

# *Planning & Zoning Toolkit: Legal Aspects — of — Decision Making*



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## **Begin with the End in Mind**

- Know where you are headed
- Shape the process with the end in mind
- Avoid aimless wandering
- Focus on procedural compliance and making the final decision



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# Legislative Decision Making



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## Preliminary Work (Pre Public hearing)

- Is 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 – need to make them accessible



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## Public Notice

- Publication of time, place, and summary of plan/ordinance/amendment in newspaper or record ([§67-6509\(a\)](#))
- Notice provided to taxing districts providing services in the county
- Notice provided both 15 days prior to meeting of P&Z commission and 15 days prior to meeting of BOCC ([§67-6509\(b\)](#))



## Setting the Ground Rules

- Hearing procedures resolution or ordinance 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



## Legislative Decision Making

- Each county must adopt a comprehensive land use plan AND establish at least one zone or zoning district
- The comprehensive plan sets the policy
- Each zone establishes the standards to regulate or restrict the types, location, and uses of buildings and structures
- Zoning ordinances should be clear and objective
- Zoning ordinances must be in accordance with comprehensive plan



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## Legislative Decisions

- Ordinances must set forth express terms of zoning laws
- Identify the basis for compliance/non-compliance
- Statement of criteria, facts, and rationale needed



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## Decision Making – Legislative

- Adoption or amendments to the comprehensive plan and zoning ordinances are legislative in nature
- For legislative proceedings it is ok to solicit feedback from public, community groups, other taxing districts, etc.
- Legislative proceedings include adoption or amendment of comprehensive plan and zoning ordinances
- You may talk with people out in the community about legislative decisions
- Decisions related to a zoning application or site specific property are quasi-judicial, not legislative (no *ex parte* communication)



## Decision Criteria – Rezoning

- To meet today's standards, clearly stated decision criteria are essential
- Revise or adopt land use, subdivision or standards ordinances that contain such criteria
- Some rough-hewn examples:
  - Zone change
    - Not in conflict with policies of the comprehensive plan
    - Must balance potentially conflicting policies and explain why
  - Conditional rezoning
    - Must identify constraints and determine how final decision will implement them



## Adopting/Amending Zoning Districts

- Must follow notice and hearing procedures ([§67-6509](#))
- Must be in accordance with comprehensive plan ([§67-6511\(1\)](#))
- Recommendation by planning and/or zoning commission to BOCC ([§67-6511\(2\)\(b\)](#))
- Zoning ordinance adopted/amended by BOCC ([§67-6511\(2\)\(d\)](#))



## Decision Criteria – Design Standards

- The BOCC may adopt building, lot, land, right of way, and other design standards ([§67-6518](#))
- Design standards adopted by ordinance following required notice and hearing procedures
- Design standards take precedence over other zoning ordinances and statutes



## Decision Criteria – Overlays

- A county may establish an overlay district (i.e.: historical, wildlife, viewshed, etc.) within zones ([§67-6511](#))
- If an overlay zoning district is established, the governing board must establish “clear and objective standards”
- An overlay zoning district may not constitute a regulatory taking



## Subdivision Ordinance Decision Criteria

- Density
- Open Space
- Road design and circulation
- Water system capacity and design
- Sewer system capacity and design
- Pedestrian pathways
- Street lighting
- Surface water management
- Bicycle paths
- Zoning compliance
- Slope stability
- Flood hazard avoidance and more



# Quasi Judicial Decision Making



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## What is a Quasi Judicial Hearing?

- At times, a governing board must make site specific land use decisions
- In these “quasi-judicial” hearings, a governing board essentially acts as a panel of judges
- While not a court of law, quasi-judicial hearings are subject to judicial review
- Quasi-judicial hearing must follow statutory due process requirements ([§67-6534](#), Cooper, 101 Idaho 407 (1980) and Gay, 103 Idaho 626 (Id. Ct. App. (1982))



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## Common Examples of Quasi-Judicial Hearings

- Special use permits
- Variance applications
- Conditional rezone of a parcel
- Etc.



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## Decision Criteria for SUPs, Variances, etc.

- Variance
  - Unique site characteristics, natural in origin
  - Grant of variance would not harm public interest
- Special use permits
  - Compatibility with surrounding land uses and public facilities
  - Burden of proof rests with the applicant
  - Same standard applies to planned unit developments



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## Hearing Procedures – Quasi Judicial

- For quasi judicial hearings, you CANNOT seek outside input
- No *ex parte* communications allowed!



