
**MIDDLETON CITY COUNCIL AND PLANNING AND ZONING COMMISSION
JOINT INFORMATIONAL WORKSHOP MINUTES
JANUARY 7, 2022**

The January 7, 2022 City Council and Planning and Zoning Commission Joint Informational Workshop was called to order by Mayor Rule at 4:00 p.m.

Those present were: Council Members Carrie Huggins, Tim O'Meara and David Murray. Planning & Zoning Commissioners: Ray Waltemate, Kip Crofts, Heidal Summers, Scott Brock and Tim Hoekstra. Also present Mayor Rule, City Attorney - Douglas Waterman, City Engineer - Amy Woodruff, Public Works Director - Jason VanGilder, City Planner - Roberta Stewart, Deputy Clerk - Jennica Reynolds. No one from the general public attended the workshop.

Introduction of those present.

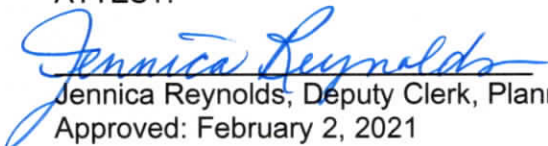
Jennica Reynolds reviewed the city resources (Agendas, Public Hearing Notices and City Code) and locations on the City Website.

Mayor Rule turned the time to City Attorney Douglas Waterman who lead the training. (Exhibit A & Exhibit B).

No decisions were made. This was an informational workshop only.

Adjourn: Mayor Rule adjourned the meeting at 5:12 p.m.

ATTEST:


Jennica Reynolds, Deputy Clerk, Planning
Approved: February 2, 2021


Steven J. Rule, Mayor



January 9, 2022
Joint workshop



Mark R. Hilty Douglas L. Waterman
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Scope of Training

1. Quasi-Judicial Rules and Due Process
2. Respective Roles of Council and P&Z
3. Decision Making
4. Idaho Open Meeting Law
5. Idaho Public Records Law
6. Ethics in Government

Quasi-Judicial Rules and Due Process

What is a "quasi-judicial" matter?
An action is quasi-judicial in nature when the local government body is "applying general rules or policies to specific individuals, interests or situations." *Cooper v. Board of County Comm'n's of Ada County*, 101 Idaho 407, 410, 614 P.2d 947, 950 (1980).

Quasi-Judicial Rules and Due Process

• "When acting upon a quasi-judicial zoning matter the governing board is neither a proponent nor an opponent of the proposal at issue, but sits instead in the seat of a judge." *Louery v. Bd. of County Comm'n's for Ada County*, 115 Idaho 64, 71, 764 P.2d 431, 438 (1988).

Quasi-Judicial Rules and Due Process

• In the case of *Chambers v. Kootenai County Bd. Of Comm's*, the court held that county commissioners must reach their decision on a conditional use permit based solely upon "the record as established at the public hearing." *Id.* 125 Idaho 115, 118 (1994).

Quasi-Judicial Rules and Due Process

• "The Due Process Clause entitles a person to an impartial and disinterested tribunal....[Q]uasi-judicial decisions are subject to due process constraints." *Eacret v. Bonner County*, 139 Idaho 780, 784, 86 P.3d 494, 498 (2004).

Quasi-Judicial Rules and Due Process

• A decision maker is not disqualified simply because he has taken a position, even in public, on a policy issue related to the dispute, in the absence of a showing that the decision maker is "not capable of judging a particular controversy fairly on the basis of its own circumstances." *Hortonville Joint School Dist. No. 1 v. Hortonville Education Ass'n*, 426 U.S. 482, 493, 96 S.Ct. 2308, 2314, 49 L.Ed.2d 1, 9 (1941).

Quasi-Judicial Rules and Due Process

• Any *ex parte* communication must be disclosed at the public hearing, including the identity of those involved and a general description of the communication. The purpose of the disclosure requirement is to afford opposing parties with an opportunity to rebut the substance of any *ex parte* communications.

