

Position Paper On The “2010 Adopted Kootenai County Comprehensive Plan”

North West Property Owners Alliance

Date: October 7, 2013

By the NWPOA Board of Directors

To the; Kootenai County Board of County Commissioners, Planning Commission & Interested Citizens.

INTRODUCTION

North West Property Owners Alliance Inc. (*NWPOA*) is a non-profit organization made up of citizens from all political persuasions who live all over Kootenai County. Our mission and goals are focused on representing, educating, and advocating for rural property owners with regards to topics based on; land use, zoning, building codes, environmental issues, septic & water issues, property taxes and privacy.

NWPOA members are people whose hearts and pocket books are aligned. We not only own rural land, we live on our land too. We cherish our rural lifestyle and most of us simply would not do well living in a city. In this respect we are perhaps united with those seeking to limit growth in the rural area. However, along with our strong desire for country life is an equally strong desire for our property rights, to be independent, not to force our will upon our neighbor and to generally let people live as they want to live. While we may not always agree, we do look-out for one another. Many of us have a strong distrust of government and thus we believe we as objective (*ie dealing with facts or conditions without distortion by prejudices*) rural property owners we should be the ones determining what regulations will be enacted and enforced upon us.

To that end, over the last 9 months we have been gathering together holding Town Hall meetings all over Kootenai County (*KC*) on the proposed KC land use codes. These NWPOA Town Hall meetings have focused on informing and educating property owners and citizens about the proposed Unified Land Use Code (*ULUC*) document and the process leading up to it's creation including details about the adopted 2010 Comprehensive Plan. (*Comp Plan or Plan*) A typical Town Hall setting will average about 80-120 attendees.

It is the local property owners in any area who arrange for NWPOA to conduct a Town Hall meeting. NWPOA has conducted meetings in; libraries, grange halls, elementary & high schools, and Legion Halls. NWPOA also set up a booth at the 2013 KC Fair and spoke with literally thousands of local area citizens, informing many for the 1st time that their zoning was changing. During the KC Fair, we handed out approximately 6,000 informational cards.

At a typical NWPOA Town Hall meeting an NWPOA representative will conduct a 2.5 hour long .ppt presentation on land use, which includes a series of feedback questions from the audience. The following are the actual questions from one of the presentation slides:

By a show of hands,

How many rural property owners were aware of the re-writing of the Comp Plan 2006-2010?

How many of you rural property owners participated?

What is interesting is that the typical response has been that only 5% of those gathered were even aware of the rewriting of the Plan and less than 1% may have participated (*went to a meeting or commented*) in some fashion.

This 31 point position paper on the Comprehensive Plan (*Plan*) was developed as we became aware of not only a ideological disconnect between what various organizations and county officials have wrote or said, verses what local property owners are telling us, but also our own independent research of the history and activities related to the formation of the Plan, Idaho Law, interviews with other elected officials, the process and methods used to create the Plan, as well as other observations.

Readers of this position paper should have the following basic understanding about land use in Idaho;

- Idaho Code requires each city or county develop a Comprehensive Plan (*ID Code 67-6508*)
- The Plan must consider a number of components such as; Property rights, Population, School facilities, Economic development, Land use, Natural resources, Hazardous areas, Public services, Transportation, Recreation, Special areas, Housing, Community design, Agriculture, Implementation, and Electric transmission corridors. (*ID Code 67-6508*)
- The Plan is a visionary document, it places no requirements upon property owners. (*ID Supreme Court rulings*)
- However, county governments are required to create zoning districts that will generally over time work towards accomplishing the zoning based goals and policies of the Plan. (*ID Supreme Court rulings*)
- The resulting ordinances (*in Kootenai County the proposed ULUC*) become the regulations enforced upon rural property owners. These ordinances do not apply to incorporated city property owners.

It is worth noting that NWPOA previously completed a review of the Kootenai County Impact Fee program and identified so many troubling aspects within it, that all of the various Taxing District Boards and the Board of County Commissioners (*BOCC*) voted to suspend the program and refund all (*nearly \$500k*) of the collected fees.

We also previously released a review of the proposed 500 pg Unified Land Use Code (*ULUC*) and map finding both appallingly obnoxious to rural property owners to such a degree that our members and other citizens showed up by the hundreds during the 1st scheduled PC Public Hearing. The standing room only crowd spilled into the hallways, so much so, that the meeting was shut down by the Fire Chief. This “public show of concern” lead to what will hopefully be a wholesale revision of the proposed *ULUC*.

SUMMARY OPINION and POSITION

The results from our informal Town Hall meeting surveys are striking;

- 1st, The results are in stark contradiction to the claims made by others that the “*Comprehensive Plan is representative of the citizens in Kootenai County*”.
- 2nd, Since we have held these Town Hall meetings in various communities, our polling is a clear indication that “*95% of the locals were truly not aware of the Plan rewriting process*”.
- 3rd point is revealed because of the first two, that “*the Plan may only actually represent the narrow views of a small portion of Kootenai County citizens who participated in its creation*”.
- 4th apparently nobody involved with the creation of the proposed *ULUC* is considering that “*the full weight of all the proposed changes is borne solely on the backs of rural property owners.*” The Plan creators seem to have no concern about property owner welfare, only their own agendas.

The balance of this position paper will identify one deficiency after another to reveal that the adopted Plan contains some serious flaws and is not representative of Kootenai County property owners. From this new understanding we reason that the Plan should be revised and a much more inclusive effort should be undertaken to create something more representative of the rural property owners of Kootenai

County. If readers come away questioning the validity of the Plan being a representative or objective document even on just a few of the points we outline in this position paper, then it stands to reason that before any drastic changes are made to create new land use codes, (*current effort to create the ULUC*) a revision of the Plan should first take place. That said, the County could easily start an effort to combine all of our existing ordinances into one document, (*NWPOA has already completed this*) while making some changes to fix known problems in our current ordinances as the Plan is revised to subsequently produce a final ULUC document building on the base and lessons learned from our current ordinances.

Readers should ask themselves the following questions while reading this document:

- Does the Plan have content flaws that need to be addressed?
- Is the Plan truly representative (*a good cross section*) of rural Kootenai County residents? (*More specifically “objective” rural ideology because rural land use regulations are to be in accordance with our rural Comprehensive Plan*)
- Did the Plan’s development contain an overriding nonobjective and dogmatic environmental theme of protecting nature over all the other aspects required by Idaho Code?
- Did the Plan equally address each of the 16 State Code required components or favor certain components over others?

It is important to note that we did not review all legal aspects of the Plan’s creation. There are surely more topics of concern that might be raised by others.

REVIEW ANALYSIS and OPINIONS

Because the Comprehensive Plan is a visionary guide to establishing rural “zoning districts” and frequently cited as the driver for such ordinances, NWPOA decided to examine the process, content and claims regarding the Comprehensive Plan as they relate to the proposed ULUC regulations. NWPOA is involved because the proposed ULUC regulations apply solely to the rural unincorporated property owners, of whom we represent. Repeating, it is our position that objective rural landowners should have the largest and most influential voice regarding any proposed changes to rural planning, regulations, and enforcement. We consider it a travesty that special interest entities (*government-environmental*) were permitted to dominate and thus dogmatically influence the Plan formation process, which will ultimately affect rural property owners by the imposition of various regulations that are birthed out of the Plan.

