

SOUND LAND USE DECISIONS

Standards and Procedures

In the Shoes of the Applicant

- Applicants rights are defined by law
- Applicant must understand what must be proven
- Significant differences between experienced applicants and “never done this before”
- Process should be somewhat predictable and understandable
- Burden of persuasion must be appreciated

From the Staff Perspective

- City staff must project “neutrality”
- If staff knows of route to success, should disclose
- Focus on issues in controversy
- Set the stage to create defensible record
- Function may be fulfilled by consulting planner, by staff planner/administrator or by city clerk
- Should the staff participant express an ultimate opinion about approval/denial?

Through the Eyes of the Public

- Maybe first public exposure to planning and zoning
- Procedures may seem foreign and unfamiliar
- To create better record, must aid participants in understanding
- Be wary of being too “friendly” with frequent flyers
- Communicate decision criteria and explain what will be effective from the outset
- Take precautions in scheduling for public benefit (and for your decision-makers)

Consistent Procedures

- Hearing procedures resolution required by Idaho Code §67-6534
- Must draw distinctions between legislative and quasi judicial decisions
- Alert potential participants to risks of *ex parte* contact
- Make rules of procedure readily available
- Adjust procedures resolution as issues arise

Amendments to I.C. §67-6535 (2013)

- Standards and criteria in comp plan and land use ordinances
- Must be set forth in express terms
- Meant to inform the applicant, residents and decision-makers
- Identify bases for decision in written decision
- Failure to comply is grounds to invalidate decision

Clearly Expressed Decision Criteria

- Trying to avoid arbitrary decisions
- Application form, staff reports and final decisions should also focus around decision criteria contained in ordinances
- Differences in criteria vary based upon legal standards required
- Communication of decision criteria should start with first mailed notice
- Criteria should be prominently displayed in hearing room
- A decision worksheet containing applicable criteria may be helpful for commission or council

Examples of Criteria

- Zone change – I.C. §67-6511
- Criterion: "... zoning districts shall be in accordance with the policies set forth in the adopted comprehensive plan."
- Emphasis is on policies
- Broad discretion is applicable in such matters
- Burden of persuasion rests on party seeking change

Conditional/Special Use Permits (§67-6512)

- Also includes planned unit development
- Use must be conditionally permitted by ordinance
- Subject to conditions authorized by ordinance
- Possible conditions:
 - Height limitations, additional setbacks, additional landscaping, parking layout, location of solid waste containers, signage limitations, lighting restrictions, access requirements, additional architectural review, materials choices, hours of operation
- Primary emphasis – fitting with surroundings

Variance – I.C. §67-6516

- Must be something that can be measured (physically)
- Serves as a constitutional safety valve
- Must show “undue hardship”
- Because of physical characteristics of the site
- Granting must not be in conflict with the public interest

Subdivisions – I.C. §67-6513

- Public hearing not required by state law- everybody requires hearing
- Meet standards of:
 - Road design and circulation
 - Water system capacity and design
 - Sewer system capacity and design
 - Pedestrian paths
 - Street lighting
 - Surface water management
 - Bicycle paths
 - Traffic signs
 - Zoning compliance
 - Slope stability
 - Flood hazard avoidance
 - Etc.

Start With the End in Mind

- Application Forms
- Mailed notice
- Display in the hearing room
- Decision sheets for decision-makers
- Final decision approved by decision-makers

Public Hearing - Procedures

- Introduction by presiding officer (mayor or commission chairman)
- Description of project by applicant
- Summary staff report
- Written comments on sign-up sheets
- Testimony by supporters of application
- Testimony by opponents
- Rebuttal of opponents by applicant – hearing closes

Developing a Written Decision

- Abandon/suspend Roberts Rules of Order if you have adopted them
- Solicit comments before developing decision motion
- After hearing from all who wish, have someone shape a motion that includes the primary decision points surrounding contested issues
- If decision is routine, without serious contention, the motion may stand on its own
- If the decision is contested, seek staff and/or legal support in developing the final written decision.
- If developing recommendation, save the time of finalizing

Appellate Procedures

- Before appeal, must notify possible appellants (§67-6535)
- Prospective appellant must seek reconsideration
- Reconsideration must identify specific deficiencies in decision
- City can:
 - Stand by original decision
 - Conduct another public hearing and stand by original decision
 - Conduct another public hearing and change original decision
 - Must act within 60 days or appeal can move forward

Judicial Review

- Court will review final decision and decision-making process
- Court will order transcription of proceedings
- Decision must address decision criteria and be backed by information in record
- Decisions are to be judged “upon sound reason and practical application of recognize principles of law”
- Remedy available only upon showing of “actual harm or violation of fundamental rights”