



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.

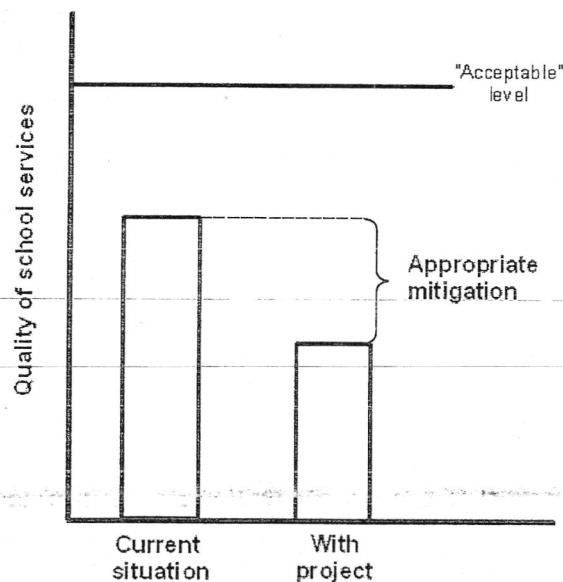
Section A directs the Commissioners to assess the effect of implementing proposed subdivisions. Section B directs them to require mitigation, prior to granting the permit, if it is determined that the subdivision will “compromise the quality of service delivery to current residents.”

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.

The process we envision would thus include the following steps:

1. When applications for subdivision permits are submitted to the Administrator of the Planning and Zoning Commission, the Administrator sends them to the school, gives the developer this report along with all attachments, and notifies the developer that he or she should meet with the Schools.
2. The School representative attempts to work with the developer to assess how much, if any, mitigation is needed and how it will be provided. If the developer does not agree or does not wish to meet with the school's representative, then this representative completes the assessment. In either case, the school forwards their assessment to the Planning and Zoning Administrator who includes it in the application package. If no such assessment is received from the school, the Administrator may assume that no mitigation is needed or he or she may develop an assessment using other channels.
3. If the developer does not participate in producing the assessment, the Administrator informs him or her that the application package will not be considered complete until the developer either provides a legally binding document promising to provide the needed mitigation or states that they do not agree with the assessment. In the latter case, the Administrator attempts to resolve the issue working with the school and the developer. If this attempt fails, the matter is passed to the Planning and Zoning Commission for resolution. If they are also unsuccessful in resolving the dispute, it is passed to the Board of County Commissioners for their decision.

This plan fulfills the requirements established by Chapter 8 of the Subdivision Ordinance but does not place an undue burden on the County Commissioners. Instead, the assessment is made by those closest to, and most expert in, the subject matter and the developer is invited to participate in the process.

Little is needed to implement this process. For example, no changes are needed in the Subdivision Ordinance. It would be helpful, however to have a statement from the County Commissioners endorsing the suggested process and stating, in particular, that schools are encouraged to carry out the assessment. The County Commissioners and Planning and Zoning Commissioners might also wish to state that if they do not receive an assessment from the schools, they will assume that no mitigation is needed. Such a statement will both assure the schools that the County Commissioners and Planning and Zoning Commission do wish them to carry out the assessment and will notify them that the only way their school is likely to obtain mitigation is if they complete the assessment and provide it to the Planning and Zoning Commission.

Sample documents for communicating the results of the assessment to the Planning and Zoning Commission and for writing a development agreement with the developer to provide any needed mitigation are contained in appendices B and C respectively. In the next section we discuss ways of carrying out the assessment.

Assessing the Need for Mitigation

Our goal in this section was to examine the effect of new developments on the public schools of Boise County. Specifically, we sought to answer the question: “How much do costs to current residents, of maintaining the current public school system, change as a result of constructing new households in the County?” In studies such as this one, it is customary to divide school costs into capital costs for constructing new facilities and all other costs and to focus only on capital construction costs. The rationale for this approach is that maintenance costs are provided from general appropriations from tax payers from throughout the State (for State appropriations) or country (for federal appropriations). There is no reason to believe that state or federal taxes paid by current residents of Boise County would increase because new residents move into the County. In contrast, new school facilities are paid for by levies and bonds. To the extent that new residents require new facilities, current residents do bear the costs unless they are mitigated through contributions made by the developers and/or the new residents. It might be argued that new facilities wear out and will eventually have to be replaced and that future replacement costs should also be considered in calculating total costs, however this has not been done to our knowledge and would be difficult. We have therefore defined “new costs” as being restricted to the cost of providing initial, new facilities for the new students.