In the following itemized bullets, we have identified a list of troubling concerns and inconsistencies that warrant a complete review and partial revision of the Comprehensive Plan. In rough numbers, approximately 85% of the Plan is background reading material, about 15% (*Goals, Policies and mapping*) drives the establishment of zoning districts and to some degree, land use regulations. The points identified below collectively demonstrate that the Plan and process that created it was not representative of Kootenai County property owners. To that end, our determination is that the Plan is acutely flawed and not in harmony with the claims attributed to it. As such a complete revision of the goals, policies, and mapping should be undertaken as soon as practical.

To base the proposed ULUC on the defective claims of this Comprehensive Plan would not only be a disservice to the rural property owners who alone bear the weight of the ULUC regulations, but we know that collectively rural property owners could never embrace a ULUC born from this Plan.

Based on; our research, NWPOA local Town Hall meetings, observations, and interviews, we have compiled the following observations about the 2010 Comprehensive Plan.

Comprehensive Plan & KezziahWatkins Step One Summary Report Issues

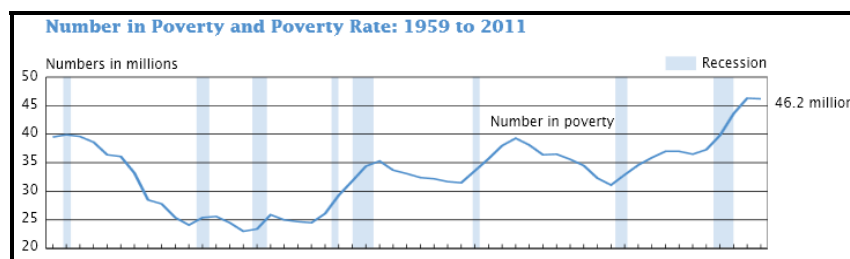
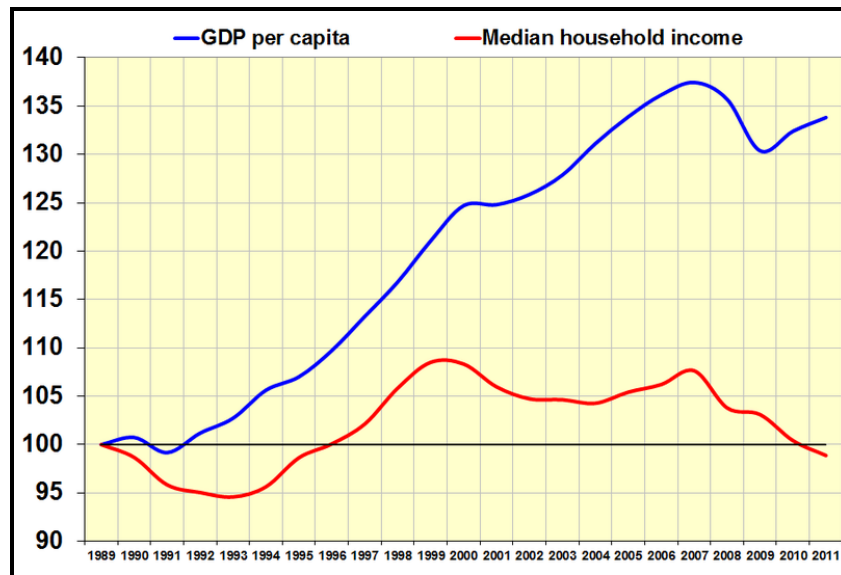
We do not have far to go to find issues/defects in the Plan, we will begin with page 1, the Introduction.

1. **Issue in the 2nd paragraph citing Idaho Code** - in the list of components required under Idaho Code, the Plan lists “(p) *Capital Improvements*” as a required component to be analyzed. Idaho Code 67-6508 does not list “capital improvements” as one of the 16 required components. Under Idaho Code, when an Impact Fee program is instituted, the Plan is then required to include capital improvements as part of the Plan, (67-8208) “... *and shall be included as an element of the comprehensive plan*”, however KC did not implement Impact Fee’s until 2011 and the Impact Fee program was suspended 18 months later. NWPOA does support forward planning and analysis as to what capital improvements may be required as our county moves forward in time. The County will have significant capital needs whether we re-implement an impact fee program or not, but the adopted Plan did not truly address the topic in its paltry 5 pages of text. Any “analysis” should also include projections for tax and other revenue as this is what property owners want to know about. A 40 yr chart projecting large asset costs and resulting property tax demand (*if any*) is warranted.
2. **Issue in the 2nd paragraph citing Idaho Code** - in the list of components required under Idaho Code, the Plan does not have a required component that is described as follows under Idaho Code “(n) *Agriculture -- An analysis of the agricultural base of the area including agricultural lands, farming activities, farming-related businesses and the role of agriculture and agricultural uses in the community.*” This Plan component was added to Idaho Code 3 months after the Plan was formally adopted. 67-6502 of Idaho Code espouses the following: “*To encourage the protection of prime agricultural, forestry and mining lands and land uses for production of food, fiber and minerals, as well as the economic benefits they provide to the community.*” Based on this component alone, the Plan should be revised as many of our members own farm or forest land.
3. **Issue in the 1st paragraph with regards to the purpose of the Plan** – In the first sentence the following statement is made; “*The Comprehensive Plan is a policy document that is used as the basis of all land use regulatory documents in Kootenai County.*” and “*It is the key to development regulations ...*” If this is the Plan creator’s intended purpose, it is not the described purpose as required in Idaho Code, which describes that the zoning districts be in accordance (*harmony*) with, Code does not say “*the basis of all land use regulatory documents*” Reference 67-6511, “*The zoning districts shall be in accordance with the policies set forth in the adopted comprehensive plan.*” And later in the section “(c) *The governing board shall analyze proposed changes to zoning ordinances to ensure that they are not in conflict with the policies of the adopted comprehensive plan.*” It is an overreaching supposition to assume that all land use ordinances rather than just zoning ordinances be in accordance with the Plan. To create a Plan with this kind of over reaching departure from the Idaho Code defined purpose, may mean that those involved with creating this Plan, wrote the document in a manner that it is not rightfully or legally entitled to fulfill. Indeed the Idaho Supreme Court ruled (2012, *Opinion #111, Filed 7-6-12*) that a Comprehensive Plan may only be considered in zoning district changes, it is not to be viewed in any other regulatory fashion. “*A comprehensive plan is not a legally controlling zoning law, it serves as a guide to local government agencies charged with making zoning decisions. The in accordance with language of I.C. § 67-6511 does not require zoning decisions to strictly conform to the land use designations of the comprehensive plan*”. No person or ideological interest should assign more purpose for a Plan than our State law or Court rulings subscribe.
4. **The Kezziah/Watkins “Step One Summary Report” failed in reviewing a very important element to planning** – The Kezziah/Watkins report erred from the aspect that it dealt solely with the visionary or forward aspect of planning, but no worthwhile planning activity begins without considering what is currently working or not working with the then current 1994 Plan. Other than a couple of historical mentions about transportation and enforcement, it appears the “meeting-in-a-box” participants had been given no historical analysis of what might be working or in need of attention. Participants should have analyzed; How was the 1994 Plan working or

