

APPENDIX C-1

DEVELOPING FINDINGS OF FACT & CONCLUSIONS OF LAW FOR PLANNING AND ZONING

DEVELOPING FINDINGS OF FACT, AND CONCLUSIONS OF LAW

1. Developing the following information in written form prior to the public hearing will be beneficial to those who are interested in the application, will help focus the scope of the hearing, and will alert participants to any errors or additional information that may be needed for the Board to make a decision. See attached Findings of Fact, Conclusions of Law as an example.
 - a. Orient the reader with general background information. Describe where the property is located, the size of the property, what surrounds the property, what is being requested, what is the current zoning, is it in a city's area of impact, are there services to the property, etc.
 - b. Explain that applicable procedural requirements were met. For example, was there a neighborhood meeting, was there legal notice, did the planning and zoning commission hear the application, were other agencies notified.
 - c. Explain the applicable law that is related to the application.
 - d. Explain how the application either complies or does not comply with the requirements of the law. Explain whether there is supporting documentation demonstrating compliance.
 2. Control the public hearing. Try to keep participants on track as to the issues being considered so that irrelevant information is limited. The record should not be cluttered with personal attacks or irrelevant assertions. Make sure that all additional exhibits are marked and made a part of the record.
 3. Have a standard operating procedure for public hearings and stick to the procedure. When the hearing is over, bring the proceedings to a definite close. If you reopen the public hearing to receive additional information, make sure that everyone involved has full notice.
 4. After the hearing, review the record. Make conclusions regarding whether the application complies or does not comply with the requirements of applicable law. Don't just make conclusory statements that it does or does not comply, provide an explanation.
- *** See attached example for ideas regarding how to write findings of fact and conclusions of law.

SUBDIVISIONS IN IDAHO

AUTHORITY AND ENACTMENT

Subdivision regulations form part of the process utilized by local governments to carry out the requirements of their comprehensive plans and zoning ordinances. This authority is based on police powers; such regulations are deemed necessary to protect the public health, safety and welfare. The authority to enact subdivision regulations is set forth in section 67-6513, *Idaho Code*, as part of the Local Land Use Planning Act. It is mandatory that local governments enact ordinances that delineate the standards and procedures for processing subdivision permits. The ordinances must be adopted, amended, or repealed in accordance with the notice and procedures provided for in section 67-6509, *Idaho Code*.

SUBDIVISION DEFINED

Subdivision is defined in section 50-1301(12), *Idaho Code*; as a tract of land divided into five (5) or more lots, parcels or sites, for the purpose of sale or building development (immediate or future) and excludes partitions of agricultural land for agricultural purposes. This section provides that cities and counties may adopt their own definition of subdivision in lieu of the definition. Local governments often define subdivision to be the division of land into two or more lots, building sites, or other divisions for the purpose of sale or building development. Street acquisition and cemetery plots are excluded from the definition.

TYPES OF SUBDIVISIONS

Governments which require landowners go through the 'subdivision' process for almost any division of land often have a 'short plat' or 'minor' subdivision procedure in their subdivision ordinance although such practices have been questioned as being authorized by the statutes. This procedure usually covers divisions of five or fewer lots where no new roadways are created. An expedited procedure with fewer requirements, fewer hearings and less notice to other property owners is common; however, the standards and requirements must still be delineated in the ordinance. Some communities don't require a formal plat for minor subdivisions although a plat is required. If a record of survey is provided instead of a plat, a conveyance deed(s) should accompany the record of survey to complete the minor subdivision process. Many jurisdictions require a subdivision plat for anything more than a simple lot division. The normal subdivision procedure should be followed whenever there are roadways necessitated by the subdivision or when the threshold number of lots results.

The development impact of minor subdivisions on public facilities should not be ignored. A number of minor subdivisions will have impact equal to a major subdivision. A commercial subdivision with few lots can have a major impact on facilities.