In some States, some of the cost of capital construction comes from sources other than bonds or levies. For example, the State may contribute a fixed percentage of the capital costs. This is not true in Idaho; all costs of new facilities are borne by residents of the school district. Our central question was thus “What is the cost of providing school facilities, at the current level of quality, for new residents?” Details of the procedure we used are explained in “Methods”. First, however, we present a description of the existing school facilities in Boise County.

Description of the Boise County public school system

Boise County has three school districts. The Garden Valley School District (71) has elementary schools in Garden Valley and Lowman and a junior-senior high school in Garden Valley. The Basin School District (72) has an elementary school and a high school, both in Idaho City. The Horseshoe Bend School district (73) has elementary, middle, and high schools, all in Horseshoe Bend. At the start of the 2006-2007 year, more than 1000 students were enrolled in the county public schools. Additional information about the three districts is available at <http://www.epodunk.com/cgi-bin/genInfo.php?locIndex=6851>.

Methods

We used a common approach for calculating costs of new school facilities and expressing them on a per household basis. We used the US Census Bureau’s definition of household: “all the people who occupy a household as their usual place of residence”. Costs per household for new school construction were calculated as

$$\left(\frac{\text{Pupils per household}}{\text{Square feet per pupil}} \right) \left(\frac{\text{Construction cost per ft}^2}{\text{Years / pupil}} \right) \left(\frac{\text{Years / building}}{\text{Years / building}} \right) = \left(\frac{\text{Cost per household}}{\text{household}} \right) \quad (1)$$

where

pupils/household = is the estimated average number of children, that will be enrolled in the Boise County public schools, per new household,

Square feet/pupil = current number of pupils divided by the current area (in ft²) of all school buildings,

Construction cost/ft² = the estimated average cost to produce a square foot of school building, averaged across different types of facility,

Years/pupil = average number of years that children moving into new dwellings will attend the Boise County public schools, and

Years/building = Number of years that new building space can be utilized by students before replacement or major renovation is needed.

The last term, (years/pupil)/(years/building) is included because once new space is constructed for entering pupils it will be available for several “generations” of pupils so no one household should pay all of the construction cost. Some analysts express this term by discounting the future value of the constructed space. We prefer the approach above because it is easier to understand and makes the assumptions clear yet yields similar results to the approach using discounted future values. We evaluated expression (1) for elementary schools and middle or senior high schools in each of the three school districts. In expression (1), number of pupils and area of school buildings appear in the numerator and denominator so it might seem that they would cancel and simplify the expression. But expression (1) is calculated for each level of school (elementary vs. middle and high school) and has sometimes been calculated for different types of household (e.g., single family, townhouse, apartment). For these purposes, the full expression as defined above is needed.

We used the numbers of pupils enrolled at the start of the 2006-2007 academic year for number of pupils. The State Tax Commission provided us with the number of households in each School District not including the cities. We obtained estimated population sizes (as of July 2005) for each of the four cities from a web site (http://www.city-data.com/county/Boise_County-ID.html) and divided these numbers by the estimated people per household obtained from the web site. The results were added to the figures from the Tax Commission to obtain the estimated total number of households in each School District. Areas of each school building, and replacement costs for them, were obtained from School District records. We do not have any data on ages of pupils who move into the County. The range in possible values is 1, for incoming families with children ready to enter their last year of high school, to 12, for families with pre-school age children. We suspect most children in new subdivisions enter the

school system at a fairly young age so we used a figure of 8 years as the mean time/pupil in the system. We used 30 years as the average life of a school building before major renovations are needed. We therefore used a fraction of $8/30 = 0.27$

Results

In Boise County in 2006 the pupils per household varied from 0.07, for elementary pupils in Garden Valley, to 0.24 for high school pupils in Horseshoe Bend (Table 1). Square feet per pupil varied from 66, for elementary pupils in Garden Valley to 263 for high school students in Horseshoe Bend (Table 2). Construction costs varied from \$136 to \$190.