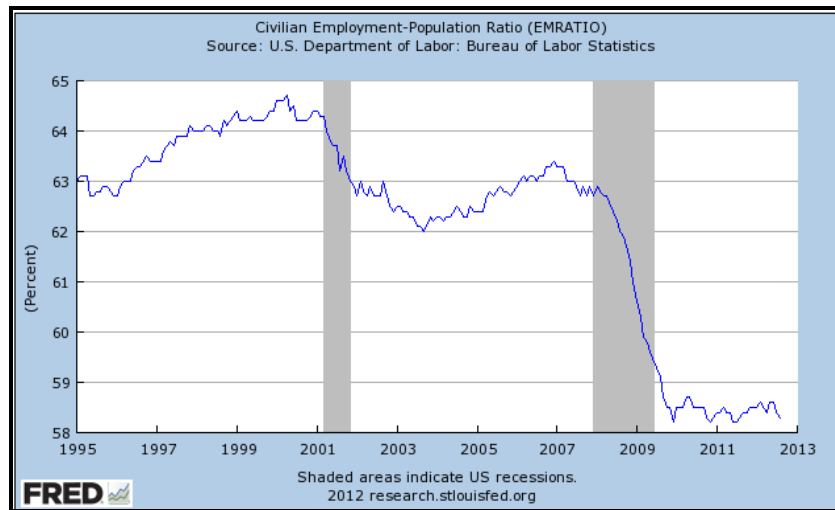
broken? What was missed? Not reviewing failures and successes in the previous version is an unforgiveable blunder, history always plays a role in defining the future.

5. **Failure to examine or include the overwhelming preponderance of community thought in Kootenai County about the importance of property rights in “Chapter 15 Property Rights”, of the Plan as well as other chapters** – Perhaps no where in America is property rights, personal independence and freedom as well attributed to any location as it is towards North Idaho. A very large percentage of our residents are of this mindset. NWPOA has confirmed this independence and property rights based mindset in numerous town hall meetings held throughout the county, indeed these ideals are a very predominate element of the feedback we receive. While the other chapters of the Plan talk about community character there is a huge an obvious void in the broad(?) citizen input of what is indeed part of our character. This absence of this very dominate North Idaho ideological trait, clearly exposes the Plan and the initial “Step One Report” as not truly representative of Kootenai County citizens. Oversight? Faulty process? Or domineering special interest influences? Regardless, the failure to weave this major characteristic of Kootenai County into the Plan is illogical, appalling, and encourages cynicism of the Plan’s integrity.
6. **Chapter 15 misleadingly focuses on defining “takings” as its basis to support the Plan is not injurious to property rights** – Chapter 15 is used by the authors not in a supportive way of establishing the importance of property rights, but to defend against complaints expected to come as the result of the Plan trampling on property rights. When the Plan addresses other topics by chapter, it is in a way to support the need for the chapter topic and resulting goals and policies, but the writers abandoned that theme when writing Chapter 15 on Property Rights. Chapter 15 focuses on “Takings” as though that is the only legal component of property rights. At best Chapter 15 is a narrow minded, incomplete, and shallow attempt to appease property owners. It fails completely at analyzing the topic of property rights or at expanding protections for property rights, yet the Plan authors went to great lengths to expand protections for natural resources. Even a casual observer could not couple the requirement stated in 67-6508 Idaho Code “(a) *Property Rights -- An analysis of provisions which may be necessary to ensure that land use policies, restrictions, conditions and fees do not violate private property rights, adversely impact property values or create unnecessary technical limitations on the use of property and analysis as prescribed under the declarations of purpose in chapter 80, title 67, Idaho Code*” with Chapter 15, except to conclude it must have been written by a junior high government studies student or otherwise incredibly biased writer.
7. **Wholesale failure of the consultants “Step One Report” to obtain the collective heartbeat of Kootenai County residents** - The “Step One Report” makes the following statement on page #9, “*In the context of community planning, identifying the core values that Kootenai County residents hold in common provides a fundamental cornerstone and a foundation for the Comprehensive Plan Update.*” and on page #28 “*The hundreds of people who participated in the development of the foundation for the update of Kootenai County’s Comprehensive Plan clearly share strongly-held values ...*” The cited foundation for the Plan’s direction was the so-called visioning process of public input gathered by a consulting firm known as Kezziah/Watkins. In fact chapters in the Report contain numerous “selected” quotes that are meant to support the direction the Plan takes as it addresses each topic. Yet as we describe in point #5 above, the collective mindset of a huge portion of Kootenai County is based in the conservative principles of freedom, liberty, property rights and personal independence. How could any researcher come to North Idaho and miss the predominance of thought? The selected quotes appear to have come more from a Sierra Club meeting than a representation of our citizenry. Each quote seems to be crafted to either steer or appease environmental ideology. Because of what is missing from these themes, we know that the “Step One Report” can not be representative of our county and thus can not and should not have been used as the foundation for our Plan. It misrepresents the true character of Kootenai County.

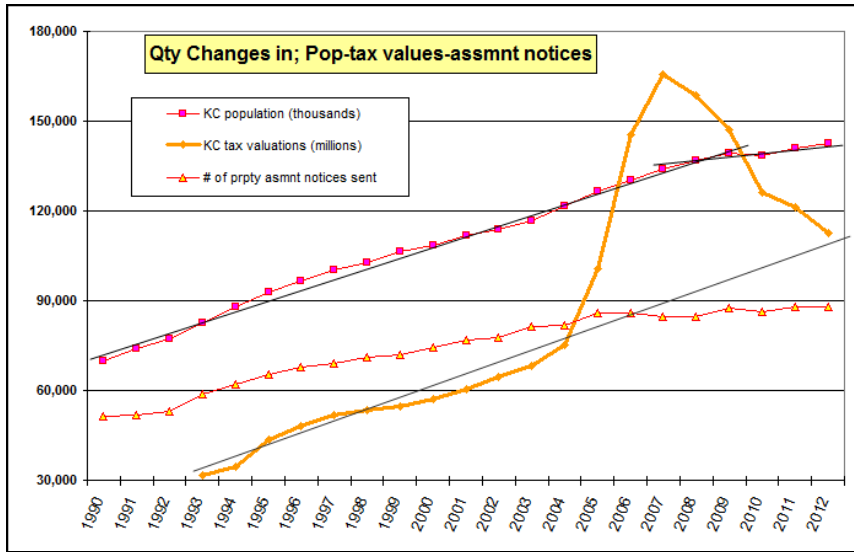
8. **Some of the required components lacked the required analysis of things to be considered** – 67-6508 of Idaho Code states: “*The plan shall consider previous and existing conditions, trends, compatibility of land uses, desirable goals and objectives, or desirable future situations for each planning component*”. Thus, we would expect that in conformity to Idaho Code, each chapter would provide information on how it relates to (a) previous and existing conditions, (b) trends, (c) compatibility, and (d) desirable goals and objectives. While some chapters covered these, others like Property Rights did not. For instance, is the trend of property rights concerns greater or less? What goals further property rights? Where are concerns for further protecting property rights woven into other components as were environmental concerns? Dogmatic environmentalists have expressed angst over the admission in legal opinions that protection for natural resources must be balanced with other protections like those for property rights and economy, and that these are sometimes at odds with the other. Our position is not that any be over or under analyzed, but all be treated fairly and where possible, equally.
9. **The Plan was formed during a perceived economic boom, but adopted during a period of economic bust** - Most of the economic data contained in Chapter 5 was only current to 2005 (some 2006 & 2007 data) and yet the Plan was adopted the last week of 2010. A complete update and review of the economic data and observations, goals and objectives should have been done prior to adoption. The Cda Realtors Assoc. highlighted this weakness in Sept. 2009, a year prior to adoption. Not only were some of the predictions in this chapter wrong, (*housing prices*) but absent from the analysis (*ID Code 67-6508*) was the terrible effect of foreclosures in our county. The “bust” cycle was major second only to the Great Depression, and we are still reeling from those economic losses reaching though businesses down to families. Ignoring the economic conditions of the bust does not make it go away. The following Wikipedia charts provide a quick understanding of the economy leading up to the Plan’s adoption.