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## Quasi Judicial Hearing Preparation

- Newspaper Notice
- Mailed Notice (if required by law)
- Staff prepare report
- Prepare meeting space
- Prepare hearing materials (make accessible)



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## Quasi- Judicial Hearings

- Right of applicants defined by law
- Burden of proof is on the applicant
- County may adopt hearing rules of order/conduct
- Process should be both predictable and understandable
- Room set up is important
- Decisions must be based on the record established at the public hearing(s)



## Rules of Order

- Recognition by chair
- Restrictions on what can be discussed (i.e.: related to topic, not repetitions, not derogatory, etc.)
- Time restrictions
- Failure to comply with rules may result in testimony being ruled out of order



## Sample Hearing Procedures

1. Introduction of subject by county staff
2. County staff report
3. Open public hearing
  1. Presentation by applicant
  2. Testimony of those in favor
  3. Testimony of those that are neutral
  4. Testimony by those opposed
  5. Rebuttal by applicant
4. Public hearing is closed



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## Consistent Hearing Procedures

- Hearing procedures adopted by resolution or ordinance required by Idaho Code ([§67-6534](#))
- Must draw distinctions between legislative and quasi-judicial decisions
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- Make rules of procedure readily available – on website
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## Quasi Judicial Hearing Procedures

- Introduction by presiding officer or designee (BOCC chair)
- 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



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## Planning & Zoning Staff

- Project neutrality
- Disclose path to success to board and applicant
- Set the stage to create a defensible record



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## The Applicant

- Applicant rights defined by law
- Have burden of persuasion
- Must understand what must be proven
- Process should be predictable and understandable



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## The Public

- May be their first exposure to government, let alone planning and zoning
- Procedures, rules of order, may be unfamiliar
- May need help understanding what is allowed/not allowed
- Communicate the decision criteria to the public
- Explain to the public what is at stake
- Schedule and arrange the meeting in a way that is conducive to the public



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## Helping the Public Understand

- Have a set begin and end time
- Continue the hearing another day if necessary
- Ensure meeting room is set up for success (enough seats, a/v set up, creature comforts, etc.)
- Make materials available to public
- Post and communicate the rules



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## Post Hearing Procedures

1. In public meeting, governing board discusses/debates application (questions may be asked of county staff and legal counsel)
2. Motion to approve or deny the application
3. Final decision written, including:
  - A reasoned statement explaining the criteria and standards used to evaluate the application,
  - Statement of facts relied upon for the decision, and
  - The rationale for the decision based on county comprehensive plan, ordinances, and state code.
4. Copy of final decision sent to applicant



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## Developing the 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 hotly contested, seek staff and/or legal support in developing the final written decision.
- If developing recommendation, save the time of finalizing



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## Final Decision

- Final decisions to be based on:
  - Clear standards set forth in county comprehensive plan and zoning ordinances
  - Recognized legal principles
  - Emphasis on fairness
- Approvals or denials must be in writing and be accompanied by a reasoned statement that:
  - Explains relevant criteria and standards
  - States contested facts relied upon



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## The Record

- Meeting minutes must be kept and retained indefinitely
- A transcribable record must also be kept for 6 months after the final decision, including:
  - Public hearings
  - Testimony
  - Deliberations



## Reconsideration and Appeals

- Prior to filing an appeal, an applicant or affected person must first seek reconsideration of the final decision within 14 days ([§63-6535\(2\)\(b\)](#))
- Upon reconsideration, the BOCC may affirm, reverse, or modify its decision in compliance with adopted procedural standards
- BOCC has 60 days to provide written decision on reconsideration or if no written decision issued the reconsideration is deemed denied after the 60 days are up ([§63-6535\(2\)\(b\)](#))
- The applicant or affected person has 28 days to seek judicial review from the time the BOCC issues its written reconsideration decision, or if no written decision then 28 days after the 60 days are up to seek judicial review ([§63-6535\(2\)\(b\)](#))



## Judicial Review

- District Court may review final decision and decision-making process
- Court will order transcription of proceedings
- Decision must address decision criteria and be backed by the record
- Decisions judged upon sound reason and practical application of recognized principles of law
- Remedy available only upon showing of “actual harm or violation of fundamental rights”

