

Nuts and Bolts of Sound Land Use Decisions

DECISIONS – FROM BEGINNING TO END

JUNE, 2018

JERRY MASON

Exploring Land Use Decision-Making

Seeking approval of a new land subdivision – presents some of most difficult decisions

- **What is a subdivision? - history – state law**
- **How judged?***
- **Why does subdivision regulation matter?**

Other subjects of quasi-judicial decision-making

- **Site-specific rezoning***
- **Conditional use permit***
- **Variance***

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**

Final Decision Essentials

Must be based on standards and criteria in:

- Comprehensive plan (zoning changes)
- 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

- Criteria
- Facts
- Rationale

Fail – appeal may invalidate decision

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

From the Staff Perspective

City 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?

Through the Eyes of the Public

May be first public exposure to planning and zoning – or city 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

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

Amendments to I.C. §67-6535 (2013)

Standards and criteria in comp plan and land use ordinances

Must be set forth in express terms

Meant to inform the applicant, residents and decision-makers

Identify bases for decision in written decision

Failure to comply is grounds to invalidate decision

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.

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?

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

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

Quasi-judicial Public Hearing - Procedures

Introduction by presiding officer or designee (mayor or 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

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

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

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 city (city council) 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

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”