

Urban Renewal: From Plan Creation to Termination Part 1

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June 21, 2018



Pedestrian Bridge
Lewiston

URBAN RENEWAL AGENCY AUTHORITY
STATUTES ▪ LIMITATIONS ▪ POWERS ▪ FINANCING

Urban Renewal Agency Authority

- Local Economic Development Act, Title 50, Chapter 29, Idaho Code
- Idaho Urban Renewal Law of 1965, Title 50, Chapter 20, Idaho Code
- Separate and distinct legal entity with independent authority—*Yick Kong v. BRA*, (entirely lay person board) *Hart v. Rexburg URA* (mix of lay persons and council members). These two Idaho Supreme Court decisions also authorize urban renewal agencies to incur long term debt without the necessity of a public vote (2/3 majority) as required of other public entities; Article VIII, § 3 of the Idaho Constitution.
- Models throughout the State vary widely, though after HB606 (2016) models should become more uniform.

Limitations On Urban Renewal Agencies

- An urban renewal agency is constitutionally prohibited from funding real property improvements to privately owned property (which includes non-profit entities) and granting funds to private entities (again, including non-profit entities).
- An urban renewal agency can fund real property improvements to real property owned by another public entity (either local, state, or federal) and may grant funds to another public entity.
- Urban renewal agencies may only expend public funds for the benefit of the public. The agency should be very cautious in considering funding improvements to private property or formally participating with private entities as a partner, joint venturer, etc. Funding could be ultimately deemed a loan or grant or gift of public funds to the private property owner and thus a violation of the Idaho Constitution. [Art. VIII, § 4, Art. XII, § 4, Idaho Constitution]

Limitations On Urban Renewal Agencies (Con't)

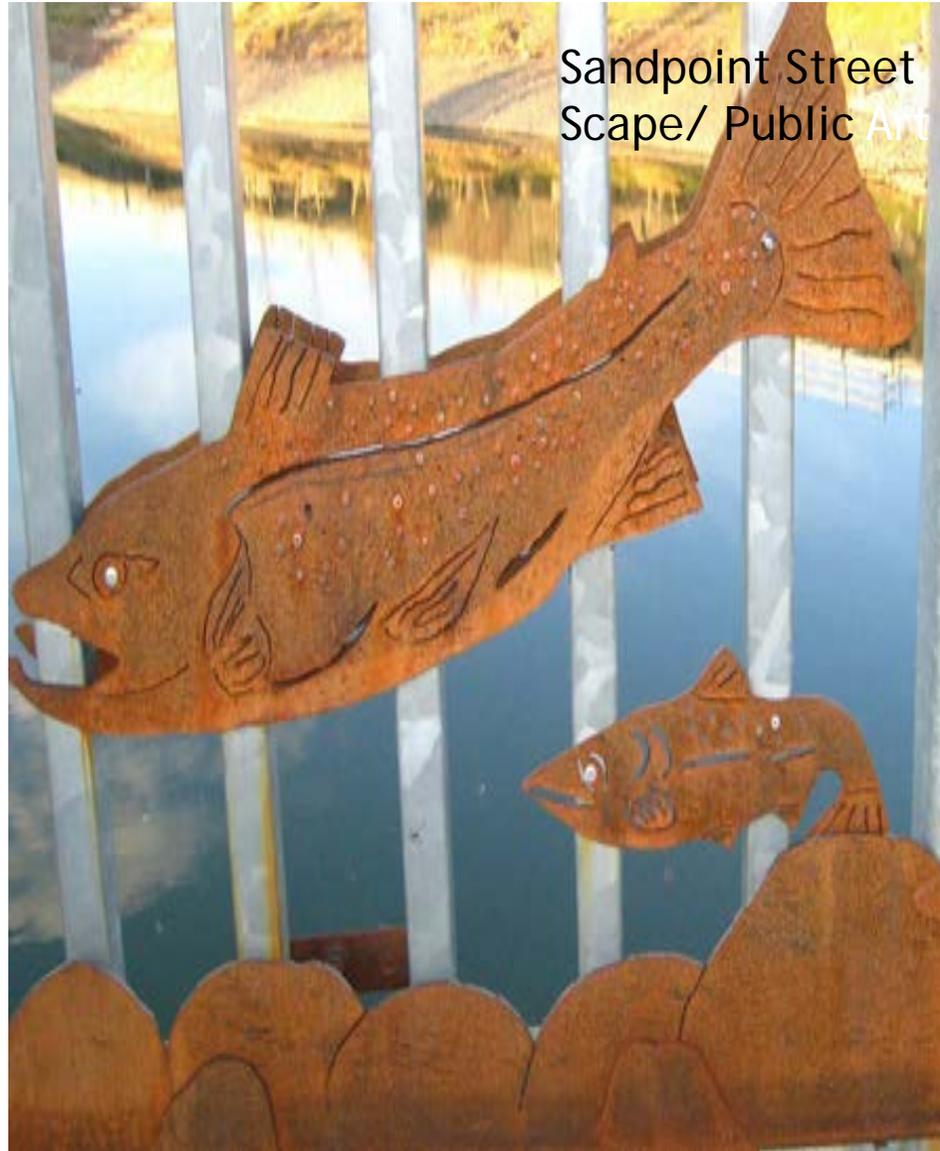
- ▶ Idaho does not permit urban renewal agencies to grant tax money to private interests for development or to lend its credit to back private interests. Art. VIII, § 4
 - ▶ NOTE - The application of Art. VIII, § 4 to urban renewal agencies has never been specifically interpreted by the Idaho Supreme Court.
- ▶ Purpose of Art. VIII, § 4 - prevent private enterprise from gaining any competitive advantage at the expense of the taxpayers
 - ▶ Agencies must demonstrate that TIF funded improvements were primarily beneficial to the public.
 - ▶ If actions challenged as unconstitutional, agency could face substantial risk of costly litigation and potentially an award of costs and attorney fees

