



Community Development

APPLICATION FOR APPEAL

451 Government Way. Coeur d'Alene ID 83814. (208) 446-1070

DESIGNATED CONTACT PERSON

Name: Jason Evans
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PARCEL INFORMATION (if applicable)

Parcel #: See attachment (7 parcels)
Serial / AIN#: See attachment (7 parcels)

APPLICATION #: APP19-0004

For Agency Use ONLY

PROPERTY OWNER / APPELLANT

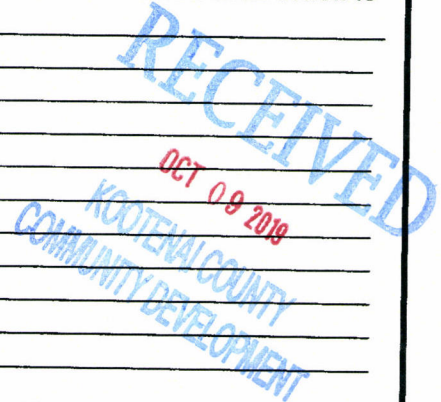
Name: Cancourse, LLC
Mailing Address: 2823 E Thomas Ln, Coeur d'Alene, ID 83815-8502
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Authorized Firm/Agent Name: _____ Registration #: _____
Mailing Address: _____
Contact Information: Phone: _____ Cell: _____ E-mail: _____

APPEAL OF: Decision/Interpretation/File/Case/ Project #: See attachment (7 case numbers)

AFFECTED/AGGRIEVED PARTY: Specifically describe how the appellant is an affected/aggrieved party:
See attachment

SPECIFIC ISSUE: Specifically describe the issue/decision/action being appealed: See attachment

BASIS OF APPEAL: Identify the "specific" reasons/grounds why the appellant believes the decision/issue/action to be erroneous: See attachment



** Use additional sheets as necessary and/or attach documentation **

APPEAL FEES ARE REQUIRED TO BE PAID IN FULL AS REQUIRED BY CODE

The appellant shall bear the burden of proving that the decision/action/interpretation was erroneous. I understand that the appeal will be strictly limited to the above issues/decisions/actions and reasons/grounds why the decision/issue/action to be erroneous. **I have carefully read and completed this application and acknowledge that the same is true and correct.**

Owner/Appellant or authorized agent: (signature) Jason Evans

(Print Name) Jason Evans Date: October 9, 2019

PARCEL INFORMATION

Parcel #: 51N03W319300, 51N03W317500, 51N03W311800, 51N03W319500, 51N03W326300, 51N03W326250, 51N03W326320

Serial/AIN#: 144423, 319504, 324594, 182820, 319502, 112510, 339270

APPEAL OF: Decision/Interpretation/File/Case/Project #: CV19-0110, CV19-0111, CV19-0112, CV19-0113, CV19-0114, CV19-0115, CV19-0187

AFFECTED/AGGRIEVED PARTY: Specifically describe how the appellant is an affected/aggrieved party:

The Notice of Land Use and Development Code Violation incorrectly defines our private commercial timberland as an outdoor recreation facility, and by doing so obstructs property rights to the detriment of property value and utility.

SPECIFIC ISSUE: Specifically describe the issue/decision/action being appealed:

This is an appeal of the Notice of Land Use and Development Code Violation (seven distinct notices), dated September 16, 2019 requiring the filing of a conditional use permit for the parcels/cases identified in the “Parcel Information” and “Appeal Of” sections above.

BASIS OF APPEAL: Identify the “specific” reasons/grounds why the appellant believes the decision/issue/action to be erroneous:

No conditional use permit should be required for the subject parcels as currently used. My wife and I purchased the subject property between 2015 and 2019. We are managing the property first and foremost for timber productivity, but our forest management goals are compatible with low impact public access, and we wish to preserve hiking and bicycling connectivity between the neighboring cities and the national forest. We have been presented with two options by the Kootenai County Community Development staff: 1) apply for a conditional use permit and operate under whatever restrictions are imposed, or 2) completely close the subject parcels to the public by posting them “No Trespassing”. Neither choice is well motivated by county code nor precedent. Furthermore, option (2) defies common sense.

Not an outdoor recreation facility

The subject parcels have no capital improvements on the land (i.e. no structures), nor a place of assembly, in stark contrast to all the example outdoor recreation facilities enumerated in the Kootenai County code definition of “outdoor recreation facility”:

8.9.304: DEFINITIONS - O:

[...]