Table 1. Pupils per household

District	Number of pupils		Number of households	Pupils per household	
	Elementary	Middle/High		Elementary	Middle/High
Garden Valley	131	144	1768	0.07	0.08
Basin	218	213	1753	0.12	0.12
Horseshoe Bend	160	182	676	0.24	0.27
All	509	539	4197	0.12	0.13

Table 2. Square feet per pupil

District	Area		Sq-ft/pupil	
	Elementary	Middle/High	Elementary	Middle/High
Garden Valley	8624	28167	66	196
Basin	16617	59301	76	278
Horseshoe Bend	13500	47800	84	263
All	38741	135268	76	251

Table 3. Construction costs per square foot¹

District	Elementary	Middle/High
Garden Valley	136	169
Basin	190	190
Horseshoe Bend	190	144
All	178	169

¹ See Appendix One

Inserting the figures from Tables 1-3 into expression 1 yielded the estimated, average cost per household to maintain school quality despite adding new students (Table 4). Separate figures were obtained for elementary and middle or high schools. These two figures were then summed to obtain the estimate per household. Results varied from \$885 in the Garden Valley School District to \$3488 in the Horseshoe Bend District.

The main reason for the difference in estimates for the three Districts was the large difference in estimated pupils per household. This figure was about 0.07 for the Garden Valley and about 0.25 for the Horseshoe Bend District. The ratio of these figures, $0.25/0.07 = 3.7$, was close to the ratio of estimated effects for the two Districts $3488/885 = 3.9$.

Table 4. Average effect per household

District	Level	Pupils/household	Feet/pupil	Cost/foot	Fraction	Effect
Garden Valley	Elementary	0.07	66	136	0.27	170
	Middle/High	0.08	196	169	0.27	715
	Total					885
Basin	Elementary	0.12	76	190	0.27	468
	Middle/High	0.12	278	190	0.27	1711
	Total					2179
Horseshoe Bend	Elementary	0.24	84	190	0.27	1034
	Middle/High	0.24	263	144	0.27	2454
	Total					3488
All districts	Elementary	0.12	76	178	0.27	438
	Middle/High	0.13	251	169	0.27	1489
	Total					1927

Discussion

The estimated costs of maintaining school facilities despite additional houses and students in the County provide average values for the County. The differences between Districts, as noted above are due mainly to differences in the current number of pupils per household. It seems likely, however, that the numbers of pupils per new household may be rather similar across the County. If so, then using the County wide average of \$1927, or about \$2,000, would be preferable to using the District-specific figures.

It is worth noting that Garden Valley is becoming the same kind of “bedroom community” to the Treasure Valley as are Horseshoe Bend and Idaho City, so the number of pupils per household may increase in coming years. If so, then the mitigation per household should be adjusted periodically to reflect this change.

If interest in this report warrants, the analysis could be refined by obtaining more accurate figures for replacement costs of school buildings, for the average number of years spent in schools per new pupil, and the expected life of new buildings.

A final comment needs to be emphasized. We are not recommending that the schools or the County use the material in this section to assign pre-set fees for developments. Instead, we encourage the developer and School District to work together to make a fair appraisal of the adverse effects, if any, that will occur for the school system due to the development and to negotiate an agreement for obtaining mitigation for any such effects. The methods described above have been widely employed and may be useful in this analysis but they should be modified as needed (for example by adjusting the number of children per household as appropriate) or replaced by other methods completely.

Reviews of this Report

We sought review from several people of the material in this report. Of particular concern was the issue of whether recommending the procedure described in this report might constitute imposing an “impact fee” on developers. If mitigation is obtained by imposing a “fee” on developers, then special procedures established by the Idaho Legislature in the “Impact Fee” statutes must be followed. Boise County, however, does not have an Impact Fee Ordinance, which is required for a County to require payment of impact fees, and even if it did, this would not help the schools because under current Idaho statutes, impact fees cannot be used to obtain mitigation for schools.