Quasi-Judicial Rules and Due Process

- Best Practice for Hearing Format (Due Process & IC)
- Staff Report
- Applicant
- Public Testimony
 - In Favor
 - Neutral
 - Opposed
- Rebuttal
- Discussion (No Additional Public Testimony)

Quasi-Judicial Rules and Due Process

- Maintaining Order
 - Can be a difficult task
 - Chair has been given the authority to conduct the meeting and has the authority to demand attendees behave appropriately
 - Staff can help answer questions about appropriate attendee behavior and the commission's authority

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Respective Roles: Council and P&Z

- Under the Local Land Use Planning Act, city councils have the authority to delegate certain tasks to a planning and zoning commission or hearing examiner.
- In Middleton, the City Council has designated certain authority to the planning and zoning commission.

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Respective Roles: Council and P&Z

- Examples of Recommendations:
 - Preliminary Plans
 - Variances
 - Zoning Ordinance
 - Annexations
- Examples of Final Decisions:
 - Special Use Permits

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Respective Roles: Council and P&Z

- For items of recommendation, the Planning and Zoning commission provides vital support to the City Council by:
 - Providing additional analysis of the facts and law
 - Providing additional opportunity for public input
 - Providing recommendations to the Council to make Council decisions better

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Respective Roles: Council and P&Z

- The Purpose of Continuances
 - Applicants have a burden of convincing the hearing body that their applications ought to be approved.
 - A failure by an applicant to provide sufficient information should result in a recommendation of disapproval, not a continuance so they can provide more information.

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Respective Roles: Council and P&Z

- The Purpose of Continuances
 - Continuing a hearing to a subsequent date to gain additional information creates a logjam for planning staff and the city council.
 - If the applicant has failed to carry his or her burden, the appropriate action is to recommend denial of the application.

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Decision Making

- Idaho Code § 67-6535: It is the intent of the legislature that decisions made pursuant to this chapter should be founded upon sound reason and practical application of recognized principles of law.
- Decision must be based on state and city code criteria.

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Decision Making

- Idaho Code § 67-6535: Such approval standards and criteria shall be set forth in express terms in land use ordinances in order that permit applicants, interested residents and decision makers alike may know the express standards that must be met in order to obtain a requested permit or approval.

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Decision Making

- Idaho Code § 67-6535: The decision shall identify aspects of compliance or noncompliance with relevant approval standards and criteria in the written decision.

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Decision Making

- Idaho Code § 67-6535: A reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.

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Decision Making

- Failure to identify the nature of compliance or noncompliance with express approval standards or failure to explain compliance or noncompliance with relevant decision criteria shall be grounds for invalidation of an approved permit or site-specific authorization, or denial of same, on appeal.

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EXAMPLES AND DISCUSSION

- SEE EXAMPLES AND DISCUSSION HANDOUT

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Idaho Open Meeting Law

- "The people of the state of Idaho in creating the instruments of government that serve them, do not yield their sovereignty to the agencies so created. Therefore, the legislature finds and declares that it is the policy of this state that the formation of public policy is public business and shall not be conducted in secret." Idaho Code § 74-201.

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Idaho Open Meeting Law

- "Meeting" means the convening of a governing body of a public agency to make a decision or to deliberate toward a decision on any matter. Idaho Code § 74-202(6)

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Idaho Open Meeting Law

- "Deliberation" means the receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature which do not specifically relate to a matter then pending before the public agency for decision. Idaho Code 74-202(2)

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Idaho Open Meeting Law

Open Meeting Law Requirements:

- Notice
 - Agenda and Changes Under the Law
 - Materials and Due Process
- Minutes

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Idaho Open Meeting Law

- Open Meeting Law Requirements:
 - Open
 - Serial Meetings and Group Emails
 - Executive sessions

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Idaho Public Records Law

KEY PURPOSE: Transparency.

