

April 3, 2023

Town Hall Meeting, Cambridge, Idaho

The Board of County Commissioners of Washington County, Idaho, does hereby meet this 3rd day of April 2023 for a Town Hall meeting at the Exhibit Hall in Cambridge.

Commissioner Chairman, Lyndon Haines, welcomed those in attendance to the meeting. Haines provided information regarding the ground rules for the meeting and the role and authority of Planning and Zoning. Haines also read portions of the Land Use Planning Act per Idaho Code 67-6501 through 67-6538 which was enacted in 1975. Haines provided the following information:

“In Idaho today the authority of local governments to engage in planning and zoning activities derives from the grant contained in the state constitution as articulated and implemented by the Local Land Use Planning Act (“LLUPA”), Idaho Code Sections 67-6501 to 67-6538 (enacted in 1975). But local governments also have zoning authority directly under the Idaho Constitution. Article XII, Section 2 of the Idaho Constitution grants the police power directly to cities and counties (without need for implementing legislation). This section states:

“Local police regulations authorized. – Any county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations are not in conflict with its charter or with the general laws.”

(Idaho Land Use Handbook, page 23)

“This constitutional grant of plenary police power to counties and cities provides a foundation for zoning laws that pre-date the express delegation contained in LLUPA and its predecessors. This avoids a basic issue that arises in zoning cases in other states. In some states, county and municipal governments have zoning power only if the state legislature specifically grants the power... In Idaho, cities lawfully engaged in zoning for years before the enactment of any express authorizing legislation.” (Idaho Land Use Handbook, 24)

Mandatory planning duties under the Local Land Use Planning Act were discussed including:

“Exercise of the authority to zone and plan, whether by governing board or by the established commissions, is made mandatory by I.C. Section 67-6503.”

(Idaho Land Use Handbook, Page 26)

I.C. 67-6503: “PARTICIPATION OF LOCAL GOVERNMENTS. Every city and county shall exercise the powers conferred by this chapter.”

Mandatory duties for cities and counties under the Local Land Use Planning Act include:

Adoption of a comprehensive plan; Adopting a zoning ordinance including one or more “zoning districts”; Adopting an ordinance governing the approval of subdivisions; Adopting an ordinance regulating the granting of variances; Adopting a procedure for the granting of permits; Issue written decisions in planning and zoning matters; Create and preserve a transcribable, verbatim record of all administrative proceedings.

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Haines discussed Idaho County as it has been mentioned several times that Idaho County does not have a Planning and Zoning. Per Idaho County Comprehensive Plan adopted in February 2020, all of Idaho County is zoned multi-use, has a population density of 1.94 citizens per square mile, and over 85% of Idaho County is Public Lands. “Outside the state Electrical, Heating Ventilation and Air Conditioning and Plumbing Codes, there are no additional local building inspections outside city limits...If you plan on dividing your property, please note that Idaho County does have a Subdivision Ordinance.” Haines noted that Idaho County does have an “Original Parcel” rule as well.

Haines discussed Idaho Regulatory Takings Act Guidelines which states: “Regulatory actions are harder to evaluate for “takings” because government may properly regulate or limit the use of private property, relying on its authority and responsibility to protect public health, safety and welfare. Accordingly, government may abate public nuisances, terminate illegal activity, and establish building codes, safety standards, or sanitary requirements generally without creating a compensatory “taking.” Government may also limit the use of property through land use planning, zoning ordinances, setback requirements, and environmental regulations.” (IRTAG, Page 7)

Haines discussed Title 34, Chapter 18- Referendum to eliminate Planning and Zoning:
“34-1801C. INITIATIVE AND REFERENDUM PROCEDURES FOR COUNTIES. Each county shall allow direct legislation by the people through the initiative and referendum.

Counties shall follow the procedures set forth in this chapter subject to the following provision:
(21) This section does not apply to zoning legislation including, but not limited to, ordinances required or authorized pursuant to chapter 65, title 67, Idaho Code.

Haines reviewed the proposed ordinance with the group and Idaho Code 63-604; Land Actively Devoted to Agriculture Defined was reviewed.

Julia Harrison addressed the Board. Harrison questioned enforcement of the proposed ordinance.

Lance Hoch questioned the Boards authority regarding what is “in my shop.”

Jim Williams discussed city rules and laws and informed the Board not to “let the cities tell us what to do.”