Above chart spans from 1959 to 2011



10. **False urgency for replacing rather than amending the previous adopted 1994 Plan and that it was no longer good** - there were statements made that the 1994 Plan was out of date and frequent pressure was being applied by some to replace it. While the overall 5yr adoption pace did appear slow, it was because what was presented was and still is not balanced. Various groups, individuals and some members of the BOCC were struggling with that imbalance. If we assume the Plan replacement process began in 2006, it was only 12 years old when replacement work began. Nothing in Idaho Code requires that Comprehensive Plans be redone every 12 or 20 years. In the “Step One Report” the executive summary begins with, “*The Plan amends and updates the 1994 Plan and should provide vision for a 20 year period.*” However, if we ascribe to a 20 yr timetable, the Plan was adopted in 2010, 4-years earlier than it was thought to be designed for. The annual year-to-year growth rate for the 1994-2010 period averaged less than 3%. Contrary to the quoted text above, the 1994 Plan as not amended, it was wholesale replaced by the 2010 Plan. The Kootenai County Planning Commission and BOCC could have used the time to interface with a much broader sampling of rural property owners using direct mail and surveys. That would have helped locate true center and isolated factions. Because that was not done, the process became drawn out. A \$30,000 (*estimated cost*) direct mail expenditure with a thoughtful, balanced and independent survey would have paid itself back several fold. When we revise the Plan, we should correct this by reaching deeper into the fabric of Kootenai County.
11. **A repeated but false concern that a population explosion (*growth*) was occurring** – What was actually occurring or being felt was rising assessed valuations and was more likely tied to a supply-demand issue than anything related to population growth because our growth in terms of population increase was consistent and stable and lower than historical norms. Data reveals that the annual increase of assessment notices being sent out (*an expression of new available inventory*) had been tapering off. Indeed real-estate agents struggled with dwindling available property inventory, thus causing the upward increases in assessed valuations. In Kootenai County, the “bubble” was a dramatic increase (*then decrease*) in assessed valuations, not population. Our most recent population growth rate over the last 4 years has averaged just 1% p/yr. From 2000 to 2010, our average growth rate was 2.7% p/yr, our historical 100 average growth rate equates to 3.1% p/yr. To put into perspective how “normal” our last 13years of growth has been, between 1970 and 1980 our growth rate was a whopping 6.9% p/yr, more than 2x our recent growth rate. The Plan should be corrected and updated with current and accurate growth data.



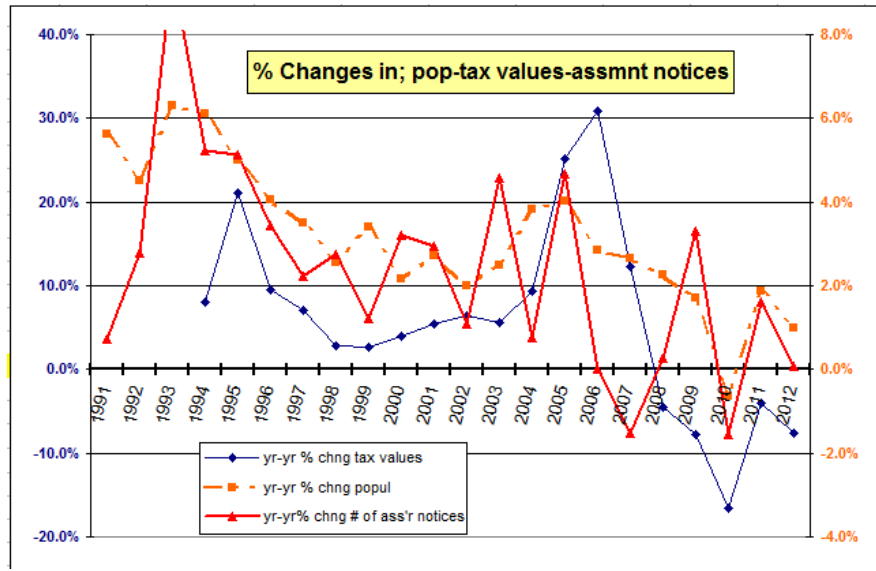
12. **Claim that the Plan represents the collective desire of the people of Kootenai County is a gross exaggeration** – When the previous Plan (1994) was developed, the then BOCC & Planning Commission notified and sent a survey to every property owner (58,100) in Kootenai County. That resulted in a 100% property owner notification effort. For some reason, the BOCC & Planning Commission for the 2010 Plan rewrite decided not to direct mail notify and survey all property owners when this Plan was being developed. The contrast is remarkable in that this reduced the awareness and input to a narrow group of participants and did not garner the much broader and balanced input of the rural property owners of which the Plan is centered around. One planning commissioner recently recounted the then unrepresentative input to the Plan’s formation. The “Step One Report” identifies 924 KC residents and 524 part time residents (*a survey was sent to 4000 property owners who own land here, but did not reside here*) who participated in the consultants “Step One” input activity.

Number of Survey's Mailed Out to Make Property Owners Aware and Solicit Feedback		
	1994 plan	2010 plan
Population	77,450	138,494
Property owners	58,100	86,353
Surveys mailed	58,100	4,000
% contacted	100%	5%

In addition to comparing the notification activity between the 1994 and 2010 Plans in the table above, if we examine the 2010 Plan local KC participation rate, we see that approximately only 1% of adult KC citizens were both aware and participated in some fashion. The population in early 2006 would have been about 128,000, then assume 70% are adults, (apx 90,000) that would equate to a local participation rate of 924/90,000= 1 %. These crude analysis’s reveal that the Plan should in no way be referred to a representative of Kootenai County citizens, let alone representative of the property owners to whom it applies.

13. **Not only was the Kootenai County population not exploding, but our rate of growth has been on the decline for many years** – The chart below measures the population changes, tax value changes, and the number of assessment notice changes from one year to the next. All 3 collectively show a declining downward trend. Why this information was not presented or shown in the Plan is a mystery, basic planning would include this analysis. Kootenai County is not exploding in any of these measured growth based indicators. These indicators should have been included in the Plan

but were not. Not correctly identifying and quantifying Kootenai County growth is a gross mistake in the integrity and purpose of the Plan.



