
Subdivision of Land in Idaho

Jerry D. Mason
Spring 2016

Subdivision Plat to Public Facilities

- Builds the physical environment
 - Privately developed-publicly maintained
 - Important environmental consequences
 - Affects private property interests
 - Building blocks of a community
 - Private improvements
 - Effects of subdivision on agriculture
 - Long-term decision- has forever consequences
-

Subdivision – Why Care?

- Shapes community's development – can affect other political subdivisions
- Public ownership of many facilities
- Affects public systems
- Environmental effects
- Long-term maintenance issues – public costs
- Protection of private property interests

Two Sides of Subdivision

■ Planning

- Layout
- Integration
- Environmental factors
- Utility systems
- Improvement standards
- Continuity
- Site integrity

■ Platting

- Formal map
- Binding legal descriptions
- Precise surveying
- Public dedication
- Permanent record
- Utility easements
- Sanitary restriction

Definition of Subdivision

- Statutory definition- §50 – 1301
- Division of parcel
- More than five divisions
- Multiple sellers
- Definition in lieu
- Every split?
- Division by sale or separate use?
- Exceptions - family, cemetery or estate

Adoption of Subdivision Ordinance

- Public hearing required - maybe two
 - Must prepare proposed text
 - Substantial change - hear it again
 - Notice must contain substantial summary
 - Recommendation from planning and zoning commission
 - Governing board enactment-procedures
-

Subdivision Procedures

- **Short (minor) subdivision**
 - Limited number of lots
 - Shortened procedures
 - Limited improvements and dedications
 - Could bypass commission
- **Regular subdivision**
 - Public hearing preferred, not required
 - Full improvements and dedications
 - Must involve commission

Application Requirements

- Strike a balance-not too much, not too little
 - Layout plan
 - Hillside procedures
 - Utility schematic
 - Set in context with external features
 - Professional certifications-when?
 - Acceptance for processing-schedule
-

Processing Steps

- Concept review-who?
- Notice to public agencies-solicit comment
- Create file-open to inspection
- Publish notice-additional days?
- Written comment-cut off – subject of comments?
- Public hearing?-procedures (not required)
- Written recommendation
- Governing board procedures

Processing Steps (cont'd)

- Public hearing?
- Action on the record?
- Written decision-subdivision plan
- Development plans-who reviews, who approves?
- Construction approval
- Construction acceptance – who reviews?
- Warranty administration

Role of the Comprehensive Plan

- Guideline?
 - Not regulatory document
 - Transportation policies
 - Corridor management
 - Environmental goals-implement by ordinance
 - Changing ordinance to match Plan
 - Zoning ordinance controls density-not Plan
-

Development Standards

- Urban or rural?
 - Consequences of the choice
 - Public or private roads
 - Public or private water systems
 - Wastewater disposal-public, private community or on-site?
 - Pedestrian access
 - Street lighting
-

Development Standards (cont'd)

- Open space
 - Homeowners associations
 - Stormwater systems
 - Off-site improvements
 - Impact fees
 - School impacts
 - Special-purpose districts
-

The Construction Process

- Whose project is it? Bond filed? Private improvements?
- Relationship of filing plat to construction
- Construction permit
- Construction inspection
- Paying for inspection
- Certification and review
- Completion and acceptance
- Coordination with other agencies

Miscellaneous Issues

- Development impact fees
 - Parkland dedication
 - Review of restrictive covenants – don't, except for essential improvements
 - Development agreements
 - Enforcement techniques-suspend building permits, injunction, foreclosure on bond
 - Surety for private improvements/amenities
 - Extraterritorial authority-ACImpact
-

The Final Plat

- Technical process-technical document
 - Who reviews?
 - Approval requirements
 - Statements of dedication
 - Facial notes
 - Sign off by county treasurer
 - Approval by governing board
-

Condominium Plats

- Exclusive rights to space
 - Remainder held in common
 - Still subject to planning and zoning requirements
 - Comprehensive plan still applies
 - Subdivision ordinance generally applies
 - Shorten procedure for existing buildings
-

Consequences of Platting

- Creates permanent, accurate legal description
- Dedicates rights of way and easements
- Imposes sanitary restriction unless released
- Addresses water system development
- Penalty for violation - \$100 per lot

The Recorder's Plat

- If seller fails to plat
 - Recorder retains surveyor
 - Costs shared by all owners
 - Questions regarding dedication
 - Issues concerning legal descriptions
 - Comparable to herding cats
-

Vacation of Plats

- 50-1306A –for procedures
- Certified mail for notices
- Public hearing and written comments
- Beware of objections!
- Vacation accomplished by ordinance
- Vacation addresses rights-not legal descriptions
- Effect of vacations

Following Quasi-judicial Procedural Requirements

Jerry D. Mason
Spring 2016

Recent Changes to LLUPA (2013)

- Clarity of standards for overlays
 - Avoidance of regulatory taking
 - Abrogation of permitting by state and federal agencies
 - Avoid decisions based on likes or dislikes – rather than standards
 - Costs, time and complexities in bringing appeals from final decisions
-

Overlay Districts

- Often premised upon broad comprehensive planning policies
 - May be difficult to map as boundaries can be uncertain
 - Amendment to §67-6511 to require “clear and objective standards” for overlay districts
 - Application of standards cannot constitute a regulatory taking
-

State and U.S. Permits

- Local ordinances cannot conflict with state law
 - Amendment made to Idaho Code §67-6522 reinforces that local requirements can't abrogate approval granted by health districts, state or federal agencies
 - Important to check ordinances to assure that they don't have the effect of overriding state or federal law
-

Clear Decision Criteria

- Amendment to I.C. §67-6535
 - Requires express statement of standards and criteria for permit decisions
 - Decisions regarding permit requests must identify rationale for compliance or non-compliance with criteria and standards
 - Failure to identify criteria in decision can be grounds to invalidate
-

Procedures for Appeal

- If aggrieved by decision **affected** person may request reconsideration within 14 days
 - Must state basis – identify specific deficiencies in decision
 - Decision may be affirmed, reversed or modified
 - If reversed or modified – should have public hearing
-

Appeal - continued

- Reconsideration determination must be complete within 60 days – otherwise denied
- If wish to appeal, must ask for reconsideration
- Seeks to have appellant raise issues to responsible decision makers
- Time period for appeal is tolled while reconsideration is in process
- Appeal from 28 days after final decision

Things To Do

- Examine ordinances to see that criteria for decisions are as clear as they can be.
 - Check relationship with state and federal permitting practices
 - Modify hearing procedures resolution (or ordinance) to see that new requirements are addressed
 - CYA (Consult Your Attorney) to assure compliance
-