What Powers Do URA's Have?

Consistent with the urban renewal plan, to:

- Construct/reconstruct streets, utilities, parks, recreation facilities, off-street parking and public facilities, public buildings and other improvements
- Acquire and dispose of property or buildings
- Improve, renovate, clear, and prepare for redevelopment properties or buildings
- Acquire property to eliminate unsanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to public welfare
- Invest and borrow money, issue bonds, and accept loans and grants
- Work cooperatively with other public entities
- Facilitate Local Improvement Districts (LIDs) and Business Improvement Districts (BIDs)
- Potential lease conduit financing in appropriate circumstances *Greater Boise Auditorium District v. Frazier*

Authorized Activities under the Law and the Act



The Act: Title 50, Chapter 29, Idaho Code

(13) "Project" or "urban renewal project" or "competitively disadvantaged border areas" may include undertakings and activities of a municipality in an urban renewal area for the elimination of deteriorated or deteriorating areas and for the prevention of the development or spread of slums and blight and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan. **Such undertakings and activities may include:**

See also - I.C. 50-2018(10)

- (a) Acquisition of deteriorated area . . .
- (b) Demolition and removal of buildings . . .
- (c) Installation, construction, or reconstruction of streets . . .
- (d) Disposition of any property . . .
- (e) Carrying out plans for . . . repair . . .
- (f) Acquisition of real property . . . to be rehabilitated
- (g) Acquisition of other property . . . to eliminate unsafe conditions, etc. . . .
- (h) Lending or investing federal funds . . .
- (i) Construction of foundations . . .

The Law: Title 50, Chapter 29, Idaho Code

14) "Project costs" includes, but is not limited to:

- ▶ (a) Capital costs, including the actual costs of the construction of public works or improvements, facilities, buildings, structures, and permanent fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures, and permanent fixtures; the acquisition of equipment; and the clearing and grading of land;
- ▶ (b) Financing costs . . .
- ▶ (c) Real property assembly costs . . .
- ▶ (d) Professional service costs, including those costs incurred for architectural, planning, engineering, and legal advice and services;
- ▶ (e) Direct administrative costs, including reasonable charges for the time spent by city or county employees in connection with the implementation of a project plan;
- ▶ (f) Relocation costs;
- ▶ (g) Other costs incidental to any of the foregoing costs.

Project Financing Options

- Pay-as-you-go
- Developer reimbursement agreements
- Owner participation agreements
- Conventional bank loans
- Bonds
- Note: Often no tax increment available to fund projects on a pay-as-you-go method until at least two years after plan creation. Many projects require infrastructure immediately in order for a project to go - requiring financing of improvements.

Project Financing Options, Con't

- Agency decisions regarding project financing are: properly noticed on agendas, decisions are made in open, public meetings, and by agency resolution.
- Before financing occurs, there must be a showing the project is economically feasible and a determination that an agency is credit worthy.

How Does Revenue Allocation Financing Work? (Local Economic Development Act)

- When a revenue allocation area is formed, property valuation is calculated on a parcel-by-parcel basis. This is the base assessment roll of the revenue allocation area.
- Base assessment roll for the geographic area under consideration (or collectively if more than one district) cannot exceed 10% of the current assessed value for the entire city.
- Due to redevelopment, it is anticipated the property values will rise. If property values increase above the base value, the added value is called the *increment*.

