



BOISE COUNTY

BOISE COUNTY RESOLUTION# 2007-12

A RESOLUTION AUTHORIZING A POLICY FOR PROCEDURES FOR MITIGATION OF SUBDIVISION IMPACT

WHEREAS, Idaho Code Section 67-6513 authorizes governing boards to adopt ordinances establishing standards for the processing of subdivision permits that may provide for mitigation of the effects of subdivision development upon the ability of school districts to deliver services without compromising service delivery or imposing substantial additional costs upon current residents to accommodate proposed subdivision development, and

WHEREAS, Boise County has adopted Subdivision Ordinance 2006-02 establishing standards for the processing of subdivision permits that provide the determination of such mitigation,

NOW THEREFORE BE IT RESOLVED by the Board of Commissioners of Boise County that the Policy Regarding Evaluation and Mitigation of Impacts of Development on School Districts, attached hereto as App. A, be adopted and incorporated herein as the official policy of the Board of Commissioners of Boise County.

APPROVED AND ADOPTED by the Boise County Board of County Commissioners in open session of the 12th day of March, 2007; with an effective date of passage.

BOISE COUNTY BOARD OF COMMISSIONERS

Handwritten signature of Fred Lawson in black ink.

Fred Lawson, Chairman

Handwritten signature of Terry Day in blue ink.

Terry Day, Commissioner

Handwritten signature of Linda Zimmer in black ink.

Linda Zimmer, Commissioner

Attest:

Handwritten signature of Constance Swearingen in black ink.

Constance Swearingen, Boise County Clerk

Policy Regarding Evaluation and Mitigation of Impacts of Development on School Districts

Developers shall, as part of the subdivision application process, meet with the school district wherein the development lies to discuss impacts the proposed development will have on the school district and ways to mitigate those impacts.

The developer will submit to the Planning and Zoning Administrator a report detailing the results of its meeting with the school district. That report shall include a letter from the school district summarizing the meeting.

The school district may use the attached document, prepared jointly by Planning and Zoning Commission officials and School District officials, and the method described therein for determining impacts when the school district meets with the developer. The school district and developer may agree upon methods the developer will use to mitigate the impacts of the development. The agreed upon mitigation could be a fee or some other arrangement. Agreement or lack thereof will be noted in the report from the school district and developer.

The application will not proceed to hearing until the report is received by the Administrator.

Once at hearing, the Planning and Zoning Commission will review the report. If there is an agreement between the developer and the school district, the Commission should make compliance with the agreement a condition of approval.

If there is no agreement, the school district should testify about the estimated impacts of the development or submit a report on such impacts for the record. The report should also include a recommendation for methods of mitigation. The developer will be given an opportunity to testify or report on the impacts and any proposed mitigation.

If the school district does not testify or submit a report on the impacts and make a recommendation for mitigation, the Commission may, as a general practice, evaluate the impacts using the methods set forth in the attached document. The developer will be given an opportunity to testify or report on the impacts and any proposed mitigation. The Commission will then decide what mitigation is appropriate. The Commission may accept a fee in lieu of actual mitigation when a developer is in agreement.

Once appropriate mitigation is determined by the Commission, that mitigation will become a condition of approval.

Development Agreements to Mitigate the Effect on Public Schools of New Developments in Boise County

February 20, 2007

Jonathan Bart, John Cottingham, Frank Gallant, Vic Koshuta, Scott Mutchie

Contents

Executive Summary	2
Introduction	3
Obtaining Mitigation for Schools	3
Legal authority	3
Legal rationale	4
Implementing Chapter 8 of the Subdivision Ordinance	5
Assessing the Need for Mitigation	7
Methods	7
Results	9
Discussion	10
Reviews of this Report	11
Appendix A. Area and replacement costs for school buildings in Boise County	13
Appendix B. Sample Letter Summarizing the Effects Analysis	14
Appendix C. Sample Developer Contribution Agreement	15
Appendix D. Opinion from the Idaho Attorney General	22

Executive Summary

This is the final report of an *ad hoc* citizens group convened at the request of Commissioner Paul Stutzman in January 2006. We were asked to make recommendations about ways that schools could avoid adverse effects caused by new developments in Boise County. Our report contains recommendations for the Boise County Commissioners, the Planning and Zoning Commission, and the Boise County public schools. The recommendations have been reviewed and endorsed by legal counsel for the County and by Office of the Idaho Attorney General. The report contains two parts, described below.

