

# Intro to Planning and Zoning

## LLUPA

### Title 65

### Chapter 67



Todd Lakey  
Borton-Lakey Law  
208-908-4415  
2023

1

## Helpful Planning and Zoning Quotes

### Rock and Roll

- ***“Welcome to the jungle.”***  
Axl Rose
- ***“And if you listen very hard  
The tune will come to you at last  
When all are one and one is all  
to be a rock and not to roll”***  
Robert Plant

2

## Authors and Religious

“Feelings are not facts.”

Borton Goldsmith, PhD

“Do not let the behavior of others destroy your inner peace.”

Dali Lama



3

# Local Land Use Planning Act Title 67 Chapter 65

- Protect property rights
- Ensure adequate public facilities
- Ensure economy protected
- Encourage protection prime ag, mining and forestry lands
- Encourage urban development in cities
  - I.C. 67-6501
- Every City and County is required to Plan and Zone
  - I.C. 67-6503

4

## BASICS

### P&Z Commission

- BOCC can exercise all powers or may appoint a Planning and Zoning Commission – by ordinance
  - Membership - location requirements
  - Terms (3-6 years) – quasi term limits
    - Removal “For Cause”
  - Authority – Recommending/Final
  - Assist in Planning Process

Idaho Code 67-6504, 67-6507 and 67-6508

5

## BASICS

### P&Z Commission and/or H.E.

- Practical Considerations
  - P&Z Should Reflect Your General Land Use Perspective
  - Diligent – Prepared – Thoughtful/Correct Analysis
  - Respectful of Public - Not Popularity Contest
  - Helping You on Caseload
  - Have You Observed Them
  - Periodic Meetings/Training – understand role – going to decide differently at times

6

## BASICS

# County Commissioners

- BOCC Ordinance and Policy Authority
  - Decide Scope of P&Z Authority
  - Clear Standards in Ordinance
- Recommendations or Appeals from P&Z Commission
- Chairman – appoints P&Z members subject to confirmation
- TORT Claims Act Applies/Land Use Not Covered by ICRMP
- Legal Counsel – Procedure/Code Compliance

7

## Local Government Decisions

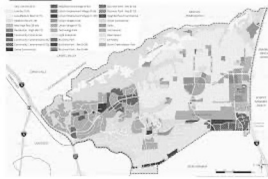
- State Only Provides Framework – not directly involved
- Quasi Judicial Proceedings – public hearings
- Courts Provide Judicial Review
  - Deference to BOCC



8

## Comprehensive Plan Req'd – I.C. 67-6508

### COMPONENTS



- MAP
- Property Rights
- Population
- School Facilities
- Economic Dev.
- Land Use
- Nat. Resources
- Hazardous Areas
- Public Services
- Transportation
- Recreation
- Special Areas/Sites
- Housing
- Community Design
- Agriculture
- Implementation
- National Interest Power Transmission
- Public Airport Facilities
- Other

9

## Strong Guide – Not Guarantee

- Zoning In Conformance With Comp Plan
  - Map and/or Text
  - Not strict/every element
  - Weight of Plan
- Guide - No Guarantee
  - *Bone v. City of Lewiston*
  - *Urrutia Evans v. Teton County*
- Ultimate Evil... “Spot Zoning”
  - Conformance with Comp Plan
  - *Evans v. Teton County*



10

## Practical Advice

- Reflect Your County Values and Priorities
  - Your Bus
- Scrutinize Map – Be Intentional
- Language Matters
- Support Your Efforts
- Keep Concise
- Watch Consultants/Staff
  - This is Your Policy – They don't drive the bus
  - Your Priorities - be comfortable with language
  - They help gather info and write



11

## Strong Guide – Not Guarantee

- Comp Plan Legislative Action
  - No judicial review 65-6721(1)/*Burns Holdings v. Madison County*
- If Joined with Rezone
  - Can do joint hearing
  - Decide Comp Plan First
  - Prefer separate motion