Revenue Allocation Financing, Con't

- Budget for City, County, and other non-school taxing districts limited to previous year's budget plus 3% and credit for value of new construction. By virtue of amendments in 2007, value of new construction within a revenue allocation area is not included in that credit amount.
- County Assessor sets property values.
- County determines tax rate needed to produce budget submitted by City, County, and other taxing districts.
- Tax rates applied to full value of property outside revenue allocation areas; to the base value of property inside revenue allocation areas.
- Taxes from the base value go to the taxing districts.
- Property tax revenue from the incremental value, if any, goes to the urban renewal agency for a limited period of time (20 year max, except for "grandfathered" projects primarily 24 years).

Revenue Allocation Financing, Con't

- The increment or revenue allocation that goes to the urban renewal agency is used to pay for improvements within the revenue allocation area.
- An urban renewal agency does not determine property valuation or tax rates.
- Funds received by an urban renewal agency for a given revenue allocation area must be spent in that revenue allocation area with limited exception.
- Funds are invested in activities that are intended to increase prosperity of the revenue allocation area.
- Result is an increase in property values which would not have otherwise occurred but for redevelopment.
- For project areas established after 2008 and voter approvals after 2008, the urban renewal agency will not receive taxes generated by voter approved levies, such as general obligation bonds, school district plant facilities levies, and supplemental levies.
- Also, no school district emergency levy available to urban renewal agency.



Ten Mile Urban Renewal District
Meridian Development Corporation

PUBLIC OVERSIGHT

OPEN MEETINGS ▪ PUBLIC RECORDS ▪ REPORTING REQUIREMENTS

Operating In The Public Eye



- Public Record Law - Idaho Code §§ 74-101 to 74-126
- Open Meeting Law - Idaho Code §§ 74-201 to 74-208
 - Notice of Meetings - Agendas, Idaho Code § 74-204
 - Executive Sessions - When Authorized, Idaho Code § 74-206

Procurement Rules and Procedures

- ▶ Title 67, Chapter 28, Idaho Code
 - ▶ Public Works Construction Bidding
 - ▶ SB1074 - increased threshold amounts for both formal and informal bidding processes
 - ▶ Best interests of Agency from \$0-\$25,000 to \$0-\$50,000
 - ▶ Informal bidding from \$25,000-\$100,000 to \$50,000-\$200,000
 - ▶ Formal bidding from over \$100,000 to over \$200,000
 - ▶ Public Procurement of Goods and Services Bidding
 - ▶ Best interests of Agency from \$0-\$25,000 to \$0-\$50,000
 - ▶ Informal bidding from \$25,000-\$50,000 to \$50,000-\$100,000
 - ▶ Formal bidding from over \$50,000 to over \$100,000
 - ▶ Exceptions

Procurement Rules and Procedures, Con't

- ▶ Idaho Code § 67-2320
 - ▶ Professional Service Contracts with Design Professionals, Construction Managers, and Professional Land Surveyors
- ▶ Idaho Code § 54-4511
 - ▶ Construction manager/general contractor

Financial Reporting Requirements: Audit, Annual Report, Budget and Other

- Audit and Annual Report
 - Idaho Code §§ 50-2006(c) and (d)
- Budget
 - Idaho Code §§ 50-2903(5) and 50-1002; see also 50-2006(d)
- Central registry and reporting portal
 - Idaho Code § 67-450E
- State Tax Commission reporting portal
 - Idaho Code § 50-2913
- Amendment certification
 - Idaho Code § 50-2903A (For plans adopted post-July 1, 2016)

Cecil Road Completion
Tullamore District, Post Falls Urban Renewal



IMPLEMENTATION

CREATION ▪ PLAN ▪ RECENT CHANGES ▪ TAX COMMISSION

Board Composition - HB606(2016) - Key changes to 50-2006.

- ▶ Members of the local governing body can only represent less than a majority of the agency board
- ▶ Allows the local governing body to terminate the appointed board and designate itself as the board for not more than one (1) calendar year
 - ▶ Must be by ordinance; “local governing body” does not include the mayor
- ▶ By ordinance, the local governing body may provide for agency board to stand for election
- ▶ Requires board members to be residents of the county where the agency is located
 - ▶ Unintended consequences!!!

