 2023 at 10:40 AM Reg Crawford <reg@project7b.org> wrote:

Good morning Jacob,

I've been contracted by P7B to do some educational work on Minor Land Divisions. The project will include descriptions of the loopholes that still exist within BCRC and will use real applications to demonstrate what is happening.

I wanted to reach out to you because I plan on using MLD0054-22 as an example. MLD00054-22 was in Rec zone where minimum lot size where urban sewer and water services are not available is 2 1/2 acres. However, this application was approved for 4 lots, the largest being 1.22-acre.

The memorandum from planning to the BOCC clearly states the 4 lots will be served individual well and septic. I am aware that there was a PHD sanitation lift after the fact, but we all know that is neither here nor there as PHD has nothing to do with applying BCRC, and once the MLD is complete, the parcels can be sold without ever following up with PHD, (and likely given the applicant is a known property investor and developer). I did a PRR for the administrative file and did not see anything referring to a conservation subdivision.

Please let me know if you have comments on this. I want to make sure the project accurately describes what occurred. I also see has another MLD coming from VA0024-23 which will request below minimum size based on being served by individual well and septic.

Additionally, I will also be addressing the usage of a split well being used as a community system or urban water. An example of this is MLD0037-23 which will be coming down the pipe, so if you have any comments on that it would be helpful as well.

Thanks,

Reg
