

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 605

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO LOCAL LAND USE PLANNING; AMENDING SECTION 67-6519, IDAHO CODE, TO REVISE TERMINOLOGY, TO PROVIDE FOR THE TYPES OF APPLICATIONS FOR WHICH PROCEDURES ARE TO BE PROVIDED, TO REQUIRE CERTAIN NOTICE AND TO CLARIFY THE RIGHT OF JUDICIAL REVIEW REGARDING CERTAIN FINAL DECISIONS; AMENDING SECTION 67-6520, IDAHO CODE, TO INCLUDE ATTORNEYS AMONG THOSE PERSONS WHO MAY SERVE AS HEARING EXAMINERS, TO REVISE THE TYPES OF APPLICATIONS FOR WHICH A HEARING EXAMINER MAY BE APPOINTED, TO REVISE THE MATTERS TO BE INCLUDED IN A HEARING EXAMINER'S DECISION OR RECOMMENDATION, TO REQUIRE CERTAIN NOTICE, TO CLARIFY THE RIGHT OF JUDICIAL REVIEW REGARDING CERTAIN FINAL DECISIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-6521, IDAHO CODE, TO REVISE THE DEFINITION OF "AFFECTED PERSON," TO REVISE TERMINOLOGY, TO REVISE ACTION THAT MAY BE TAKEN BY A COMMISSION OR GOVERNING BOARD AFTER A HEARING, TO REQUIRE CERTAIN NOTICE, TO CLARIFY THE RIGHT OF JUDICIAL REVIEW REGARDING CERTAIN FINAL DECISIONS, AND TO REVISE THE BASIS OF THE CLAIM FOR WHICH AN AFFECTED PERSON IS MAKING CERTAIN CLAIMS; AMENDING SECTION 67-6535, IDAHO CODE, TO CLARIFY TERMINOLOGY, TO PROVIDE APPLICANTS JUDICIAL REVIEW FOR CERTAIN DENIED APPLICATIONS AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-6519, Idaho Code, be, and the same is hereby amended to read as follows:

67-6519. ~~PERMIT~~ APPLICATION GRANTING PROCESS. (1) As part of ordinances required or authorized under this chapter, a procedure shall be established for processing in a timely manner applications for zoning changes, subdivisions, variances, special use permits and such other similar applications required or authorized pursuant to this chapter for which a reasonable fee may be charged.

(2) Each application ~~for a permit~~ required or authorized under this chapter shall first be submitted to the zoning or planning and zoning commission for its recommendation or decision. The commission shall have a reasonable time fixed by the governing board to examine the application before the commission makes its decision on the permit application or makes its recommendation to the governing board. Each commission or governing board shall establish by rule a time period within which a recommendation or decision must be made. Provided however, any ~~permit~~ application which relates to a public school facility shall receive priority consideration and shall be reviewed for approval, denial or recommendation by the commission or the governing board at the earliest reasonable time, regardless of the timing of its submission relative to other applications which are not related to public school facilities.

1 (3) When considering an ~~an permit~~ application which relates to a public
 2 school facility, the commission shall specifically review the ~~permit~~
 3 application for the effect it will have on increased vehicular, bicycle and
 4 pedestrian volumes on adjacent roads and highways. To ensure that the state
 5 highway system or the local highway system can satisfactorily accommodate
 6 the proposed school project, the commission shall request the assistance
 7 of the Idaho transportation department if state highways are affected, or
 8 the local highway district with jurisdiction if the affected roads are not
 9 state highways. The Idaho transportation department, the appropriate local
 10 highway jurisdiction, or both as determined by the commission, shall review
 11 the application and shall report to the commission on the following issues
 12 as appropriate: the land use master plan; school bus plan; access safety;
 13 pedestrian plan; crossing guard plan; barriers between highways and school;
 14 location of school zone; need for flashing beacon; need for traffic control
 15 signal; anticipated future improvements; speed on adjacent highways;
 16 traffic volumes on adjacent highways; effect upon the highway's level of
 17 service; need for acceleration or deceleration lanes; internal traffic
 18 circulation; anticipated development on surrounding undeveloped parcels;
 19 zoning in the vicinity; access control on adjacent highways; required
 20 striping and signing modifications; funding of highway improvements to
 21 accommodate development; proposed highway projects in the vicinity; and any
 22 other issues as may be considered appropriate to the particular application.