Our position on this issue has been that the Legislature clearly intended that schools can obtain mitigation because they are specifically included as one branch of government that can obtain mitigation. We believe that the critical question is whether developers must pay a “fee” for mitigation. A fee, in our view, is a pre-determined charge that applicants for a permit or some other service, must pay. Fees are determined prior to and independent of the applicant. Applicants have no option to debate or re-negotiate the fee. Thus, people buying a hunting license or paying a processing fee are not permitted to negotiate the price. When this situation arises, it makes sense that government should carry out a detailed review, according to established standards, to determine an appropriate amount to charge. In contrast, when the person making the payment negotiates the amount, there is no need for such a process. It is thus critical that developers be given every opportunity to participate in the assessment to determine whether mitigation is needed and if so in what amount. Under these conditions, the payment is a negotiated agreement, not a fee. Even if the developer does not accept the determination of the County, the County is still not imposing a fee because developers are given ample opportunity to present their case and negotiate a more favorable agreement. We believe that the process thus does not involve imposing a fee and that impact fee procedures therefore are not required and indeed should not be used because using them would reduce the opportunity for the developer to participate in the assessment.

Legal counsel for the Planning and Zoning Commission reviewed this document and concurred with our position. Senator Tim Corder studied our report and then asked the Idaho Attorney General the following questions on our behalf:

1. When, if ever, may counties impose a mitigation fee upon a developer as a condition of approval?
2. Is there statutory or constitutional authority, prohibitions or guidance for determining the costs for migration?
3. What are the implications of forty-four counties individually formulating a process of assessment?
4. Could it be argued the mitigation fee is a tax and is unlawful without impact fee authority apart from promulgation?

The full response from the Attorney General is contained in Appendix D. Senator Corder summarized the opinion and his judgment about the issue in an e-mail to the senior author on February 13, 2007. The important passage from this e-mail was:

What you need to know is that the official opinion is that the County can do just as you have described as a condition of approval. It is good news.

Thus, legal counsel for the County and the Idaho Attorney General's Office have both reviewed the approach in our report and concluded that the procedure is legal.

Appendix A. Area and replacement costs for school buildings in Boise County

District	Level	Building	Address	Area	Cost/sq-ft	Total Cost	Ave. cost/sq-ft	
Garden Valley	Elementary	Elementary Modular #1	Garden Valley Road	1,056	80	84,480		
		Elementary Modular #2	Garden Valley Road	1,056	80	84,480		
		Elementary Modular #3	Highway 17	1,056	80	84,480		
		Elementary Module #4	Garden Valley Road	1,056	80	84,480		
		Garden Valley Elem School	Garden Valley Road	4,400	190	836,000		
	Totals			8,624		1,173,920	136	
Garden Valley	Middle/High	Garden Valley High School	Garden Valley Road	14,782	190	2,808,580		
		Garden Valley Middle Building	Garden Valley Road	2,520	190	478,800		
		Industrial Arts Building	Garden Valley Road	4,600	190	874,000		
		Lowman Elementary School	Highway 21	760	190	144,400		
		Middle Modular # 1 & 2	Garden Valley Road	1,680	80	134,400		
		Middle Modular # 3 & 4	Garden Valley Road	1,960	80	156,800		
		Middle School Modular 5 & 6	Garden Valley Road	1,865	80	149,200		
Totals				28,167		4,746,180	169	
Basin	Elementary	Basin Elementary School	611 Main Street	16,617	190	3,157,230	190	
		Middle/High	Basin Middle School	100 Centerville Road	1,714	190	325,660	
			Classroom #11/12	611 Main Street	1,838	190	349,220	
			Classroom #13 & 14	611 Main	1,799	190	341,810	
			Classroom Bldg #9/10	611 Main Street	1,848	190	351,120	
			Classroom Building #15	611 Main Street	966	190	183,540	
			Idaho City Jr. & Sr. High Sch001	Placer Street	46,161	190	8,770,590	
			Pre-School Education Complex	611 Main Street	2,550	190	484,500	
		Vo-Ag Building	103 Placer Street	2,425	190	460,750		
Totals				59,301		11,267,190	190	
Horseshoe Bend	Elementary	Horseshoe Bend Elem School	School Drive	13,500	190	2,565,000	190	
		Middle/High	Community Hall	School Drive	3,600	190	684,000	
			Horseshoe Bend High School	School Drive	16,700	190	3,173,000	
			Horseshoe Bend Middle School	School Drive	7,500	190	1,425,000	
			Horseshoe Bend School Gym	School Drive	20,000	80	1,600,000	
Totals				47,800		6,882,000	144	
All	Elementary			38,741		6,896,150	178	
	Middle/High			135,268		22,895,370	169	