12

## ZONING ORDINANCE – 67-6511

- Procedure same as comp plan – 67-6509
- Zoning – Map in accordance with Comp Plan
- Text - various districts and uses within



13

## ZONING ORDINANCE – 67-6511

- Set criteria and standards – clear and objective
  - Rezones
  - CUPs
  - Admin Divisions
  - Variances
- Sets the Process
- LLUPA - P&Z Recommendation First Rezone/Comp Plan.
  - BOCC/Ordinance - Set Reasonable time for P&Z Consider

14

## Character of the Area

- Aspects of the Character
  - Uses – what’s happening
  - Zoning – what can happen
  - Comp Plan – what’s planned to happen

15

## SUBDIVISION ORDINANCE 67-6513

- Work in Conjunction with Title 50 Chapter 13 Platting
  - Preliminary Plat
  - Final Plat – who signs
- Clear standards – think like an engineer/surveyor
- Public Hearing not required under state law – most do
- Generally – technical/compliance review under zoning entitlement – not rehash of zoning
- Ord. can provide for mitigation of effects – careful impact fees

16



## Conditions/Requirements

- Nexus to impact – *Nolan & Dolan* cases
- Fees – impact fee code
- “Voluntary” – Buckskin Case

17

## Quasi-Judicial Proceedings

- Like Judges – not courtroom
- Due Process Issues
  - Proper Notice
  - Public Hearing - Open Meeting
  - Opportunity to be heard – reasonable limitations
    - Order of Testimony - Options
  - Written Decision
  - Transcribable Record



18

## Quasi-Judicial Proceedings

- Written Decision
- I.C. 67-6535
  - Based on Express Standards
  - Identify aspects Compliance or Non-Compliance
  - Written – Reasoned Statement
    - Explain Relevant Criteria and Standards
    - State applicable facts
    - Explain Rationale – ties criteria and facts together
    - Failure may equal Invalidation



19

## Quasi-Judicial Proceedings

- Written Decision
- I.C. 67-6535
  - Actions if any to gain approval
  - Right – Request Reg Takings Analysis I.C. 67-6512/67-8003
    - Written Analysis
    - Checklist from AG's Office
    - Decision Voidable if don't provide



20

## Quasi-Judicial Proceedings

- Reconsideration - purpose
- I.C. 67-6535
  - Req. before Judicial Review
  - 14 days of Final Decision
  - Identify Specific Deficiencies
  - BOCC – affirm, reverse or modify
  - Written decision 60 days or deemed denied
- Tolls 28 day clock – Judicial Review



21

## Quasi-Judicial Proceedings

- Judicial Review
- I.C. 67-6521
  - CUPs, Subs, Permits, Variances  
Zoning/Rezoning and Similar
  - Affected Persons
  - 28 days after final decision
  - Court reviews the record
  - District Court/Sup. Court
  - Show Actual Harm



22

## Quasi-Judicial Proceedings

- Judicial Review
- Deference to BOCC
  - Trier Fact
- Violate the Law
- Procedural/Due Process Error
- Arbitrary/Capricious/Abuse
- Remand typically



23

## Various and Sundry Items

- Manufacturerd Homes
  - Gen. treat same
- Short Term Rentals – treat same
- Mediation – 67-6510
  - Request by Parties or Directed by County..... \$\$\$
  - Not part of Official Record
- Dev. Agreements – 67-6511A
  - Rezone with Conditions



24

## Various and Sundry Items

- Variances 67-6516 – bulk, height, set backs etc. – undue hardship physical on site – CUP option
- Lawful Non-conforming Use/Grandfathered 67-6538
- Area of Impact – 67-6526
  - County Jurisdiction
  - Factors – trade area, geographic factors, reasonably expected annex
  - Fixed until both agree



25

## End of the Day

- Set Policy – Legislative – Politics
- Implement – A lot of Quasi-Judicial
- Conformance with Comp Plan
- Compliance with Zoning Ordinance
- Questions?



26