

Challenging Times

UNPRECEDENTED GROWTH PRESSURES, RESOURCE LIMITATIONS
AND THE PATH FORWARD

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Topics and Additions

- ☐ Growth
- ☐ Land Use and Budgets
- ☐ Moratoria
- ☐ Public Hearing Procedures
- ☐ Topics to Discuss – your choice

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Growth Pressures?

- How extensive is current pressure?
- Source of demand?
- Where are people coming from?
- How are local people affording housing?
- What questions or contentions are you confronting?

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Land Use, County Budgets and Public Services

- Structure of Idaho local government – counties and cities
- Doctrine of separate sovereignty – Article XII, section 2
- Counties are established by state law; methods for forming cities are situational
- Counties as providers of urban services
- Who receives services; who pays?
- Where revenues are capped, what are the long-term consequences?

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About the 'M' Word – (moratorium)

➤ **Emergency Ordinances or Moratoriums (I.C. §67-6523)**

- Finding of imminent peril to public health, safety and general welfare - written
- Can by-pass recommendation from p-z commission – proceed on any abbreviated notice (agenda)
- Max duration 182 days – no consecutive on same subject – 1-year gap

➤ **Interim Ordinances or Moratoriums (I.C. §67-6524)**

- Plan being prepared or changes under consideration - establish interim ordinance/moratorium
- Public hearing required per I.C. §67-6509
- Interim ordinance doesn't require comprehensive plan policy support
- Max duration – 1 year
- To sustain, must adopt regular ordinance

➤ **Regular Ordinances**

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From Public Hearing to Defensible Decision

PUBLIC HEARINGS AND FINAL LAND USE DECISIONS

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Starting at the Conclusion ...

Know where you are headed

Shape the process with the end in mind

Avoid aimless wandering

Focus on two important components:

- **“Final” decision – after public hearing**
- **Public hearings – procedural compliance**

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Final Decision Essentials

Must be based on standards and criteria in:

- Comprehensive plan policies (zoning changes only – not conditional uses, etc.)
- Zoning ordinance
- Other applicable ordinances

Standards must be set forth in express terms

Identify basis of compliance/non-compliance

Decision must be written – accompanied by reasoned statement

- Decision Criteria
- Facts (from the record)
- Rationale – explain why

Fail to comply – appeal may invalidate decision

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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

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From the Staff Perspective

County staff should project "neutrality" – even if a challenge

If staff knows of route to success, should disclose

Focus on issues in controversy – others are routine

Set the stage to create defensible record

Should the staff participant express an ultimate opinion about approval/denial?

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Through the Eyes of the Public

May be first public exposure to planning and zoning – or county gov't

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) – no all-nighters

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Clearly Expressed Decision Criteria

Application form, staff reports and final decisions should focus around decision criteria contained in ordinances/statutes

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

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Subdivisions – Standards/Criteria

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.

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What Question is Asked?

When you send a notice of public hearing, do you clearly state the purpose of the hearing?

To those who receive your notice, do you know what they perceive?

What does the public want in a typical subdivision hearing?

How do you reach your final answer?

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Preliminary Work Before Public Hearing

When a public hearing is required*

Publish notices – official newspaper and website (document)*

Mail notices – first class USPS

Solicit comments from public agencies

Prepare staff report – note compliance/non-compliance

Make sure meeting space will accommodate

Prepare hearing materials

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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 in notice

Make rules of procedure readily available – on website

Adjust hearing procedures resolution as issues arise

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Quasi-judicial Public Hearing – Procedures and Order of Steps

- Introduction by presiding officer or designee (commission chairman) – keep explaining
- Description of project by applicant
- Summary staff report – ultimate opinion or not?
- Written comments on sign-up sheets*
- Testimony by supporters of application – then neutrals
- Testimony by opponents – spokesman?
- Rebuttal of opponents by applicant – hearing closes

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Developing a Written Decision

Abandon/suspend Roberts Rules of Order if you have adopted them

Solicit comments from commissioners 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 – including approval of worksheet

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

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Reaching a Decision

Start With the End in Mind

Application Forms

Mailed notice – more than published

Display Decision Criteria in the hearing room

Decision sheets for decision-makers

Final decision approved by decision-makers

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Appellate Procedures

Before appeal, must notify possible appellants (§67-6535)

Prospective appellant must seek reconsideration – 14 days

Reconsideration must identify specific deficiencies in decision

Final decision-maker for the county 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

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Judicial Review – In District Court

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”