SUBDIVISION ORDINANCES

- Should be adopted only after a noticed hearing before both the planning and zoning commission and the governing board;
- Should clearly specify the procedure to be followed;
- Should clearly set forth the standards the developer will have to comply with, special consideration might be accorded to application in extraterritorial jurisdiction;
- Should contain provisions for mitigating the impact the development will have on public facilities;
- Should have reasonable time limits for preliminary plats and final plats.

ADMINISTRATION OF SUBDIVISION ORDINANCES

Application for Subdivision

An application for a subdivision should be on forms provided by the governing entity and include information regarding the applicant, ownership, engineer, location, description of the proposal, size of lots, area, density, available public facilities (including schools) serving the subdivision, zoning, comprehensive plan designation, surrounding land uses, physical features of the property, facts of historical or geological significance regarding the property, an analysis of the impact the subdivision will have on public facilities, and proposed actions designed to mitigate those impacts. Application forms should be used to build the factual record upon which a decision is based.

Approval Process

The process of subdivision approval can generally be broken into three elements.

1. An initial conceptual stage coincident with application which involves staff review of a sketch plat and a discussion of requirements and procedures with the developer. For a major project, a workshop may be conducted with affected property owners invited. This is an opportunity for the applicant to present basic concepts to staff and/or local officials and receive their suggestions and concerns. This process is often utilized prior to acceptance of an application so that the developer can withdraw the proposal if it will not conform to law or will be plagued by too many problems.

2. Preliminary plat or plan stage wherein a detailed plan for the subdivision is reviewed, usually by the planning and zoning commission, then by the governing board. This is the most important stage in the subdivision process. This stage is often dealt with too lightly by local governments because they believe they can remedy problems at the time of final plat approval.
 - a. The following should be part of the preliminary plat submission:
 - i. Hydrology, soils, vegetation, topography and other features of the land;
 - ii. Applicable codes, covenants and restrictions of the subdivision;
 - iii. Overlay Districts, for example, hillside, wildland urban interface, etc.
 - iv. Irrigation Information
 - v. The Plat; in digital format if possible
 - b. The following should be accomplished as part of any preliminary plat approval:
 - i. Conclusion that the proposed subdivision complies with the zoning ordinance and Comprehensive Plan of the entity. This can be reflected in findings of fact.
 - ii. Approval of subdivision plan (preliminary plat) map, which shows lot locations, streets, easements and any public dedications.
 - iii. Conditions of approval should include any changes which need to be made in this map, such as dedication of stub streets which will not be developed until adjacent properties are developed.
 - iv. Off-site improvements which will be required should be evaluated and established as conditions or by written agreement.
 - v. On-site improvements which will be required should be evaluated and established as conditions or by written agreement.
 - vi. Concerns of other agencies, including the health district, water and sewer districts, highway districts, Department of Transportation, school district, fire district, and entity providing solid waste services should be resolved at this stage by directing changes in the plat or applying conditions to approval.
 - vii. If the zoning ordinance provides any flexibility or tradeoffs which the developer intends to take advantage of, such as approval of smaller lots in exchange for a scenic easement, all details of the tradeoff should be reflected in conditions of approval or a written agreement.
 - viii. If grading is permitted prior to final plat approval, a grading plan is submitted and is part of the approval.
 - ix. If model homes will be permitted prior to final plat approval, a plan for such homes should be submitted and be part of the approval.

- x. We recommend that findings of fact and conclusions be thoughtfully prepared and approved and that they reflect the reasons for approval as well as any conditions of approval.
- xi. If the request is denied, the findings of fact and conclusions should reflect the reasons for rejection and what the developer could have changed which would have made the proposal acceptable to the governing board (§67-6519).

The subdivision ordinance should provide that the preliminary plan/plat approval only be good for a specific period of time (usually one to two years). If the developer requests major changes in the preliminary plat/plan, the ordinance should provide that the same (preliminary plat) hearing requirements be adhered to in considering the changes.