Appendix B. Sample Letter Summarizing the Effects Analysis

(date)

Mr. Craig Wolford
Administrator
Boise County Planning and Zoning Commission
Idaho City, ID

Dear Mr. Wolford:

Our School District has conducted an analysis to estimate the adverse effect, if any, on our schools of the proposed subdivision, (*subdivision name*).

Methods described in the report by Bart et al. (2007), that you have previously conveyed to me, were used. We estimate that the average number of school students per housing unit in the new subdivision will be xxx. Using this value, and expression (1) in the report, the estimated costs for the school system per housing unit, excluding costs that will be reimbursed by taxes to be paid by new residents, will be xx. The total cost, for the xx housing units proposed, will be xx.

(Add description of discussions with the developer and whether a development agreement between the schools and the developer has been signed)

Please contact me if you have any questions.

Sincerely,

(signature block)

Appendix C. Sample Developer Contribution Agreement

THIS CONTRIBUTION AGREEMENT (this "Agreement") is entered into this _____ day of _____, 20____, by and between _____ (Developer), and _____ School District ("School District"). Developer and School District are sometimes referred to herein individually as a "Party" and collectively as "Parties."

RECITALS:

A. Developer owns that certain real property legally described on **Exhibit A**, attached hereto and made a part hereof ("**Developer Property**"), and when developed, will be served by School District.

B. Developer has filed, or in the immediate future will file, an application to Boise County for a conceptual development and preliminary subdivision plat approval in connection with Developer Property (referred to herein as the "**Project**"). As planned, Project will contain approximately _____ residences and _____ commercial units. It is anticipated that, at full build out, Project will add students to School District.

C. Project recognizes the need for excellent school facilities to serve the community, including new students in Project, and appreciates the mission of School District to provide educational excellence that gives students the opportunity to succeed in an ever-changing world. Project recognizes that funding for school facilities relies on the sale of bonds approved by a two-thirds majority vote of School District taxpayers. As evidenced by a recent Idaho Supreme Court ruling and state legislative studies, while such taxpayer approval ensures local control, the hurdle can be difficult to overcome.

D. Project desires to honor the concept of local control and also desires to assist School District to more easily clear this hurdle by voluntarily committing to provide financial contributions to be used to

_____ The Parties acknowledge that there is no requirement for Project to financially assist School District other than as duly established through property taxes.

E. Consistent with the terms hereof, Project desires to voluntarily contribute toward the payment for the application described in Section D. above, which will assist School District to readily meet its mission statement for all students, including those students that might reside in Project, and which school will improve the marketability of Project.

F. School District recognizes and appreciates the willingness of Project to make such voluntary contributions assuming that Project is approved by Boise County. School District

recognizes and appreciates Project's willingness to maintain or improve the community-wide educational standard for current residents and future ones.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and in consideration of the recitals above, which are incorporated herein, and the premises and the mutual representations, covenants, undertakings and agreements hereinafter contained, the Parties represent, covenant, undertake and agree as follows:

1. Term. The term, of this Agreement shall commence on the date of contract for the first sale of a residential lot in Project and the Term shall continue until all lots in Project are sold and closed.