Public records can be inadvertently created: emails from personal accounts regarding Commission business; text messages on personal phones involving Commission business; voicemails on personal phones relating to Commission business; emails, texts, or instant messages sent during a meeting or hearing, regardless of their content; personal notes taken during a Commission hearing, etc.

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Idaho Public Records Law

Attorney General Manual
Question 6, Page 5

"What are Public Records?"

Attorney General Manual
Question 18, Page 10

"What Information is Exempt from Disclosure Under the Law?"

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Idaho Public Records Law

recent cases

IDAHO PRESS CLUB, INC.,
v.
JANICE MCGEACHIN
CV01-21-11095

IDAHO PRESS CLUB, INC.,
v.
ADA COUNTY
CV01-19-16277

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Idaho Public Records Law

Texts show lawmakers' surprise at last-minute committee meeting

Idaho Press Tribune Article - April 6, 2019

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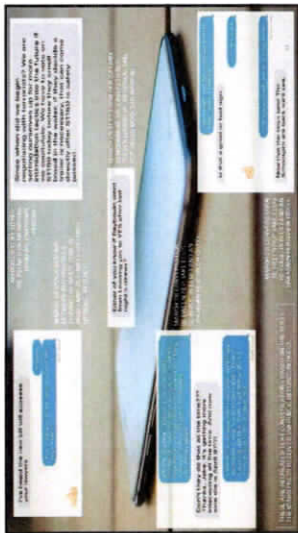
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Idaho Public Records Law

"To get a better idea of lawmakers' conversations surrounding that meeting and the bills, the Idaho Press filed a public records request for the text messages of 40 Treasure Valley legislators, sent or received from 6 a.m. to 10 p.m. on Thursday, March 28.

The text messages the Idaho Press received in response show a behind-the-scenes look at the committee meeting and discussions that caught many legislators off guard, as well as raised questions of government transparency."

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Ethics In Government

Attorney General Manual
Question 3, Page 2

Question No. 3: Who is subject to Idaho Code §§ 18-1351 et seq., the Bribery and Corrupt Influence statutes?

Answers: Idaho Code §§ 18-1351, et seq., regulate the conduct of public servants in the areas of bribery and corrupt practices, including conflicts of interest and nepotism. Unless otherwise stated, these statutes apply to all "public servants," which is defined to mean: "any officer or employee of government, etc..."

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Ethics In Government

Conflicts of Interest

When a conflict of interest exists, the public official must disclose the conflict. Disclosure does not affect an elected public official's authority to vote on the matter. The public official should seek legal advice on any potential conflict of interest. Disclosure of the conflict or consultation with counsel satisfies the requirements of the Ethics in Government Act.

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Ethics In Government

Bribery and Self-Interested Contracts

Public Officials cannot accept any compensation or benefit for any decision made in their capacity as a public official, nor can they use their office to benefit themselves in a personal, financial manner. Additionally, with a few, very specific exceptions, no public official may be "interested," i.e. may have a personal financial stake, in any contract entered into by the entity they help govern.

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QUESTIONS

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THANK YOU

- THANK YOU FOR YOUR SERVICE TO THE CITY OF MIDDLETON
- PLEASE REACH OUT TO OUR OFFICE WITH ANY QUESTIONS OR CONCERNS

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EXAMPLES AND DISCUSSION HANDOUT

The Following Actions are Subject to LLUPA¹ Review

- Initial zoning following annexation
- Rezoning of specific parcels or sites pursuant to section 67-6511
- Conditional rezoning pursuant to section 67-6511A
- Application for subdivision
- Application for variance
- Application for conditional use permit (aka special use permit)
- "Other similar applications," which presumably includes planned unit developments

Things to Keep in Mind

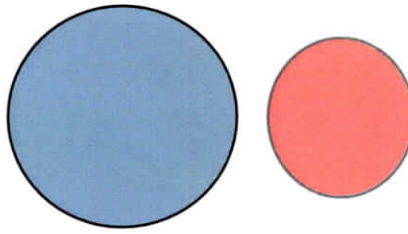
When making the decisions listed above, you are acting in a quasi-judicial role. The decisions you make can be appealed, first to City Council and then to a District Court. While you should keep the following in mind for all decisions, these concepts are particularly important for decisions subject to LLUPA review.