3. Final Plat consideration and approval is the responsibility of the governing entity. Many jurisdictions also have the final plat reviewed and get a recommendation from the planning and zoning commission. Some ordinances require a noticed public hearing before one or both of these bodies. If the final plat is consistent with the law, the comprehensive plan, the preliminary plat and the changes and conditions required at the preliminary plat stage, the governing entity has little choice but to approve the final plat. Following final approval, the required endorsements are made and the plat is recorded. Note that some jurisdictions require completion of all public improvements before the final plat is approved. Some courts have concluded that the final plat process is ministerial. If major changes are required at the final plat stage, the proposed subdivision should go back to planning and zoning for another hearing, returning after commission review is complete.

Administrative and Inspection Fees for Subdivisions

In order to properly administer its subdivision ordinance and to insure that public facilities are properly inspected, a governmental entity can incur substantial expenses. A fee structure should be adopted whereby the following costs will be recovered:

- Costs of review of the proposal by a planner and engineer representing the City;
- notice;
- publication; and
- inspection of public improvements as they are being constructed.

Subdivision fees are often structured so that there is a flat or base fee for the first 1 - 5 lots and an incremental fee for each additional lot. Separate fees may be charged for preliminary plan review, final plat review and approval and for inspection of public improvements.

Administrative fees are legal so long as they reasonably reflect the government's costs.

Security for Improvements in Subdivisions

All subdivision ordinances should provide for security to assure that public improvements are constructed. Common types of security include bonding, irrevocable letters of credit, a cash deposit and such other security as may be acceptable to the governing entity (often deeding of land or a deed of trust, which the writers do not recommend). Instruments purporting to provide security should be carefully reviewed by the govern body's attorney to insure that the developer will, in fact, provide such security. Arrangements need to be in place to renew the security if the public improvements have not been completed prior to expiration of the bond or letter of credit. Private improvements should be left to the seller.

PUBLIC IMPROVEMENTS FOR SUBDIVISIONS

Streets and Easements

Streets and easements are usually recorded on the plat and dedicated to the public on the face of the plat. Language on the plat related to dedication should be carefully reviewed by the local government's attorney. Local governments often require that streets be extended to the subdivision if not presently adjacent. If streets serving the development are substandard, the developer can be required to improve the street to some degree to mitigate the impact of the subdivision. Sub-dividers should conform to standards established by the government for naming streets.

Design Standards

Specific design standards and requirements for dedication as well as construction of streets, sidewalks, water, sewer, and storm water facilities, and other public facilities to be dedicated and/or constructed by the developer should be included in the subdivision ordinance or adopted separately and applied by the subdivision ordinance. State public works standards should be considered.

Water and Sewer

Water and sewer facilities are usually constructed from the existing infrastructure to and through the development. These facilities should also be dedicated or deeded to the entity having responsibility for them through a separate document. Government entities often pay for

the cost of ‘oversizing’ lines in order to serve other potential consumers beyond the subdivision. Sewer and water connection fees are usually utilized for this purpose. Sewer and water connection fees, which are a type of impact fee, have been validated by court decision in Idaho on the theory that the new user can be required to buy into the system See *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272, (1991).

Some communities do require developers to provide wells, water storage facilities and sewage treatment facilities where the local government’s facilities are inadequate to serve the development or are not available. Such provisions may be justified through the requirement that the developer mitigate impacts of the subdivision.

If health department approval is required it should be obtained prior to the approval of the preliminary plat.

Storm water Facilities

Construction of storm water facilities is often required by subdivision ordinance and will be more commonplace in the future as federal regulations are made applicable to local communities. Increasing attention is being paid to the environmental impact of disposal of storm water. Federal regulations apply to cities with a population over 100,000 but increased scrutiny is applicable to publicly funded projects in smaller entities. Injection wells are subject to regulation by DEQ and certain construction requirements must be met. Construction run-off control is the least practiced, but most significant source of catastrophic run-off events.

Parks and Open Space

Many subdivision ordinances require provisions for parks and open space. The tools available at the present time for making such requirements include the requirement that the developer mitigate the impact of his development and impact fees. Flexible zoning ordinances which permit smaller lot size in exchange for park or open space dedication are possible.