2. Contribution. Developer shall deliver, or cause to be delivered, to a title insurance company licensed in the State of Idaho ("**Escrowee**"), on or about the closing date of the first sale of each residential lot in Project, an amount equal to the mitigation measure recommended by the Boise County Planning and Zoning Commission as revised annually (\$2,000 in 2006 and 2007) for Boise County projects paid in connection with the first sale of each such residential lot in Project (individually, the "**Contribution**" and collectively, the "**Contributions**") or the equivalent in in-kind services and materials as described in Appendix B. The Contribution shall be paid subject to the terms of this Agreement and shall only be paid in connection with the sale of a residential lot in Project. Hence, should Developer transfer all or a portion of Project to another developer, such bulk transfer shall not trigger the payment of the Contribution.

3. Escrow. The Contributions contemplated herein shall be held by Escrowee through a long-term escrow using form escrow instructions then in use by Escrowee, modified to reflect the terms and conditions of this Agreement and as mutually agreed upon by the Parties. The cost of the escrow relating to this Agreement and the transactions contemplated herein shall be paid by Developer. This Agreement shall not be merged into any escrow instructions, and the escrow instructions shall always be deemed auxiliary to this Agreement. The provisions of this Agreement shall always be deemed controlling as between Developer and School District.

The terms of the escrow instructions shall include, without limitation:

- Any and all Contributions shall be held by Escrowee and shall be delivered to School District.
- The Parties shall, as soon as practicable, direct Escrowee to deliver any and all Contributions held by Escrowee to School District, which Contributions shall be used by School District according to this agreement.
- Except for notices or demands expressly contemplated in the escrow instructions, Escrowee shall be authorized to disregard any and all notices or warnings given by any one of the Parties or by any other person or entity, but Escrowee shall be authorized to regard and to comply with any and all orders, judgments or decrees

entered or issued by any Court with competent jurisdiction, and in case Escrowee obeys or complies with any such order, judgment or decree of any Court with competent jurisdiction, the Escrowee shall not be liable to any of the Parties hereto or any other person or entity by reason of such compliance, notwithstanding any such order, judgment or decree is subsequently reversed, modified, annulled, set aside or vacated.

- The escrow instructions may not be amended except by a writing signed by all of the Parties thereto.
- Deposits made pursuant to the escrow instructions may be invested on behalf of any Party or Parties hereto; provided that any direction to Escrowee for such investment shall be expressed in writing and contain the consent of all other Parties to the escrow instructions.

4. Conditions Precedent To Delivery of Contribution. This Agreement, and Developer's obligation to deliver the Contributions to School District, are subject to the following express conditions precedent. Notwithstanding anything to the contrary which may be contained herein, each of the conditions precedent may be waived in writing by Developer, such conditions being for the exclusive protection and benefit of Developer. School District agrees to cooperate with Developer and to execute any documents which may be necessary or convenient to the performance or satisfaction of these conditions precedent.

(a) Approval by Boise County. The Project is (or will be) zoned and/or subdivided and all studies, reports, permits, approvals and written agreements satisfactory to each residential lot buyer (**Buyer**) (including, without limitation, site plan approvals, subdivision plat(s), building and use permits, and environmental reports and permits) required by the appropriate public or governmental authorities to permit the development of Project in accordance with Buyer's intended use have been finally adopted, all without conditions that, in Buyer's reasonable opinion, would cause construction of facilities and/or site work on the Property to be economically unfeasible.

(b) Failure of a Condition Precedent. In all events, the obligation of Developer to pay Contribution(s) is subject to the provisions of paragraph 5 below and is contingent upon: (i) the conditions precedent provided for in this Agreement being satisfied or waived by Developer in writing; and (ii) School District otherwise having performed all of School District's obligations hereunder. In the event of a failure of any condition precedent set forth herein, then Developer may declare this Agreement null and void, and the Parties shall have no further obligations or liabilities hereunder.