23 (4) Whenever a governing board or zoning or planning and zoning
 24 commission grants or denies an ~~an permit application~~, it shall specify:

25 (a) The ordinance and standards used in evaluating the application;

26 (b) The reasons for approval or denial; and

27 (c) The actions, if any, that the applicant could take to obtain a
 28 ~~permit approval~~.

29 Every final decision rendered shall provide or be accompanied by notice
 30 to the applicant regarding the applicant's right to request a regulatory
 31 taking analysis pursuant to section 67-8003, Idaho Code. An applicant
 32 denied an ~~an permit application~~ or aggrieved by a final decision concerning
 33 matters identified in section 67-6521(1)(a), Idaho Code, may within
 34 twenty-eight (28) days after all remedies have been exhausted under local
 35 ordinance seek judicial review under the procedures provided by chapter 52,
 36 title 67, Idaho Code.

37 SECTION 2. That Section 67-6520, Idaho Code, be, and the same is hereby
 38 amended to read as follows:

39 67-6520. HEARING EXAMINERS. (1) Hearing examiners include
 40 professionally trained or licensed staff planners, attorneys, engineers, or
 41 architects. If authorized by local ordinance adopted, amended, or repealed
 42 in accordance with the notice and hearing procedures provided in section
 43 67-6509, Idaho Code, hearing examiners may be appointed by a governing board
 44 or zoning or planning and zoning commission for hearing applications for
 45 subdivisions, special use ~~and permits~~, variances ~~permits~~ and requests for
 46 ~~rezoning district boundary changes~~ which are in accordance with the plan.
 47 Notice, hearing, and records before the examiner shall be as provided in this
 48 chapter for the zoning or planning and zoning commission. Whenever a hearing
 49 examiner hears an application, he may, pursuant to local ordinance, grant or

1 deny the application or submit a recommendation to the governing board or
 2 zoning or planning and zoning commission. His decision or recommendation
 3 shall specify:

- 4 (a) ~~The~~ ordinance and standards used in evaluating the application;
 5 (b) ~~The~~ reasons for the recommendation or decision; and
 6 (c) ~~The~~ actions, if any, that the applicant could take to obtain an
 7 ~~permit or zoning district boundary change in accordance with the plan~~
 8 ~~approval.~~

9 (2) Every final decision shall provide or be accompanied by notice to
 10 the applicant regarding the applicant's right to request a regulatory taking
 11 analysis pursuant to section 67-8003, Idaho Code. An applicant denied an
 12 permit application or aggrieved by a final decision concerning matters
 13 identified in section 67-6521(1)(a), Idaho Code, may within twenty-eight
 14 (28) days after all appellate remedies have been exhausted under local
 15 ordinance seek judicial review as provided by chapter 52, title 67, Idaho
 16 Code.

17 SECTION 3. That Section 67-6521, Idaho Code, be, and the same is hereby
 18 amended to read as follows:

19 67-6521. ACTIONS BY AFFECTED PERSONS.

20 (1) (a) As used herein, an affected person shall mean one having a bona
 21 fide interest in real property which may be adversely affected by:

22 (i) The issuance or approval, denial of a or failure to act upon
 23 an application for a subdivision, variance, special use permit
 24 authorizing the development and such other similar applications
 25 required or authorized pursuant to this chapter;

26 (ii) The approval of an ordinance first establishing a zoning
 27 district upon annexation or the approval or denial of an
 28 application to change the zoning district applicable to specific
 29 parcels or sites pursuant to section 67-6511, Idaho Code; or

30 (iii) An approval or denial of an application for conditional
 31 rezoning pursuant to section 67-6511A, Idaho Code.

32 (b) Any affected person may at any time prior to final action on an
 33 ~~permit application~~ required or authorized under this chapter, if no
 34 hearing has been held on the application, petition the commission
 35 or governing board in writing to hold a hearing pursuant to section
 36 67-6512, Idaho Code; provided, however, that if twenty (20) affected
 37 persons petition for a hearing, the hearing shall be held.

