


Advanced Planning and Zoning

LLUPA

Title 65

Chapter 67


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

Dali Lama



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Impact Areas – I.C. 67-6526

- County Jurisdiction – *Blaha v. Ada County*
 - *Some cities think its theirs*
- *Purpose/Issues – Control vs. imminent growth – set for decades - difficult get resolution - timeliness*
- *Statute Bit Outdated*
 - *Provides for both County and City Ordinance*
 - *Map*
 - *Set Applicable comp plan and zoning ordinance or mutual ordinance/plan*
 - *City Can't annex without one*
- *Impact Area – cross county boundary – if agree and w/in 3 mi.*
- *Factors: trade area - geographic factors - reasonably expected annexed in future*

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Impact Areas – I.C. 67-6526

- *If New – City/County can demand compliance to establish or Gang of 9*
 - *If fail enact ordinance – declaratory action*
- *Existing – remains same until mutually agree to renegotiate*
 - *If don't agree – Gang 9 / says Judicial Review really Dec Action*
- *If Overlap (mess scenario)*
 - *Cities negotiate – if can't then county for recommendation*
 - *If still don't agree then Vote of those residing – not property owners*
 - *Election Final (popularity contest)*

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Legislation S1073

- History: Middleton/Star litigation – two years ago
- Interim Working Group & Input During Session
- Intent Language
 - County Jurisdiction
 - Cities – notice and provide input – should work cooperatively
 - AOI where growth expected but not limited to
 - Where cities expect to annex in near future
 - Cities – do planning in and outside AOI
 - Review AOI at least every five years

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Legislation S1073

- Annexation – Category A – voluntary
 - Can occur outside AOI – but not in another’s AOI - exceptions
- In AOI - County Ordinance: Map/Z.O./Comp Plan
- New City/AOI
 - County doesn’t comply – Rec. Committee 4 members
 - 180 days to rec/90 days act or District Court
- Modification/Confirmation Existing AOI
 - Either County or City initiates
- Abutting AOIs
 - Cities negotiate – agree/joint hearing - can’t agree then anyone – BOCC still decides

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Legislation S1073

- Criteria – new/modify/confirm
 - Anticipated Residential/Commercial Growth
 - Geographic factors
 - Transportation and Infrastructure Systems – connectivity
 - Where sewer and water - next five years
 - Other public service districts
- Focus – areas very likely be annexed 5 years and 1 mile
- Propose amendments any time
- Cross County with BOCC approval – notice/hearing/criteria
- No overlapping AOI
- County Plan/Ord – can do specific AOI sections

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Legislation S1073

- Cities get notice of all applications in AOI
- BOCC written decision on AOI – reasoning/basis
- Cities can petition for expedited court review
 - Reconsideration First
 - Ct. review arbitrary/capricious/abuse of discretion
 - If violate procedure – remand
 - If overturn – remand or decide

Cities two years to comply

If beyond two miles – back to two miles first time

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Legislation S1073

- Annexation IC 50-222
 - FLUM MAP includes AOI – can annex
 - Where AOI abuts can't annex across unless
 - Consent
 - Five Years
 - Site specific AOI boundary adjustment

NEXT STEPS

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P&Z Commission and/or H.E.

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

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Practical Advice – Z.O./Comp Plan

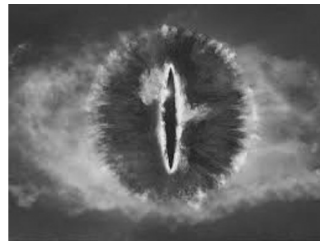
- Reflect Your County Values and Priorities
 - Your Bus
- Scrutinize Map – Be Intentional
- Language Matters
- Support Your Efforts
- Keep Concise
- Watch Consultants/Staff
 - This is Your Policy – They don't drive the bus
 - Your Priorities - be comfortable with language
 - They help gather info and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



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Comp Plan 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*

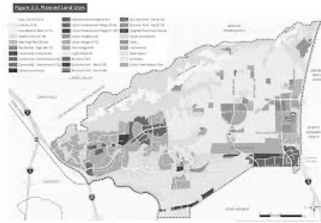


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Comprehensive Plan Req'd – I.C. 67-6508

COMPONENTS

** Weight of applicable factors – +/-'s



- 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

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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

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ZONING ORDINANCE – 67-6511

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



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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

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Character of the Area

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

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SUBDIVISION ORDINANCE

I.C. 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 – pretty much all do
- Generally – technical/compliance review under zoning entitlement – not rehash of zoning.
 - Streets, sewer/water, lighting, flood plain, slopes etc.
- Ord. can provide for mitigation of effects – careful impact fees

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CUPS

- Establish Criteria in Ordinance – “permitted with conditions”
- Conditions
 - Min. adverse impacts
 - Sequence/timing/duration
 - On-going maint of site
 - Locations/nature
 - On-site Off-site public facilities
 - Can require more restrictive standard than ord. – *City of Boise Case*
 - Mitigation impacts on public service entities

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Conditions/Requirements

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

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Quasi-Judicial Proceedings

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



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Quasi-Judicial Proceedings

Applicant Perspective

- Rights defined in Law
- Their Burden of Persuasion
- Process should be predictable and understandable
- Do your documents/plans/criteria mean something
- Time Value



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Quasi-Judicial Proceedings

Staff

- Neutrality in Analysis
- If route to success help guide
- Focus on issues in controversy
- Help establish defensible record
- Opinion/Recommendation?



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Quasi-Judicial Proceedings

Public Perspective

- You're my Elected Official
- Don't understand Quasi Judicial
 - Procedures unfamiliar/be consistent
 - Get one turn and take turns
 - Testimony closed
 - Communicate Criteria for Decision
 - Rules -Courtesy/Professionalism
 - clapping/cheers/boos/groans
 - Address Board – not others
- Careful of perceptions
 - Whisper/Texts
 - Talking before/after participants
- Scheduling
 - benefits all - avoid long nights



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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
 - Facts vs. Conclusions
 - Explain Rationale – ties criteria and facts together
 - Failure may equal Invalidation



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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



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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



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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: transcript-reviews the record
 - Address req. criteria and backed by info in record
 - District Court/Sup. Court
 - Show actual harm – viol. fund Rt.



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Quasi-Judicial Proceedings

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



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Various and Sundry Items

- Manufactured 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



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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
 - Intensify not expand



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New/Interesting Cases

- *City of Ririe v. Gilgen*
 - City lacks standing jud. rev. in AOI
- *Arnold v. City of Stanley*
 - Building permit not subject jud. rev.
- *Richardson v. Blaine County*
 - Have to request reconsideration before jud. rev.
- *Citizens Against Linscott v. Bonner County*
 - 28 jud. rev. clock starts after reconsideration decision
 - CUP based on void ordinance amendment also voided



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End of the Day

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