5. Supreme Court Ruling. The Parties acknowledge that the Idaho Supreme Court ruling in *Idaho Schools for Equal Educational Opportunity vs. the State of Idaho* has prompted the State legislature to review possible alternative funding sources for public schools. The Parties acknowledge that the legislature may enable School District to charge fees in connection with residential lots in Project to fund public school capital facilities. The Parties acknowledge and agree that if School District duly charges such fees in connection with any residential lot, each residential lot owner shall pay such fees (whether that residential lot owner is Developer or

a subsequent owner); provided, however, if the conditions precedent to the release of Contribution from Escrowee to School District have been met, as provided further in paragraph 4 above, then Developer shall receive a credit against any and all such fees paid (whether by Developer or a subsequent residential lot owner), which credit shall be an amount equal to the lesser of: such fee charged by School District and paid in connection with any particular residential lot; or the Contribution delivered to Escrowee in connection with such residential lot.

In addition to the obligations specified in this Agreement or contemplated to be performed, executed and/or delivered by School District or Developer, in light of the unknown circumstances surrounding School District's ability to charge and collect such fees, School District and Developer, also agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered at any time during the Term, any and all such further acts and assurances as School District and Developer, as the case may be, may reasonably require to evidence the intent of the Parties hereunder. Notwithstanding anything to the contrary herein, if enabled to charge fees for capital facilities, School District shall not charge any such fees in connection with commercial lot development in Project.

6. Termination.

(a) Upon Agreement. The Parties may terminate this Agreement by mutual written agreement upon the terms contained in such agreement.

(b) Upon Breach. Either Party may elect to terminate this Agreement if the other Party is in a material breach of this Agreement and such default continues for a period of thirty (30) days after written notice thereof has been given to the Party in default by the other Party; provided, however, that if the nature of the alleged breach is such that it cannot be cured within thirty (30) days, this Agreement shall not terminate thirty (30) days after the giving of written notice if in the opinion of the non-defaulting Party, the Party alleged to be in breach is taking or has taken reasonable steps (within said thirty (30) day period) to cure the alleged breach and such steps are being diligently pursued.

(c) Release. Upon the expiration or earlier termination of this Agreement, the Parties shall thereafter be automatically relieved and released from all further liabilities and obligations hereunder, except for: (i) liabilities and obligations accruing prior to the date of expiration or earlier termination; and (ii) liabilities and obligations contained herein which are expressly made to extend beyond the Term.

7. Indemnity.

(a) Developer. Developer agrees to indemnify and hold harmless School District or its trustees, employees, agents or representatives from any loss, cost, damage, liability or expense (including reasonable attorneys' fees) incurred as a result of the failure of Developer or any of its members, employees, agents or representatives to act or perform as required by the terms of this Agreement.

(b) School District. School District agrees to indemnify and hold harmless Developer or any of its members, employees, agents or representatives from loss, cost, damage, liability or expense (including reasonable attorneys' fees) incurred as a result of the failure of School District or its trustees, employees, agents or representatives to act or perform as required by the terms of this Agreement.

(c) No Third-Party Beneficiaries. The obligations of each Party shall inure solely to the benefit of the other Party, and no person or entity shall be a third-party beneficiary of this Agreement.

8. Consolidation. In the event that School District consolidates with another school district, any and all Contributions shall be expended in connection with the consolidated school (or the existing school as provided further in Section 4 located within the geographic area that presently comprises the School District.

9. Notices. All Notices, demands, requests, and other communications under this Agreement shall be in writing and shall be deemed properly served or delivered, if delivered: by hand to the Party to whose attention it is directed; or when sent, three (3) days after deposit in the U.S. mail, postage prepaid, certified or registered with return receipt requested; or one (1) day after deposit with a nationally recognized courier providing next day delivery; or if sent by facsimile to the Party to whose attention it is directed, addressed as follows:

Developer:

With a copy to:

And with a copy to:

School District:

With a copy to:

or at such other address or to such other Party which any Party entitled to receive notice hereunder designates to the other Party in writing as provided above.

10. Counterparts. This Agreement may be executed in several counterparts and all as so executed shall constitute one (1) agreement binding on all the Parties hereto.

11. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the Parties and the Parties' respective heirs, executors, administrators, successors and assigns. School District shall look to any successors and/or assignees of Developer in connection with Contribution due following such assignment. Developer shall include reference to this Agreement in any restrictive covenants to be recorded in connection with Project.