Chapter Eight of the Boise County Subdivision Ordinance requires the County Commissioners to determine whether proposed subdivisions will lead to a reduction in the quality of government services, including schools, and, if so, to obtain mitigation for these effects prior to granting applications for subdivision permits. We recommend that the Commissioners delegate this responsibility to the School Boards. They should prepare an assessment of the adverse effects, if any, of proposed developments on the schools and forward their assessment to the Boise County Planning and Zoning Administrator. Whenever possible they should work with the developer on the assessment and agree with the developer on how any needed mitigation will be provided. We provide a sample transmittal letter summarizing the assessment and a draft development agreement. Developers who disagree with the school's assessment should be given ample opportunity to explain their view to the Planning and Zoning Administrator. If the Administrator cannot resolve the dispute, it should be considered by the Planning and Zoning Commission and, if necessary, the County Commissioners. Following this approach would place responsibility for the assessment where it logically belongs, on the schools, and would insure that developers have full opportunity to participate in determining what level of mitigation, if any, is warranted.

We also describe an approach, widely used elsewhere in the United States, that may prove helpful in assessing effects of new developments on schools. The procedure estimates only the effect of crowding since other school costs, such as teacher salaries and textbooks, are provided by the State based on tax dollars. We estimated the average costs to the schools of new households by calculating pupils per household, square feet of school space per pupil, construction costs per square foot of school space, and fraction of the life of new school space utilized per household. The product of these four quantities has been used in other studies to estimate the financial effect per household. In our study, results varied among the districts, largely because the estimated number of pupils per household varied. We suspect that pupils per household, among new developments, will be similar across the County so we suggest using the county-wide average for all three School Districts. This number was \$1927 per household. We therefore suggest that \$2000 be used as a reasonable default, estimated effect per household for new developments. If this value is viewed as reasonable, for a given development, by the developer and School District, then mitigation with a value of \$2,000 should be obtained for each proposed household as part of a development agreement with the schools. We emphasize, however, that the figures in this report are averages, so a given development may have either more or less effect, and that several means exist to provide mitigation for the effects.

to deliver services without compromising the quality of service delivery to current residents or imposing substantial additional costs upon current residents to accommodate the proposed subdivision.

B. If the Board determines that the proposed subdivision is likely to compromise the quality of service delivery to current residents or is likely to impose substantial additional costs upon current residents, the Board, prior to granting the permit, must require the applicant to provide mitigation for such effects as authorized by the provisions of Section 67-6513, Idaho code.

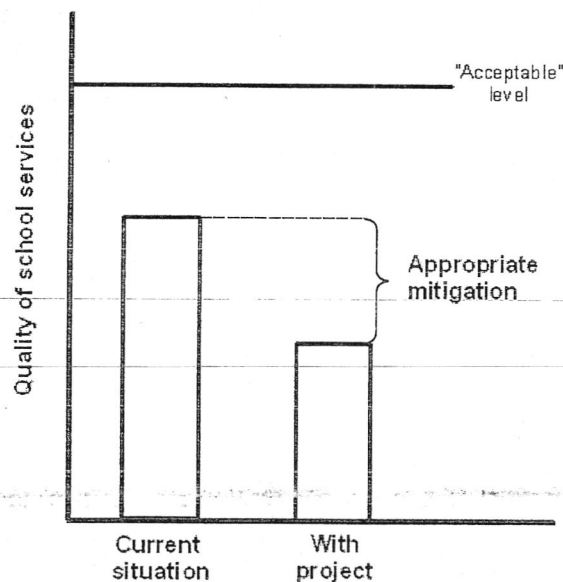
Section A directs the Commissioners to assess the effect of implementing proposed subdivisions. Section B directs them to require mitigation, prior to granting the permit, if it is determined that the subdivision will “compromise the quality of service delivery to current residents.”

Legal rationale

The principle that leads to requiring mitigation for effects of new residents on schools is that *people should pay for problems they create*. If people move into a County and thereby cause problems in the form of crowding or other reduction in the quality of services provided by government, including schools, then they – rather than current residents – should provide mitigation. On the other hand, it is not reasonable to require that new resident pay to improve the quality of existing schools. This would require that they pay to solve problems they did not create.