The Record is the whole of the documents, testimony, and discussion that makes up the basis for granting or denying an application. The decisions made by a P&Z Commission must be based on the record. Consider the following examples with accompanying diagrams. In the diagrams, the blue represents the record, and the red represents the facts upon which a decision is made.

Example 1

- An Applicant is bringing a request for a SUP at a 7:00PM P&Z Commission Meeting.
- Just prior to the hearing, at 6:55PM, the city staff member assigned with analyzing the application speaks to a long, conclusive list of reasons why the SUP should be denied.
- The hearing begins at 7:00PM, and the applicant briefly presents on the SUP.
- Nobody else wishes to speak on the SUP, and the city staff member does not reiterate the list of concerns.
- The Commissioners deny the application.

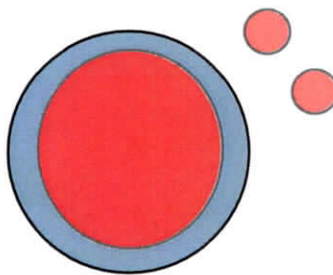
¹ Idaho Local Land Use Planning Act, Idaho Code Title 67, Chapter 65



If the city staff member had presented the evidence of why the SUP should be denied at the appropriate time (during the hearing/on the record), this decision would be fine. However, because the staff concerns were not placed into the record, the record would essentially be blank, and the P&Z Commission's decision would be susceptible to challenge.

Example 2

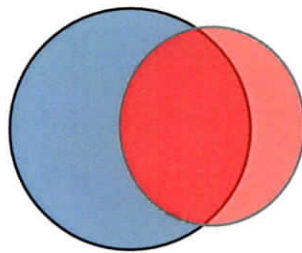
- An Applicant is bringing a request for a SUP at a P&Z Commission Meeting.
- Prior to the meeting, a Commissioner goes out and visits the application site and sees reasons why the application should be denied.
- Another Commissioner receives a phone call from a citizen prior to the meeting, and the citizens supplies the Commissioner with a list of reasons why the application should be denied.
- At the meeting, a city staff member assigned with analyzing the application speaks to why the SUP should be granted.
- The applicant presents on the SUP.
- The Commissioner who went and viewed the property does not disclose that fact.
- The Commissioner who received the phone call does not disclose it either.
- After discussion, the Commissioners deny the application.



In this scenario, the viewing of the site by the Commissioner and the phone conversation between a member of the public and a Commissioner have created a secret record. The things that the Commissioner saw at the site, and the concerns raised by the citizen, have not been provided to the applicant or the public to be addressed. This decision would be susceptible to challenge.

Example 3

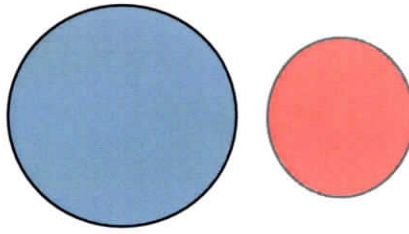
- A public hearing is held on a SUP at a P&Z Commission Meeting, and members of the public speak both for and against the application.
- The public hearing is closed after final comments from the applicant.
- A Commissioner moves to approve the application, and there is a second.
- The Commissioners begin debating the motion.
- A Commissioner has a question and asks a member of the public to comment.
- The member of the public, without being sworn in or coming to the podium, responds to the question, which response weighs against approval of the application.
- The applicant is not given an opportunity to respond.
- The motion fails and, the Commission denies the application.



There are two issues with this decision, both of which create a susceptibility to challenge. First, the applicant was not given an opportunity to respond to claims made about, and against, their application. Second, the comments by the member of the public are not in the record. To the extent that the decision is denied based on those comments, the decision is based on a blank spot in the record.