OUTDOOR RECREATIONAL FACILITIES: Areas designed for active recreation, whether publicly or privately owned, which may include, without limitation, baseball diamonds, soccer

and football fields, golf courses, tennis courts, swimming pools, outdoor riding arenas, and similar places of assembly for outdoor recreational activities. This definition shall also include private recreational facilities accessory to single- or multiple-family dwelling properties.

[...]

In meetings with Community Development staff we all agreed that if any aspect of the subject parcels constitutes an “outdoor recreation facility”, it is the trails. Yet the trails are diffuse, in the midst of a forest. Of the examples given in the definition, not even golf courses have this quality.

The code does not define “facility”, and dictionary definitions add little clarity to this issue. As such, there is no compelling support for a broad interpretation of “outdoor recreation facility” that encompasses the subject parcels. Consider these external definitions:

merriam-webster.com:

4 a (1) something that makes an action, operation, or course of conduct easier—usually used in plural:

- [provide books and other] *facilities* for study
- The resort has a wide range of *facilities* for young and old alike.

4 b something (such as a hospital) that is built, installed, or established to serve a particular purpose

dictionary.cambridge.org:

- **(PLACE)** something such as a place, building, or equipment used for a particular purpose or activity: *The new sports facility has a swimming pool.*
- **(BUILDING)** a place, especially including buildings, where a particular activity happens:
 - *a nuclear research facility*
 - *a military facility*
 - *a new sports facility*

dictionary.com:

1 a) something designed, built, installed, etc., to serve a specific function affording a convenience or service: *transportation facilities; educational facilities; a new research facility.*

No improvements

As mentioned, there are no improvements on the subject parcels; they contain the following:

- **Forest:** The forest is being managed for commercial timber production.
- **Access roads and trails:** The roads and trails provide access for forestry activities, emergency fire suppression, and hiking/bicycling. They also serve as fire breaks.
- **Fences:** The border fences restrict entry. The interior fences protect sensitive ecosystems.
- **Signs:** The signs prohibit most uses and provide contextual information.

No precedent

There appear to be no similar properties bound by a conditional use permit. There are examples of similar land use in Kootenai County, e.g. timberland owned by Stimson and Inland Empire Paper Company, and to the best of our knowledge none of them operate under a conditional use permit. Cedar Mountain Farm Bed & Breakfast was cited by planning staff in the current case as precedent, but the owner, Al Kyle, related to me that he sought a conditional use permit when adding an RV park to his operation. Furthermore, he said that the associated "trail system" consists entirely of logging roads that were established in previous decades, and he allowed limited use by the public long before the establishment of the RV park.

Bizarre remedy

The Notice of Land Use and Development Code Violation does not enumerate the actions required to bring the site into compliance with county zoning ordinances absent a conditional use permit, but I verbally received the same bizarre remedy requirements over four meetings and multiple phone conversations:

- The existing signage allowing hiking/bicycling access must be removed, and the entire property must be posted "No Trespassing". During one meeting, I asked whether it would be sufficient to remove signage allowing hiking/bicycling, without adding "No Trespassing" signs. The emphatic reply was that I must prohibit all public access, although I would not be forced to fence the property in addition to posting it. Such a reduction of property usage rights diminishes property value and owner freedom. Were this deemed a legitimate exercise of county regulatory authority, it would set a precedent. For example, neighbors might complain about nearby hunting (or even something as innocuous as people hiking through the corner of a parcel) and force landowners to post their property prohibiting all use.
- All "advertising" must be removed. In particular, the entrance signage must be removed, and the cancourse.net website must be taken down. This was presented as a requirement to remove evidence of non-compliant use, but I perceive it as a vaguely defined gag order. For example, the website describes forest management and restoration activities, but the website takedown requirement censors that and all other content. The overreach of this requirement casts a shadow over all communication related to the subject parcels, such that it is unclear whether I am left the right to converse in any forum that may be recorded or overheard.

In conclusion, there is no violation, and the actions required to bring the subject parcels into compliance call further attention to the miscategorization of the timberland as an outdoor recreation facility. This appeal seeks to put an end to a misapplication of county ordinances that would harm the appellants, harm people who benefit from traversing the subject parcels, and harm other landowners who could be subject to similar future regulatory actions.