Carolyn Kiesz discussed the duties and powers per the State Constitution, Kiesz stated that Planning and Zoning is not required.

Haines stated that the Planning and Zoning requirement is addressed in the Land Use Planning Act as previously mentioned.

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Delton Walker stated that the Planning and Zoning Commission can be done away with, but the duties cannot. Without a Planning and Zoning Commission, those duties would be the responsibility of the Board.

Jeff Nauman stated that there is nothing in the proposal that eliminates the building of an outbuilding.

An unidentified person inquired what are the problems that were being solved through the proposed ordinance.

Haines clarified that it is to prevent buildings from being built in a setback or easement.

Hal Harris discussed Idaho Code 63-604 and questioned the wording, “As determined by the Assessor.”

Haines stated that 63-604 is the code used by the Assessor who determines if one qualifies for the exemption.

Jay Langer discussed setbacks and 50–60 foot right-of-way. Langer stated he believed that was a “taking.”

Jerod Odoms, Washington County Road & Bridge Supervisor, discussed Road & Bridge standards. Odoms stated that easements are different widths throughout the county. Some are twenty-five feet from the center.

Conley Walker discussed right-of-way versus prescriptive easements and questioned the difference. There was also a discussion of Frontage Requirements.

Robert Bias stated that some roads cannot accommodate 50-feet from the center. Bias requested a site visit from Odoms.

Mike Kaech stated that per the Constitution, property owners own the property to the center of the road. Kaech informed the Board that the county should buy that from the property owner.

Prosecuting Attorney, Delton Walker, stated that would have to be addressed through the Courts.

Gordon Wilkerson questioned the purpose of a 15-foot setback.

An unidentified person discussed road setbacks and Title 40 Chapter 6 and the purchase of a right-of-way. She stated a survey is to be done and is more for the purpose of a subdivision.

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Walker stated Title 40 Chapter 6 refers to Highway Districts while Idaho Code 40-203 addresses county roads.

Irv Leen questioned the liability of the county if a person were to build a structure and then find it is in the wrong place.

Walker explained the process to be followed to bring a person into compliance. Walker stated the Board of County Commissioners does not have enforcement powers.

Dan Leuthold stated there was a lot of opposition to the proposal. Leuthold stated he did not trust the Board or Planning and Zoning, and that he did not want to be governed or controlled.

John Hoff addressed the Board and stated that there was a development near him that has problems with water. Hoff stated that he helps with plowing roads. Hoff stated Washington County is a beautiful county and that rules provide guidelines.

Bob Gallagher stated it was a screwed up ordinance and that people want to be left alone. Gallagher stated no one was in favor of the proposal.

Nate Marvin indicated that the proposal may not be perfect. Marvin stated that there are 10,000 people in the county and not all 10,000 people are at this meeting.

Nikki Barnett expressed frustration with Planning and Zoning. Barnett stated it was not suggested that Road and Bridge look at setbacks in their area.

Walker stated the process to abandon a road is in Idaho Code 40-203A. Robert Bias inquired who drafted the proposal.

Haines showed the Commissioner minutes from October 3, 2022 where the matter was discussed. Haines stated it did not originate in Planning and Zoning.

Cathy Kaech again inquired who had written the proposal.

Haines stated the draft was written by Bonnie Brent per the Commissioners request.

Walker stated that a discussion may be started by the Planning and Zoning Administrator, the Planning and Zoning Commission or the Board.

Allis Chandler stated that it was interesting that on January 3rd, 2023, Kirk Chandler had no information on the matter. Chandler stated that it seems to her that there was a hidden agenda.

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Haines stated that the proposal has never come to a vote, but they had to have a draft to present at a hearing.

Walker discussed his statutory duty as the prosecuting attorney. Walker informed the group that there have been times when the county did have a separate attorney for Planning and Zoning because he cannot advise the County Commissioners and the Planning and Zoning Commission should there be a conflict.

Robert Bias stated everyone is impacted differently and that everyone has an opinion. Bias inquired what the problems are that the Board is trying to solve.

Walker stated that the intent of the proposal is to determine if a person constructs a building if it qualifies for the Ag exception or not.

Haines closed the meeting.

Written comments were submitted by Frank Schwartz, Lloyd Roberts and Bob Hamilton.

Chairman, Board of County Commissioners

ATTEST:

Clerk

A full audio recording of the Town Hall Meeting is available at the Clerk's Office upon request.