Schools

Section 67-6513, *Idaho Code* permits, by ordinance, mitigation of the impact the development will have on school districts. Impact fee legislation in Idaho has left schools out of this funding system. Other states permit impact fees for schools.

Other Facilities

Contribution for other public facilities (such as library facilities) may be required to mitigate the impact of the subdivision or through impact fees.

Exaction's and Impact Fees

Off-site improvements, dedication requirements, impact fees and connection fees are often referred as exaction's. Recent U.S. Supreme Court cases including *Dolan v. City of Tigard* (June 25, 1994) and *Nollan v. California Coastal Comm*, 483 U.S. 825, 107 S. Ct 3141. 97 L. Ed2d 667 (1987), have placed severe burdens on communities to make a showing that the required exaction's are reasonably related (proportional) to the impact the development will have on the facilities for which the exaction's are collected.

In 1992, the Idaho Legislature passed the "Idaho Development Impact Fee Act" (§67-8201 et seq) which provides for payment of money as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve the development. This Act now applies to all governmental entities. Compliance with this act is cumbersome.

Zoning

Procedures in the zoning ordinance for planned unit developments, cluster zoning, floating zones, and low income housing must be integrated with the subdivision ordinance so that the goals and requirements of both ordinances are met. When zone changes are coincidental with subdivision proposals, the zone change should be final before the subdivision proposal is finalized.

Development Agreements

There is neither express authority nor a prohibition concerning use of development agreements specifically related to subdivision approval. There is authority for development agreements at the time of rezoning and such agreements could contract for responsibilities and improvements related to the subdivision (67-6511A). This authority is only available if the government has provided for such agreements by ordinance.

There is neither authority nor prohibition for annexation agreements, which could also provide for improvements to be constructed in consideration of annexation.

OTHER LOCAL LAND USE ORDINANCES

Zoning Ordinance

The governing body, by ordinance, must establish one or more zones or zoning district where appropriate. Within the zoning district, the governing board establishes standards to regulate buildings and open spaces within the particular zone or zoning district. (§ 67-6511).

Special Use Permits (Conditional Use Permits)

The governing body may provide by ordinance for the processing of applications for special or conditional use permits. § 67-6512. These permits may be granted if the proposed use is conditional permitted by the ordinance.

Planned Unit Developments

The governing body may also provide by ordinance for the processing of applications for planning unit developments (§ 67-6515). A PUD is an area of land used for a variety of residential, commercial, industrial and other land uses.

Transfer of Development Rights

Local government may by ordinance adopt a system whereby development rights that are vested within a zoning district, such as density requirements, may be transferred or sold to landowners in parcels of other zoning districts in order to increase or modify development rights within the originating zoning district. Participation in this development provision is voluntary for the landowner (67-6515A).

Variance

An ordinance defines size and placement requirements. A variance allows modification of bulk and placement requirements (lot size, lot coverage, width, depth, etc.) in certain limited circumstances. § 67-6516. A variance is not a right or special privilege but may be granted ONLY upon a showing of undue hardship because of characteristics of the site and that the variance is not detrimental to the public interest (i.e., health, safety and welfare). A variance procedure allows the board to address unique conditions that are site specific.

Administrative Decisions

Administrative processing of some planning and zoning applications, if provided for by local ordinance, allows for issuing of permits without formal review by the commission. Types of applications that may be processed in this manner may include zoning certificates of compliance, accessory uses, farm development rights for property division, floodplain permitting, hillside development, special events or temporary use permitting, master site plans, one-time division of property, private road approval, property boundary adjustment, signage, nonconforming use or time expansion.

Enforcement, Violations, and Penalties

It is usually provided that violation of local ordinances is a misdemeanor. There is a minor penalty for unlawful subdivision under Title 50, Chapter 13, *Idaho Code*. Local governments should retain the right to utilize civil remedies to obtain specific performance of the duties, obligations and promises of subdividers.