14. **The Plan did not discuss making small adjustments over time which would be more preferred by property owners** - There are a number of comments we've heard over and over again as we've held these town hall meetings and talked with thousands of people at the KC Fair. "Why are they (county government) making such drastic changes?" "Why not keep the map the same?" The point driven home by the rural property owners is, the Plan and resulting ULUC makes far to many and far to drastic changes. And what is lacking is justification to warrant drastic changes. Where is the evidence occurring here locally to demonstrate each change is needed? Change for the sake of change is no reason at all. The Implementation chapter of the Plan could have provided a schedule of sorts describing what and how various Plan goals and Policies would be implemented, but it did not. Apparently the County decided that a complete wholesale replacement of all our current ordinances and zoning map all at one time was the preferred method. While it may have escaped our County leadership, they should be aware that rural property owners are the folks bearing the burden of these changes and a better understanding of how the Plan would have been carried out, would be very beneficial and should be included in the next revision.
15. **Some citizens say their input was not included** – While holding our Town Hall meetings through-out the County, we encountered a few property owners who stated they participated in the "meetings-in-a-box" but their input and comments were ignored and not included. They were "surprised" that what they submitted, never saw the light of day. Which leads to our next point.
16. **Destruction of public records** – Concerned that some people may have been marginalized, or that some dominate special interest people may have attended more than one meeting or some meeting leaders may have steered comments and meeting tabulated results, we made a public information request to get the original records for all of the "meetings-in-a-box". We were permitted to spend several hours of supervised sifting thru record boxes that were thought to contain such records, we found they did not. The County denied having any other electronic records. So an attempt to acquire these original records was made via the consulting firm Kezziah/Watkins. Kezziah/Watkins replied that per Kootenai County authorization, they destroyed the original documents sometime 1 year or more after the project was completed. While there is apparently nothing we can do to expose or recover these records, we would highly recommend that all future leaders retain all original and summary records for the sake of transparency and accountability. Meeting participants say their opinions were not counted, that is a pretty serious defect.

17. **Missing an analysis of the contribution of part time resident homes** – Kootenai County is economically stimulated by not only the construction activity of building part time residential homes, but these part time residents pay property taxes all year round. In effect, Kootenai County gets the benefit of full year property tax revenue, but only experiences the burden (if any) for a few short months. If county leadership thought about it, part time residents are one of the best sources of tax revenue and the least amount of impact to resources. Not many counties get to enjoy this kind of benefit. As such, we should encourage development types that attract this kind of part-year taxpayer.
18. **The mayors of the 3 largest cities in Kootenai County came out against the adoption of the Plan** – Just 2 months before the Plan was adopted, 3 mayors came out against the plan using some very strong language about how messed up the Plan was.

Mayors Critical of Comp Plan

Posted: Tuesday, October 26, 2010 12:00 am | Updated: 10:35 am, Fri Dec 10, 2010.

By [ALECIA WARREN/Staff writer](#) | [3 comments](#)

The mayors of Kootenai County's biggest cities have declared the new county Comprehensive Plan as unacceptable, and are calling for the county commissioners to start all over.

A letter sent by the mayors of Coeur d'Alene, Hayden, Rathdrum and Post Falls on Monday labeled the plan as "irretrievably broken," and urged the commissioners to rewrite it, this time incorporating more public input.

"We do not make this recommendation lightly," the letter read, alluding to the many hours county staff invested in the planning document. "However, adopting this plan, based on those considerations, would be a disservice to all county residents."

The mayors fingered several issues with the visionary document, intended to guide development in the county over the next 20 years.

The plan is too lengthy and convoluted, according to the letter, and relies on out-of-date information. It also

While it is true that these 3 mayors have since expressed satisfaction with the ULUC process, we are quite sure they have not endeavored to notify the affected property owners in the proposed "Areas of City Impact" (ACI) to get their input. Property owners have every expectation that our leaders will keep us in the loop about things that matter to us and our lands. Ignoring or marginalizing property owners will prove not to workout well. Our message to both City and County leadership is to notify property owners of wholesale changes because it is the right thing to do. All ACI agreements should include the direct input of affected property owners.

19. **Incorrect perception of how the county Plan and Ordinances are applied and what group of people they apply to and entitled to participate in the process** – Title 67-6500 of Idaho Code outlines how planning activities are to occur. There is a prevalent but incorrect assumption that while city planning involves just the city residents, county planning includes city and county residents. Ie, we can not play in their sand box, but they get to play in ours. However, 67-6504 states "The powers of the board of county commissioners conferred by this chapter shall apply to the *unincorporated area of the county.*" Once a city or county Plan has been created, the zoning districts for a respective city or county can be generally aligned with the Plan policies. Each city or county is free to establish standards for each zoning district (67-6511) irrespective of what the other jurisdiction enacts. Thus, a county does not dictate city zoning or standards nor does a city dictate county zoning, or standards. It is an important distinction that while a county Plan may include information about cities within its boundaries, and a city Plan may include information about the county, both are separate and apply solely to the property owners served by each.

Percent the host leaders of the "meetings-in-a-box" were rural property owners	
% of participants who were rural	59%

Rural county property owners have no voice in city property owner zoning, planning, and ordinances, but some city dwellers assume they get an equal voice in determining the rural county zoning, planning, and ordinance creation. The only two aspects of a county Plan and ordinances that Idaho Code recognizes as jointly participatory is in establishing annexation (67-6525) and in jointly established areas of city impact (ACI) (67-6526). In summary, other than these two aspects, tribal entities and city dwellers have no more business participating in “our” rural property owner planning than we (*rural folks*) do in tribal or city property owner planning and frankly it is somewhat offensive to rural property owners when tribal and city dwellers butt in.

Outsider and Dogmatic Environmental Influence

NWPOA is made up of a very diverse group of people who both own and do not own rural property. We have members who are from all political persuasions because property rights and excessive regulations are concerns that cross political ideologies. As property owners we have a very personal interest and concern for our lands and with perhaps only a couple of exceptions, we are very good stewards of our lands. Because we live on them, it is our goal to foster our lands in a responsible manner, not only environmentally, but economically, and for our children. We do not take care of our lands because of any fear that the planet will die, rather because it just makes sense to take care of what we’ve paid for and have toiled over all year long. Many of our members depend on their land for crops and revenue.

With rare exception, we consider ourselves environmentalists, but balanced and practical environmentalists. Many of us are ashamed by the wholesale distortion of what it means to be environmentally conscious. The radical and dogmatic fringe continues to give environmentalism a bad name, it is these flawed influences we stand against. Excessive regulations, layers of bureaucracy, and heavy handed enforcement upon mom and pop land owners by big government is not something we support and we stand against those groups advocating for such.

In this portion of our position paper we will be critical of the unbalanced influence used to manipulate the land use process. While we disagree with their dogmatic approach that targets and tosses under the bus, rural property owners to accomplish their agenda, we must at the same time give kudo’s to the local environmentalist group KEA. They have indeed earned our respect for strategically getting their leadership and people out there and heavily influencing every aspect of this land use code formation process to align it with their ideology. One of the KEA Directors stated “*not to have, would have been paramount to malpractice on our part*”. Though their membership represents a fraction of rural property owners, they have passionate leaders and members in key decision making positions and their influence has resulted in huge gains for their ideology. Out of respect, we have to admire what they have accomplished in pushing their agendas through.