This point is made graphically in Fig. 1. The vertical axis portrays the quality of school service. The current level (left rectangle) is assumed to be lower than an “acceptable” level under

Fig. 1. Appropriate mitigation for adverse effects on schools



Introduction

In January, 2006, Mr. Paul Stutzman, then a Boise County Commissioner, asked a group of citizens to examine ways to mitigate the effect on public schools of new developments in Boise County. At a meeting soon thereafter the full Boise County Board of Commissioners endorsed Commissioner Stutzman's request. This document is the final report of that group. The report is divided into two parts. First, we review of provisions of the Boise County Subdivision Ordinance and suggest a general approach to securing mitigation for schools. Second, we present an approach for calculating the needed mitigation, if any, arising from the construction of new housing developments. We hope that this report will help Boise County officials, school leaders, and citizens interested in maintaining the quality of our public schools understand the Subdivision Ordinance requirements for obtaining mitigation of effects caused by development. We also hope the report will help developers understand their obligations under the Subdivision Ordinance and how they can obtain swift and fair actions on their applications for subdivision permits.

Obtaining Mitigation for Schools

Legal authority

Title 67, Chapter 65, of the Idaho Statutes directs Counties and other "governing boards" to adopt ordinances establishing standards for processing applications for subdivision permits. This Chapter further states that the ordinances may provide for mitigation. The relevant passage, from 67-6513, is:

Each governing board shall provide ... for standards and for the processing of applications for subdivision permits under sections 50-1301 through 50-1329, Idaho Code. Each such ordinance may provide for mitigation of the effects of subdivision development on the ability of political subdivisions of the state, including school districts, to deliver services without compromising quality of service delivery to current residents or imposing substantial additional costs upon current residents to accommodate the proposed subdivision.

In accordance with the provision from Title 67, Chapter 65, quoted above, on December 6, 2005, Boise County adopted a Subdivision Ordinance (Ordinance 2006-02) which included the following provisions:

Chapter 8, Mitigation of Effects of Subdivision Development on Political subdivisions and School Districts

Section I. General

A. Prior to the granting and/or approval of a permit to subdivide land within Boise County, the Board shall determine if the proposed subdivision is likely to affect the ability of political subdivisions of the State, as well as School Districts,

some standard (horizontal, solid line). The project, as proposed, would reduce the level of government services (right rectangle). Consequently, mitigation is needed to maintain the level of services. Developers and those who will purchase their homes, however, should not be forced to provide mitigation to increase the quality of government services above their current level, and, in particular, they should not be forced to increase the quality of government services to the “acceptable” level. All citizens in the County must share equally in raising the quality of services to that level (or any other) level.

These points have been made several times in recent legal discussions. For example,

Constitutional principals protect developers against overreaching municipalities that attempt to exact economic contributions or other public benefits unrelated to development impacts. State court judicial formulations of the degree of protection have required a “reasonable relationship,” or “rational nexus,” between the exaction and project impacts, or that the exaction be “specifically and uniquely attributable” to development impacts. Likewise, the U.S. Supreme Court has required a “rational nexus” and a “rough proportionality” of the permit condition to the impacts of the regulated activity for the permit exaction to pass constitutional muster. Dolan v. City of Tigard, 512 U.S. 687 (1994); Nollan v. Cal. Coastal Comm’n, 483 U.S. 845 (1987). (M.R. Healy and E.E. Buzuvus, 2002. Development agreements must navigate a changing legal landscape. Environmental Law Advisory.)

The Idaho statute above, and various other legal documents including decisions of the U.S. Supreme Court, thus lay the basis for requiring mitigation to insure that new residents do not cause a *reduction* in the quality of government services, but the same body of literature makes clear that the statute above cannot be used to make new residents pay to *improve* the quality of services.

It should also be pointed out that developers and those who move into their houses may provide mitigation through existing channels such as tax dollars or fees. These payments must be acknowledged in calculating how much mitigation, if any, should be provided in accordance with Chapter 8 of the Boise County Subdivision Ordinance. This point is discussed more fully, with respect to the schools, below.

Implementing Chapter 8 of the Subdivision Ordinance

Although Chapter 8 of the Subdivision Ordinance directs the Board of County Commissioners to assess whether mitigation is needed for subdivisions, and to determine how to obtain any needed mitigation, it does not seem likely – or even appropriate – that Commissioners will carry out such analyses themselves. The same can be said of the Planning and Zoning Commission. Neither they nor the County Commissioners have time or expertise to carry out these assessments. Instead, we recommend that the assessments be carried out at the agency level, which in the case of the schools means the School boards or members of the school community (such as the School Superintendents) selected by the School Boards.