Example 4

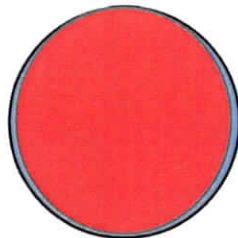
- An Applicant is bringing a request for a preliminary plat.
- The hearing beings, and staff and the applicant present the proposed development, which development is generally in compliance with the city codes and comprehensive plan.
- Two members of the public testify.
- The first member of the public testifies about how there are not enough parks within the City in general and how he thinks the applicant should be denied.
- The second member of the public testifies about how there are too many large residential homes and not enough small, multifamily developments and how she thinks the application should be denied.
- The City Council denies the application based on the foregoing evidence.



Cities deal with a long list of competing interests and concerns regarding land use; however, land use applicants are entitled to have their application processed based upon the code in place at the time the application is submitted. Stated differently, when an application is submitted, that application must be assessed based specifically on the codes the City has adopted that govern those types of applications. In the foregoing example, the preliminary plat application has been denied because of two city-wide issues, not based on the specific code applying to preliminary plats. While a lack of park facilities or the appropriate level of density may need to be addressed in a city, it must be addressed through a legislative act, i.e. an ordinance, not by denying development applications.

Example 5

- All facts upon which the decision on an application is made are contained within the record.



Even when the record is complete, and the decision is properly based upon said record, that decision can be challenged. However, the standard for overturning a decision that is properly made is much higher, and the chances are very low that such an appeal would be successful. The goal should be that, for every decision, the above diagram would be an accurate representation of the relationship between the record and the facts upon which a decision is based.

Due Process requires that individuals have notice and an opportunity to be heard. While operating within the normal P&Z Commission Meeting structure should provide these things, it is advisable to go out of your way to ensure that an applicant has the opportunity to respond to questions the Commission may have, as well as the testimony of anyone speaking about the application. If a Commissioner has questions for the applicant, for staff, or for anyone who has testified, these should be asked prior to making any motion on the application. If a Commissioner asks a question

of city staff or of an individual who has testified, the applicant should be given an opportunity to respond. Asking all questions of individuals as they testify allows the applicant to use their closing remarks as an opportunity to respond to any concerns that have been raised during the public hearing. After the public hearing has been closed, no member of the public should be allowed to provide the Commission with any additional information.

Bias and the appearance of bias should be avoided. Decisions should be made on the basis of the facts before the Commission, not on anecdote or preconception. Commission members should avoid expressing any personal preferences or support for applicants or others testifying. A statement of city policy is *not* an expression of bias. For example, if the Master Plan contains a preference of condition X over condition Y, it would be proper to express that official preference by referencing the Master Plan. In contrast, a personal preference for business type X over business type Y should not be the stated reason for a P&Z decision.

Ex Parte Contacts are often inevitable in the land use context; however, it is best to avoid them when possible. Applicants should reach out to city staff with questions or concerns or should raise those questions or concerns at the P&Z meeting, on the record. If there are *ex parte* contacts between an applicant or a member of the public and a Commissioner, these can be cured by full disclosure of said contacts. Failing to disclose such contacts essentially creates a “secret record,” to which neither the applicant nor the public have an opportunity to respond.

Viewing the Site is another way a “secret record” can be inadvertently created (when a P&Z Commissioner preemptively goes and views the site that is the subject of a P&Z hearing). This does not mean that a Commissioner is precluded from participating in a hearing about a site with which they are familiar. However, if a Commissioner has special knowledge of a site, that special knowledge should be disclosed. Going and viewing a site for the purpose of getting information about it for the hearing is the role of city staff, and if a Commissioner does so it creates a risk that their decision will not be based on the record before them.

Equal Protection essentially guarantees that people in similar positions will be treated similarly. Trying to maintain consistency when granting and denying applications will ensure that applicants are treated fairly.