38 (c) After a hearing, the commission or governing board may:

39 (i) Grant or deny an ~~permit application~~; or

40 (ii) Delay such a decision for a definite period of time for
 41 further study or hearing. Each commission or governing board
 42 shall establish by ~~rule and regulation~~ ordinance or resolution
 43 a time period within which a recommendation or decision must be
 44 made.

45 (d) Every final decision rendered shall provide or be accompanied by
 46 notice to the applicant regarding the applicant's right to request
 47 a regulatory taking analysis pursuant to section 67-8003, Idaho
 48 Code. An affected person aggrieved by a final decision concerning
 49 matters identified in section 67-6521(1)(a), Idaho Code, may within

1 twenty-eight (28) days after all remedies have been exhausted under
 2 local ordinances seek judicial review as provided by chapter 52, title
 3 67, Idaho Code.

4 (2) (a) Authority to exercise the regulatory power of zoning in land use
 5 planning shall not simultaneously displace coexisting eminent domain
 6 authority granted under section 14, article I, of the constitution of
 7 the state of Idaho and chapter 7, title 7, Idaho Code.

8 (b) An affected person claiming "just compensation" for a perceived
 9 "taking," the basis of the claim being that a ~~specific zoning action~~
 10 ~~or permitting final~~ action restricting private property development
 11 is actually a regulatory action by local government deemed "necessary
 12 to complete the development of the material resources of the state,"
 13 or necessary for other public uses, may seek a judicial determination
 14 of whether the claim comes within defined provisions of section 14,
 15 article I, of the constitution of the state of Idaho relating to eminent
 16 domain. Under these circumstances, the affected person is exempt from
 17 the provisions of subsection (1) of this section and may seek judicial
 18 review through an inverse condemnation action specifying neglect by
 19 local government to provide "just compensation" under the provisions
 20 of section 14, article I, of the constitution of the state of Idaho and
 21 chapter 7, title 7, Idaho Code.

22 SECTION 4. That Section 67-6535, Idaho Code, be, and the same is hereby
 23 amended to read as follows:

24 67-6535. APPROVAL OR DENIAL OF ANY APPLICATION TO BE BASED UPON
 25 STANDARDS AND TO BE IN WRITING. ~~(e1)~~ The approval or denial of any
 26 application ~~provided for in~~ required or authorized pursuant to this
 27 chapter shall be based upon standards and criteria which shall be set forth
 28 in the comprehensive plan, zoning ordinance or other appropriate ordinance
 29 or regulation of the city or county.

30 ~~(b2)~~ The approval or denial of any application ~~provided for in~~ required
 31 or authorized pursuant to this chapter shall be in writing and accompanied
 32 by a reasoned statement that explains the criteria and standards considered
 33 relevant, states the relevant contested facts relied upon, and explains
 34 the rationale for the decision based on the applicable provisions of the
 35 comprehensive plan, relevant ordinance and statutory provisions, pertinent
 36 constitutional principles and factual information contained in the record.

37 ~~(e3)~~ It is the intent of the legislature that decisions made pursuant to
 38 this chapter should be founded upon sound reason and practical application
 39 of recognized principles of law. In reviewing such decisions, the courts
 40 of the state are directed to consider the proceedings as a whole and to
 41 evaluate the adequacy of procedures and resultant decisions in light of
 42 practical considerations with an emphasis on fundamental fairness and the
 43 essentials of reasoned decision-making. Only those whose challenge to a
 44 decision demonstrates actual harm or violation of fundamental rights, not
 45 the mere possibility thereof, shall be entitled to a remedy or reversal
 46 of a decision. Every final decision rendered concerning a site-specific
 47 land use request shall provide or be accompanied by notice to the applicant
 48 regarding the applicant's right to request a regulatory taking analysis
 49 pursuant to section 67-8003, Idaho Code. An applicant denied an application

1 or aggrieved by a final decision concerning matters identified in section
2 67-6521(1)(a), Idaho Code, may, within twenty-eight (28) days after all
3 remedies have been exhausted under local ordinance, seek judicial review
4 under the procedures provided by chapter 52, title 67, Idaho Code.

5 SECTION 5. An emergency existing therefor, which emergency is hereby
6 declared to exist, this act shall be in full force and effect on and after its
7 passage and approval.