But their leadership has not been respectful of property owners, witness some of the maligning comments made by past KEA Director Terry Harris; “*Ignoring the completely nutty “U.N. Agenda 21” conspiracy theorists, the ULUC opposition appears to be based primarily in a “property rights” viewpoint that ignores both the law and the policy choices that guide modern land use across the country. Despite the bluster coming from the usual North Idaho know-it-alls, “property rights” are simply not absolute. The senseless, fact-free, and knee-jerk opposition to the ULUC actually works against their purported property rights cause. However, the current wholesale opposition to the ULUC*

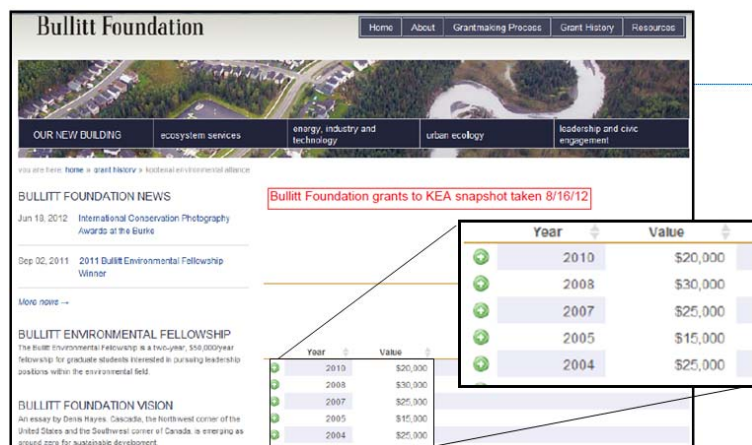
appears to be driven by either intellectual laziness or intellectual dishonesty.” Ridiculing and disrespecting property owners is not how to win friends and influence people. But now that we know what KEA thinks of rural property owners, we will passionately defend ourselves and our lands. Other than a few rural property owners who embrace their “tons of save the planet regulations” ideology, KEA has fully supported the destruction of rural property rights to accomplish their agenda.

The evidence is (*news and public comments*) that KEA has been whole heartedly pushing for these excessive regulations upon rural property owners. Yet the resulting regulations are being born on the back of mom and pop rural property owners and we will fight to preserve our freedom to live upon our land unencumbered by excessive regulations. We’d prefer that those who associate with these environmentalist radicals would rein them in and let us not become public enemies, but that effort is out of our hands. We as average mom and pop property owners do not want a process influenced by corporate big business lobbyists or radical environmentalism, both corrupt the process. We will protect our lands from these kinds of radical influences and Idaho Code recognizes the need to protect property rights with no less vigor than the radical environmentalists seek to encumber our lands.

- 1. Plan was created by entities, organizations and people that do not represent mainstream rural property owners** – The Plan guides the resulting rural zoning district ordinances. These regulations are only applied and enforced upon rural property owners. But in reviewing the list of acknowledged contributors for the Plan, it can easily be seen that rural property owners were not represented or for that matter, even recognized. What good for rural property owners can be expected when you assemble a bunch of government representatives in a room with instructions to “*build a Plan*”? Listed are: 7-Kootenai County Dept Reps, 6-Outside Planners, 5-Map & Copy Reps, 4-Tribal Reps, 4-City Gov. Reps, 4-State Gov. Reps, 3-Business Assoc. Reps, 2-KEA Reps, 1-Federal Gov. Rep, 1-Developer, 1-College Professor, 1-Airport Rep. No groups, associations or individuals are acknowledged as representing rural property owners. This is a very obnoxious omission. It is also interesting that Federal, State and Tribal representatives are cited in helping create something that does not apply to them. Going forward, we demand that objective unbiased rural property owners be the majority voice in creating or revising any Plan or ordinance that will be enforced upon us. This Plan is from all the groups and people listed above, it doesn’t represent us and it is not from us.
- 2. A word analysis reveals an overwhelming dogmatic one sided view to the Plan contents** – The Plan goes into some frequent detail about various environmentally friendly recreational activities but completely ignores most of the many uses enjoyed by the average Kootenai County resident. As examples, the Plan makes the following mentions: *parks-89x, open space-74x, trails-44x, fishing-11x*, but the following recreational uses did not fair well; *hunting-5x, boating-5x golf-1x, racing-0x, shooting-0x, motorcycle riding-0x, snowmobiling-0x, 4-wheeling-0x*. The obvious omission of what is everyday activity for many Kootenai County residents was shunned by the Plan creators. We believe these activities were purposefully ignored by the dogmatic environmentalists involved with creating the Plan, for how could what is practiced so widely in our County have otherwise been ignored? Obviously a very narrow minded faction was involved with creating the Plan.
- 3. Biased application of the word “protect” (or “ed, tion”) towards environmental components** – Idaho Code 67-6502 in describing the purpose of the land use regulations uses the word “protect” 6 times for several topics. Among the items deserving protection is; property rights, local economies, environmental features, fish, wildlife and recreational resources, and agricultural, forestry and mining lands. The creators of the plan were so focused on topics of interest and priority to them that they failed to cultivate a balanced application of protections in the other areas. And protect does not mean not use or ban all human activity. Protect may also mean manage, or

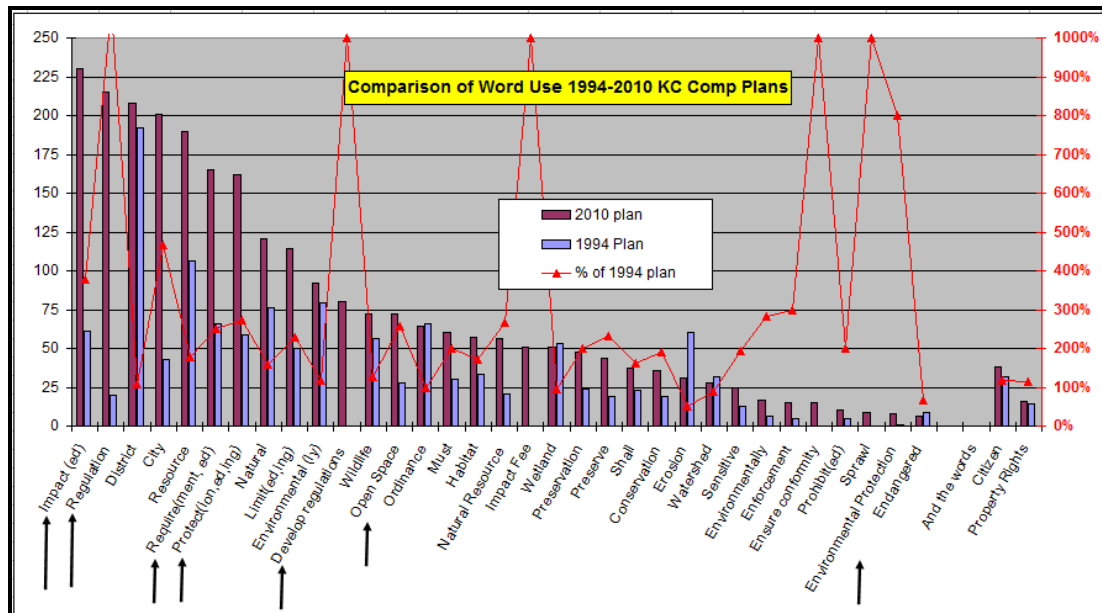
foster use and participation, ie the economy. For this reason all of the goals and policies must be revisited to insure fair treatment to all topics.

