

# **FITTING THE PUZZLE PIECES TOGETHER**

**Making Sense  
of the Planning  
and Zoning  
Process  
ICCTFOA - 2018**

# WHY DO WE ...?

- Do the things we do?
- Do them the way we do?
- Have all these public hearings?
- Have to follow all these procedures?
- Need to avoid talking to our constituents in certain circumstances?
- Let's try to pull the pieces together

# PLANNING AND ZONING PROCESS

- Derived from national initiative in the 1920s
- Mandated by Local Land-Use Planning Act (Idaho Code chapter 65, title 67) (1975)
- Governance – support for governing board
- Structural Framework – fitting pieces together
- Interacting Pieces – jurisdictional give and take
- Practical Considerations

# GOVERNING STRUCTURE

- Planning and zoning commission
  - Recommendations to governing board
  - Final decisions - with appeal or without
  - Not mandatory to have p-z – governing board authorized
- Elected governing board-county commission or city council – where final authority rests
- Appeals to District Court
- Do you currently require two public hearings?

# COMPREHENSIVE PLAN

- Serves as policy foundation
- Future land use map provides general guidance
- Can be changed when governing board determines necessity
- Roughly comparable to Constitution
- Must address seventeen (17) required components-failure to do so can lead to judicial reversal
- Should check status of comprehensive plan at least every five years – not law, just good practice
- Why should we care?

# IMPLEMENTATION TOOLS

- Zoning ordinance
- Subdivision ordinance
- Special permits -  
measure of discretion
- Standards requirements

# LOCAL ZONING ORDINANCE

- Multiple land-use zones - only one zone legally required - purposes
  - Separate incompatible uses
  - Match land-use to infrastructure-hard or soft
- Within each zone
  - Designate permitted uses
  - Identify specially permitted uses which require discretion
  - Uses not permitted or specially permitted are prohibited (Gardiner v. Boundary County)

# COUNTIES AND CITIES DIFFER

- Different scale – macro v. micro
- Doctrine of separate sovereignty – establishes jurisdiction
  - Counties exclusive in unincorporated area
  - Cities exclusive in city limits
- Area of City Impact provides options for cooperation because jurisdiction is so clear – and so contrary to real life
- Urban development is to be served by cities

# INTERGOVERNMENTAL ISSUES

- If lands will ever be included in a city – county holds future of city in its hands
- If not ever in city – may also shape city – provides an alternative – tax consequences
- Who provides urban services?
- Agencies with approval/denial authority have little incentive to cooperate on timing
- Differences in development standards can shape the future of a city – ring around the city?

# ZONING DECISION CRITERIA

- “... in accordance with the policies set forth in the adopted comprehensive plan” – I.C. §67-6511
- “Particular consideration shall be given to the effects of any proposed zone change upon the delivery of services by any political subdivision ... , including school districts ...”
- “... considering the comprehensive plan and other evidence gathered through the public hearing process ...”

# ADMINISTRATION AND PUBLIC HEARING

- Who administers? P-Z staff? City clerk? Consultant?
- Public hearings – why hearings? Unlike other actions
  - Legislative hearings – before consider ordinance changes
  - Quasi-judicial hearings – dealing with specific ownerships or sites
- Be certain you have adopted public hearing procedures resolution or ordinance – required by I.C. §67-6534 (resolution preferred)

# DISCRETIONARY PERMITS

- **Special Use Permits**
  - Key is how the use would be implemented
  - Burden of persuasion rests with the applicant
  - Mitigation of adverse effects is the goal
  - Well-drafted ordinance contains list of possible conditions
  - Think about staff report making recommendation before hearing testimony

# VARIANCE

- Constitutional safety valve
- Result of undue hardship – general rule applied to specific site – denying all use
- Requires unique site characteristic
- If show unique site characteristic, then must demonstrate that the public interest would not be harmed
- Variance is not another word for “guideline”

# MORE DISCRETIONARY PERMITS

- **Planned Unit Development**
  - A hybrid of zoning and subdivision
  - Allows flexibility in exchange for planning large area
- **Subdivisions**
  - The process that creates our built community
  - Overcomes prior law that had public funding improvements
- **Relation to Comprehensive Plan – largely a zoning question – otherwise rely on specific ordinances**

# SUPPORTING DECISION MAKERS

- Staff reports – provide the organizational framework for most decisions
- What should be in them?
  - Start with the decision criteria and work backwards – from the application forward
  - If one asks – answer to all – if you think the question is answer-worthy
- Provide contextual information – all about anticipation – where do public comments fit?
- Should staff report contain ultimate recommendation – thumbs up or down?

# DECISION STANDARDS

- Criteria for consideration need to be in your ordinance
- Applicant for permit should know what target at which to shoot
- Do public hearings assist you to reach a sound decision?
- Is it more of a “check the box” exercise?
- How can you foster understanding – or at least avoid misunderstanding?

# NEED TO INFORM PARTICIPANTS

- Those invited to testify should be informed
- Communicate what factors will shape decision
- Follow through in mailed notice
- Follow through again at public hearing (poster)
- And again with decision aids for commission/council
- And finally address criteria in final written decision

# PUBLIC HEARING PROCEDURES

- All favorable evidence first – applicant, staff, sign-up sheet messages, supporters and neutrals (present evidence)
- Contrary evidence by opponents (present evidence and rebut supporters)
- Rebuttal by applicant (only the applicant)
- Written decision (or recommendation)
- Possibility of appeal – procedures now detailed

# CRITERIA FOR DECISIONS – WHY?

- Increased attention to specific decision standards
- Legislature enacted changes to I.C. §67-6535 to place special emphasis on decision criteria
- Responding to “don’t like your project” response
- Trying to get the standards in ordinance
- Review your ordinances to evaluate criteria – would you want your efforts judged by them?

# FOLLOW UP TO DECISIONS

- Decision must be in writing – getting to writing isn't easy - working with multiple people on board/commission
- Appeal procedure has been changed (revisions to I.C. §67-6535)
  - Must give effective notice of decision
  - Trying to keep decisions in the hands of the officials who make them
  - Avoid judicial appeals just to harass and delay
- Judges don't work with land use cases very frequently – decision needs to be clear and rational