Urban Renewal Law: Contains a Broader Conflict of Interest Prohibition

- I.C. § 50-2017 prohibits board members from having an interest in a contract connected to an urban renewal project, whether or not the urban renewal agency itself is a contracting party or not.
- Provision has not been amended since the Urban Renewal Law was enacted in 1965.
- Provision likely based on a model act required by HUD to receive federal funding assistance.
- Provision was likely intended to prevent a board member from investing in real estate in an urban renewal area.

. . . voluntarily acquiring any personal interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project in such municipality or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the agency and such disclosure shall be entered upon the minutes of the agency.

I.C. § 50-2017

Urban Renewal Law: Exception to Conflict of Interest Prohibition

- There is an exception created for board members that own property in the urban renewal project area at the time the member is appointed.
- Provision is likely intended to address those situations of appointing a board member who may own property within the urban renewal project area.

. . . If any such official, commissioner or employee presently owns or controls, or owned or controlled within the preceding two (2) years, any interest, direct or indirect, in any property which he knows is included or planned to be included in an urban renewal project, he shall immediately disclose this fact in writing to the agency, and such disclosure shall be entered upon the minutes of the agency, and any such official, commissioner or employee shall not participate in any action by the municipality (or board or commission thereof), or urban renewal agency affecting such property.

I.C. § 50-2017

How Are Urban Renewal Areas Formed?

- Idaho Urban Renewal Law first adopted in 1965 states there exists in municipalities deteriorating areas which justify the powers conferred by the Act and use of public funds for that purpose.
- City Council (or County Commission) must make preliminary finding there are one or more deteriorating areas within city or county (or competitively disadvantaged border community) in order to activate an urban renewal agency.
- Mayor and City Council (or County Commission) appoint urban renewal agency board members.

Steps to Create a RAA

- Designate a study area for potential creation of an urban renewal district
- Determine whether conditions within the study area meet the criteria established in State Law (Idaho Code §§ 50-2903(8), 50-2018(8) and (9)) and make the requisite findings in an eligibility report
- Best Practice: Consider retaining independent, third party consultant to review area and prepare study report. Supports credibility of findings.

Steps, Con't

- Agency Board concurs with the conclusions of the eligibility report and forwards it to the City Council
- If the City Council adopts the finding in the eligibility report, then the City Council directs the preparation of an urban renewal plan for the area; plan must include certain information with specificity - see I.C. 50-2905
- Agency prepares and approves the plan and forwards it to the City Council
- City Council receives the plan and refers it to the Planning and Zoning Commission for a determination that the plan is consistent with the City's Comprehensive Plan

Steps, Con't

- City Council refers the plan to the affected taxing entities and provides at least 30-days notice of the public hearing
- Planning and Zoning Commission determines that the plan is consistent with the City's Comprehensive Plan.
- City Council holds public hearing; determines whether to adopt plan and form the revenue allocation area.
- City Council adopts the plan, including a revenue allocation financing provision, by ordinance
- Those cities/counties that did not already have an urban renewal agency established prior to July 1, 2011, must seek voter approval to establish the agency
- Generally, the plan approval process takes about 6 months for a clearly defined project

Additional Considerations

- Must demonstrate that the proposed area and plan of work is financially feasible
- Best Practice: Obtain an independent, third-party consultant to prepare the economic feasibility study. Supports credibility of the findings.
- Must determine that the combined base assessment value of all existing urban renewal districts and any proposed urban renewal districts does not exceed 10% of the total city assessed value (recommend use of “taxable” value comparison)
- Owners of “agricultural lands” and “forest lands” must provide written consent

Urban Renewal Plan - Generally

- A revenue allocation area exists for 20 years (pre-2011 plans grandfathered for longer term of 24 years)
- The urban renewal plan provides the Agency with a process and a basic framework within which to consider and proceed with specific projects
- Due to the length of time a plan is in existence, the plan maintains some flexibility to allow the Agency to respond to changing market and economic conditions.
- Amendments are limited by I.C. § 50-2033 and 50-2903A
 - Cannot amend plan to extend term beyond max term allowed by law
 - Can amend plan one time to add geographic area - limited to 10% of existing RAA
 - Permissible to amend plan to add new projects
 - Plans adopted post-2016 cannot be amended without resetting the base value to current value; limited exceptions

Property Acquisition

- ▶ Agency has the authority to acquire property; however, the definition of “urban renewal plan” in the Law requires identification of property to be acquired by the Agency. See, I.C. § 50-2018(12)
- ▶ The Agency may acquire property by negotiation or condemnation. See, Idaho Code § 50-2010. The Agency has the authority to exercise the power of eminent domain subject to the limitations set forth in Title 7, Chapter 7, Idaho Code, specifically I.C. § 7-701A.