4. **The Plan focuses on “sensitive” environmental concerns but considers no other component of the Plan worthy to use that term** – The Plan writers heavily consider that there are many types of environmental issues that are sensitive, ie, wetlands, lakes, aquifer, wildlife, plants, etc, but pays no attention to sensitivities to the economy, agriculture, property rights, etc. Science says the earth has been around for billions of years, it will be here for billions of years after humans are gone, that millions of species of animals and plants come and go and that is how our planet works. The earth itself has caused many natural disasters all on its own. Locally we have had huge wild land fires and of course experienced the Mt St Helens eruption. We have also experienced some pretty big man-made disasters and yet the earth continues to demonstrate it will over time recover from them all. The earth has shown it is quite capable of putting humans in our place whenever it decides to, millions of people die annually from nature's fury. Our economy is certainly described as sensitive to all kinds of forces, but no wording to those “sensitivities” was included in the Plan, again proving the overwhelming bias by the creators of the Plan. We would not deny that we should be carefully mindful of items like our water supply, but that in no way means marginalize everything else. The creators of the Plan should have been “sensitive” to these other sensitivities.
5. **Outside Kootenai County area radical environmental influences involved** – The local environmental organization Kootenai Environmental Alliance (KEA) is shown to have received some rather large sums of money (\$135,000) from the Bullitt Foundation prior to, during, and up to the point of the Plan’s adoption. It is widely known that well funded environmental foundations provide large sums of money to help local environmental groups influence local regulations. We have no way of knowing if the money was used to create literature or entice officials, but it certainly was applied in some manner. While it is not illegal to use money to influence government, all Americans would agree that money has been a very corrupting force in our government at all levels. We do know the unbalanced application of environmental dogma resulted in a Plan not acceptable to the rural residents it applies to. KEA=big money interests, rural property owners had no big money pushing our cause.



6. **An over the top explosion for new or additional environmental and regulatory activity** – It is clear from not only reading the previous 1994 Plan and the adopted 2010 Plan, but by performing a word analysis between the two, that the creators of the 2010 Plan sought to dramatically increase regulatory and environmental requirements while setting aside other interests. For instance what was so terribly wrong between Plans that justifies a 250% increase in “regulation” or “developing regulations”? The creators of this document need to be reminded, these regulations will apply to mom and pop property owners, and frankly we not looking for any more regulation upon our

lands. Are rural property owners really such bad people that it justifies regulating our lands into a paralyzed state of inactivity?



7. **Halting growth is not the purpose of a Plan** - Title 67 of Idaho Code in no manner describes its purpose is for limiting growth. Nor is there any language that implies that the word “protect” means to limit growth. Yet there is the inbred assumption promoted by dogmatic environmentalists that the Plan and resulting ordinances are the preferred method to limit growth. This assumption is a fallacy view of our Idaho Land Use laws. On page 4-2 Population, in the last paragraph of the Plan it states: *“Future population growth in unincorporated areas can be proactively limited, if so desired, through a variety of growth strategies.”* These strategies are unfairly based in restrictions and regulations upon rural property owners. However, using a parody, “if” a community desired to limit growth by regulations, it should address the topic head on and in a simple manner: ie reducing building permits issued to only replacement houses or business that are destroyed or that have rotted away, reducing births to equal deaths, and/or limiting migration into Kootenai County so that it equals only those leaving. Because all of these methods would be morally and/or politically incorrect, the dogmatic radicals then default to making improvement of our rural property expensive, complicated and time consuming as the next best method to achieving their agenda. The point is, growth happens, but freedom and liberty are injured when we introduce more regulations to treat symptoms rather than treating the cause. In recent years, when have we reduced regulations to expand liberty and freedom? Planning is nearly always good, but planning does not mean pile on regulations. Plan - *a method of acting, doing, developed in advance, to arrange, prepare for.* The mindset of the Plan creators is not aligned with rural residents.
8. **Admission that the overall philosophy and intent of the plan is environmental** – In the Introduction, page 1-3, the creators of the Plan wrote; *“The Plan pays much attention to the natural environment ...”* and *“In order to relieve development pressure around sensitive areas such as lakes, rivers, wetlands, and wildlife corridors, the Plan directs higher-density development to happen within the existing cities that have the capacity to provide urban services.”* It would be one thing to regulate and economically hinder the potential of public property, it is quite another to force such methods upon rural property owners who may own such lands for not only their personal enjoyment but also as an investment. Clearly the creators of the Plan have little concern for trampling upon rural property owners. To dogmatic environmentalists, *“relieve development pressure”* means regulations that take away a right a property owner’s current right, to divide, and

make it something less, without having to pay that property owner for that loss. Who bears the burden for the dogmatic ideology written into the Plan other than the rural property owner? Indeed a basic analysis of the Plan chapters reveals the very prevalent focus on environmental specific categories. What if the Plan’s focus became predominantly economic development or property rights? Yet as rural property owners, what we want and deserve is a balanced Plan and we deserve to be the chief voice in creating it.

2010 KC COMP Plan Goals and tasks				
pgs	Section	Goals	Strategies	
4	intro			
5	exec sum			
10	3	2	11	Historical
3	4	2	8	Population
13	5	6	17	Business
5	6	4	13	Housing
4	7	4	9	Education
5	8	9	34	PS & Utilities
5	9	6	30	Transportation
4	10	3	11	Prk & Rec
11	11	10	53	Nat resources
3	12	1	9	Haz areas
11	13	2	21	Comm design
43	14	24	173	Land use
3	15	2	7	Prop rights
4	16	4	15	Plan implement
5	17	2	5	Cap imp & impact fees
138		81	416	

9. **Unusual atypical celebration by environmentalists regarding the adopted Plan** – This is another clear sign of why the adopted Plan is not balanced, since when do dogmatic environmentalists celebrate? Usually environmentalists are complaining they didn’t get what they wanted, but that was not the case with the KC Plan because our local environmentalists knew they had basically channeled the Plan process to its end result. DEC 30, 201 KEA Blog = *“But we thought the County was especially nice to acknowledge and thank “the hundreds of citizens ho attended countless public meetings, workshops, local neighborhood meetings, and public hearings. Your thoughtful review of the Plan and its goals and policies have been essential to capturing the spirit and vision of what makes and will keep Kootenai County great. “We are pretty sure they are talking about KEA members.” and Dec 31, 2010 KEA Blog = “As you know, KEA has been involved at every step of the way. Although the final product is all that we would have liked it to be, the new Plan is still a vast improvement over the hopelessly out of date version currently in effect. KEA’s friends and members can take credit for most of the improvements within the new Plan, and for fending off attempts to derail those improvements by developers, builders, and misguided business interests.”* The local environmentalist group KEA was so sure of what the Plan would accomplish in the way of the resulting new land use codes, (ULUC) they publicly urged citizens to email and call the BOCC in support of the ULUC while it was still being drafted and 8 months before the draft was completed and released. Yet most others could not logically make the leap to endorsing a document until it was fully written and reviewed. How did KEA leadership know in advance the ULUC would be so loyal to environmental ideals? The Plan was certainly an environmental victory, but it was an unbalanced win that needs to be corrected.
10. **Huge Increase in Goals/Strategies** – But missing was the justification for such dramatic increases. What was so wrong in the last Plan? A common sense review of all the additional goals and tasks begs justification for each. And yet the Plan according to Idaho Code is not enforceable as regulative, so why all the added goals and tasks? What justified these several hundred percent increases? Most all of the Plan increases were related to an environmental protection agenda. It is

obvious that the narrow ideological intent was to multiply the volume and intensity of future land use regulations. Indeed, the recent ULUC draft did result in a doubling of our current land use codes. As rural property owners we find this an unacceptable burden upon us and our lands.