Property Disposition - IMPORTANT!!!!!!

- ▶ Procedures for the disposition of property are set forth in Idaho Code § 50-2011. Property cannot be given to a private person/entity/non-profit without going through a competitive bidding process.
- ▶ Idaho Code § 50-2011(f): Property previously acquired or acquired by an agency for rehabilitation and resale shall be offered for disposition within three (3) years after completion of rehabilitation, or an annual report shall be published by the agency in a newspaper of general circulation . . . listing any rehabilitated property held by the agency in excess of such three (3) year period, stating the reasons such property remains unsold and indicating plans for its disposition.

Idaho Code § 50-2903A

Plans adopted post-July 1, 2016, are subject to base reset upon modification except in limited circumstances.

The effect of a base reset is the loss of the increment value resulting in an immediate loss of revenue to an urban renewal agency leading to default on existing obligations. This statute will impact plans adopted post-July 1, 2016, and subsequent modifications to those plans.

Idaho Code § 50-2903A

A New Section (continued)

A modification shall not be deemed to occur in the following limited circumstances:

- (1) To make technical or ministerial plan amendments
- (2) To make a plan amendment that increases the revenue allocation area boundary by up to 10%
- (3) To de-annex parcels from a revenue allocation area. Provides statutory justification and process
- (4) To make a plan amendment to support growth of an existing commercial or industrial project in an existing revenue allocation area

This exception can only be used in limited circumstances and is subject to varying interpretations.

Idaho Code § 50-2903A does not have any effect on plans adopted prior to July 1, 2016, and any amendments to those plans.



For plans adopted post-July 1, 2016, there is no ability to amend the plan to support an unanticipated economic development project without risk of a base reset.



Increased administrative responsibilities.

“With specificity” Idaho Code 50-2905

Idaho Code § 50-2905 is amended to address the contents of a plan

- a. Requires that a revenue allocation area plan must state with specificity details about the types of projects that are contemplated [no definition of specificity].
- b. Requires that any changes to an urban renewal plan be noticed and completed in an open public meeting.

Plan specificity – what does that mean?

- ▶ Requiring “specificity” will limit an agency’s ability to respond to new economic development opportunities.
- ▶ Additionally, as a plan is implemented, it is not uncommon for there to be changes to the location of improvements. At what point does a change deviate from the specificity requirement to require a plan amendment?

Idaho Code § 50-2905A - Limitation on use of TIF to fund construction of public buildings

- ▶ TIF may be used to fund up to 50% of the costs to construct municipal buildings.
- ▶ Municipal building is defined as: an administrative building, a city hall, a library, a courthouse, public safety or law enforcement buildings, other judicial buildings, fire stations, jails and detention facilities.
- ▶ If 51% or more of project costs to construct a municipal building are to be funded by TIF, the project must be approved by 60% of the participating qualified electors.
- ▶ There is no limitation on the use of TIF to fund projects associated with the new public building, such as sidewalks, parking, etc.

Idaho Code § 50-2913

State Tax Commission Repository

Idaho Code § 50-2913 established urban renewal reporting requirements and penalties for non-compliance.

NOTE - Letter from STC was circulated on June 11, 2018

Best Practice Tips

- ▶ If you receive a communication from the STC or from LSO - **RESPOND EVEN IF YOU THINK THE COMMUNICATION IS IN ERROR!**
 - ▶ The penalties for non-compliance with Idaho Code §§ 50-2903A and 50-2913 can be significant.

Best Practice Tips – Considering a New Project

- ▶ Is the proposed project within the boundaries of an existing RAA?
- ▶ Is the proposed project allowed by the Urban Renewal Law or the Local Economic Development Act?
- ▶ Is the proposed project consistent with the urban renewal plan?
- ▶ Is the plan a pre-or-post July 1, 2016, plan?
- ▶ Is a plan amendment possible or necessary?
- ▶ Is the proposed project within the jurisdictional boundaries of the city?
- ▶ Is the proposed project consistent with the City's comp plan?
- ▶ Does the property at issue have an ag exemption, or has the property been used for ag purposes within the last 3 years?

A few thoughts...

- ▶ Legislative changes have negatively impacted an urban renewal agency's ability to use tax increment to fund longer visioning, downtown revitalization projects
- ▶ Legislative changes have created significant administrative challenges, particularly for smaller districts
- ▶ Significant strain on city and county staff
- ▶ Important for city and agency to work collaboratively recognizing that agency is a separate and distinct entity



Bonneville Hotel in Idaho Falls
Soon to be Renovated

URBAN RENEWAL IN IDAHO
a valuable tool worth preserving