Activity Comparison			
	1994	2010	% chng
goals	27	81	300%
tasks	174	416	239%

11. **Previous commissioner’s opinion of plan** – In speaking to one of the commissioners who voted to adopt the Plan, we asked “why did they adopt it?” The reason given (*a paraphrase of the actual conversation*) was that the pressures from environmental interests were very, very strong, and that they felt that if they did not adopt it in the week before their departure (*2 commissioners were not reelected*) that the incoming commissioners who were part of the crowd pushing for this Plan would radically increase the amount of environmental dogma in the Plan before adopting it. In various news accounts all over America, citizens have read how radical environmental groups have relentlessly pressured government agencies and businesses into submission. It should be no surprise that it occurred here in Kootenai County too. Part of the problem politics is that city folks out vote rural folks two to one in county commissioner elections, yet these commissioners decide 100% of our rural regulations. This inequity has to be changed.
12. **Meetings-in-a-box” appear non-representative of County’s normal make-up** – While this analysis is somewhat crude, it is a useful indicator to determine the political flavor of those who hosted and led these meetings. This is demonstrated by the voter connections between conservative/liberal or Republican/Democrat splits. For instance the 2012 platforms between these two major political parties are deeply contrasted regarding property rights and the environment. While the Republican platform contains many mentions regarding protecting property rights and identifies excessive force by government agencies in harming property rights, the Democratic platform does not even mention property rights, (*intellectual only*) and rather very strongly supports all kinds of environmental activity. The KW Summary report (*pg-7*) identifies 54 location based meetings-in-a-box. The KW Summary Report is credited with being the collective will and desire of Kootenai County residents as a whole, but is it? The Acknowledgements at the end of the report identify 679 names who attended the meetings, with 57 names of organizations, couples and individuals who hosted these events. To determine political leanings we; (a) looked for online information from news reports, blogs, etc, and (b) consulted with several local people who are deeply involved in politics and know “who is who” in Kootenai County. The political flavor breakdown resulted in the following; 10 are names of organizations of which a few can be reasonably coupled to the name of the person hosting the event, 33 individuals listed as hosts, as well as 14 joint host husband and wife teams. The dramatic contrast between the normal make-up of the county proper and those who hosted and led these meetings is very obvious. Again, we tip our hats to KEA for getting their people up front in hosting and leading these discussions. However, the “bent” was to obvious not to draw attention. The 1st principle in the “Process” as described by the Step One report was stated to be “*inclusiveness*,” to that we can only say the consultant failed miserably. “Check and balances” appears not to have been a concern.

Of the 21% shown in the unknown column in the table below, many of them were simply not known. A constant statement expressed by the old timers we asked to review the names was “*who are these people?*”

Were the Host Leaders of the "Mtgs-in-a-box" Representative of Kootenai County ?			
(apx values)	Conservative	Fence or Unknown	Liberal
Current KC Conservative/Liberal Ideology Split (voting records)	63%	5%	32%
Comprehensive Plan "mtg-in-a-box" Host Leader Ideology Split	27%	21%	52%

(note we will be updating the table as new information comes in about participants)

Closing Comments

It is likely that less than 3 dozen people in Kootenai County have ever read the entire adopted Plan and perhaps less understand the implications of how it shapes land use policy. Yet most should appreciate that this is a review of a 160 page document and roughly 5 years of history in creating it. The plan itself asks for a review in the Implementation Chapter, goal #4.

In wrapping up our review and this position paper, we make the following additional observations.

Whenever county wide rezoning of private property occurs, it will have several kinds of corrupt and legitimate influences working to control the process. It is the job of leadership to insure that checks and balances are used to insure the process is balanced, inclusive, and representative. Government leaders must guard against not only big corporate influences (*who may also be landowners*) but also dogmatic ideological influences as well. We strongly feel that the process of creating the Plan was unfairly out of balance and strongly influenced by special interests. The groups and individuals involved certainly have a right to influence government, but that does not make what they do, right.

Is a political process corrupted when many government taxpayer paid staffers get to shape regulative policy during there workday, while the property owner who bears the weight of these regulations cannot be because he/she is working at a job that does not allow him/her to be paid and participate? Doesn't history prove that government when left to itself in the absence of citizen imposed restraint, just grows itself into a behemoth of bureaucracy? Sadly many seem to have little concern with regards to the weight they are willing to put upon the average "mom & pop" property owner as they champion their not so balanced agendas. For the weight of all the new regulations, costs, and enforcement provisions, is born solely by rural property owners.

To round out our review of the Plan, we'd like to include the words captured in several Idaho Supreme Court rulings that seem to shed a bright light on what the purpose of a Plan is and how it relates to various zoning ordinances that might be born from such a Plan.

Giltner Dairy, LLC v. Jerome County, 2008 WL 803001 (Idaho, 3/27/2008) In affirming the district court decision, the Idaho Supreme Court offered a good textbook description of the differences between planning and zoning. The Court quoted an earlier decision (Balser v. Kootenai County, 1986):

If the Zoning Ordinance itself, or the zoning designation on a particular parcel of property must immediately conform to the Comprehensive Plan, then there appears to be an unnecessary duplication. A change in the Plan would then automatically change the zoning, and we would have a distinction without a difference.

In fact, there is a substantial difference between planning and zoning. Planning is long range; zoning is immediate. Planning is general; zoning is specific. Planning involves political processes;

zoning is a legislative function and an exercise of the police power. Planning is generally dynamic while zoning is more or less static. Planning often involves frequent changes; zoning designations should not. Planning has a speculative impact upon property values, while zoning may actually constitute a valuable property right.

It seems clear, therefore, that while zoning designations should generally follow and be consistent with the long-range designations established in the Comprehensive Plan, there is no requirement that zoning immediately conform to the Plan. The Plan is a statement of long-range public intent; zoning is an exercise of power which, in the long run, should be consistent with that intent. Planning is a determination of public policy, and zoning, to be a legitimate exercise of police power should be in furtherance of that policy.

The story about Howard Hughes building the “Spruce Goose”, seems relevant. At the time, this aircraft was a marvel of size and aviation. It took tens of thousands of dedicated man-hours to build and had a wing span larger than a football field. But it never again left the ground after its highly publicized initial flight, it simply would not work for its intended purpose. Likewise, the 2010 Comprehensive Plan is not going to work for rural property owners, it must be revised in a more balanced and inclusive manner.

We understand that a hand handful of good people individually contributed several hundred hours of participatory involvement in this Plan. Dozens of others perhaps devoted a hundred+ hours of involvement. Not to be ignored is the fact that the County certainly expended much in the way of time, staff resources and some taxpayer money. We believe that the greatest failure is not so much in what each individual might have contributed, but more specifically with the consultants and county leadership guiding the process who did not insure that the entire effort was being done in a balanced, fair and inclusive manner. In spite of our criticism of the Plan and our strong recommendation that the identified issues and flaws need to be corrected, we admire the effort of those who in a spirit of balanced and genuine effort gave of their time and knowledge. Kudo’s to you!

Neither do we assert all the data or information contained in the Plan is bad, rather much of it is very good. Unlike the proposed ULUC draft, the structure of the 2010 Plan is solid. We believe we can identify and work with what is present in the Plan and we do not need to replace the Plan entirely, rather we can examine it chapter by chapter, goal by goal, and update it.

The property owners of Kootenai County deserve a balanced review and update of the current Plan uncorrupted by groups with dogmatic agendas. Going forward we along with other representative property owner groups deserve to be the super majority in any revision and it needs to be done in balance with all provisions of Idaho Code.

Sincerely

Board of Directors
North West Property Owners Alliance
www.nwpoa.org