12. Attorneys' Fees. In any action arising between the Parties seeking enforcement of any of the terms or provisions of this Agreement, the prevailing Party in any such action shall be awarded, in addition to any damages, injunctive or other relief, and the prevailing Party's reasonable costs and expenses including reasonable attorneys' fees.

13. Waiver. No consent or waiver, express or implied, by any Party to or of any breach or default by any other Party in the performance of obligations hereunder shall be deemed or construed to be a consent to or of any other breach or default in the performance by such Party hereunder. Failure on the part of any Party to complain or any act or failure to act of any other Party or to declare another Party in default, irrespective of how long such failure continues, shall not constitute a waiver by any Party of such Party's rights hereunder.

14. Headings. The headings of the articles and sections of this Agreement are inserted solely for convenience or reference and are not a part of and are not intended to govern, limit or aid in the construction of any term or provision hereof.

15. Further Assurances. Each Party hereto agrees to execute and deliver all such other and additional instruments and documents and do all such other acts and things as may be necessary to more fully effectuate this Agreement

16. Mediation in the Event of Failure to Agree. In the event a disagreement arises between the Parties, any Party may demand mediation and shall give written notice to that effect to the other Party. The Parties shall have thirty (30) days from the date of such notice to agree on a mediator. Once a mediator has been obtained, no Party may avail itself of any other legal or equitable remedy available to such Party under Idaho law until the earlier of sixty (60) days or such mediation has been concluded. If the result of such mediation is unsatisfactory to one or more Parties, then any Party may avail itself of any legal or equitable remedy available to such Party under Idaho law.

17. Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

18. Time Is of the Essence. Time is of the essence with respect to the obligations of the Parties hereunder.

IN WITNESS WHEREOF, the Parties have signed this Contribution Agreement effective as of the date first written above.

DEVELOPER:

SCHOOL DISTRICT:

SCHEDULE OF EXHIBITS

Exhibit A - Legal Description of Developer Property

Exhibit B – Description of In-kind Services and/or Materials

EXHIBIT A: LEGAL DESCRIPTION OF DEVELOPER PROPERTY

APPENDIX B: DESCRIPTION OF IN-KIND SERVICES AND/OR MATERIALS

Appendix D. Opinion from the Idaho Attorney General



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

February 5, 2007

VIA HAND DELIVERY

The Honorable Tim Corder
Idaho State Senate
STATEHOUSE

Dear Senator Corder:

This letter is in response to questions that you sent to me by e-mail regarding the authority of counties to impose mitigation fees upon developers. I will respond to your questions in turn.

Question 1. When, if ever, may counties impose a mitigation fee upon a developer as a condition of approval?

Response to Question 1.

Counties may impose fees upon developers to mitigate the effects of subdivision development upon enactment of a subdivision permit ordinance that provides for such fees. While, under state statute, counties must enact an ordinance providing for the processing of applications for subdivision permits, providing for the assessment of mitigation fees is optional.¹ Counties may make payment of this fee a condition of development approval² Idaho Code § 67-6503 specifically gives all Idaho counties and all Idaho cities this authority. While exercising this authority, counties must establish mitigation fees in compliance with Chapter 82, Title 67 of the Idaho Code. Even if Idaho Code § 67-6503 did not exist, counties would nevertheless have this power as Idaho Code § 67-8202 empowers governmental entities with the authority to adopt ordinances to impose development impact fees. Counties, of course, have the authority to adopt ordinances.³

¹ See Idaho Code § 67-6513.

² See Idaho Code §§ 67-6513 and 67-8204.

³ See Idaho Code § 31-714 granting boards of county commissioners ordinance and rule-making authority.

Question 2. Is there statutory or constitutional authority, prohibitions or guidance for determining costs for mitigation?

Response to Question 2.

There is no constitutional or statutory prohibition against county imposition of development impact fees. Guidance for the development, determination, imposition and expenditure of these fees is contained in Chapter 82, Title 67 of the Idaho Code. Chapter 82 also contains appeals and refunds provisions providing due process protections for persons upon whom impact fees are imposed.⁴

Question 3. What are the implications of forty-four counties individually formulating a process of assessment?

Response to Question 3.

Implications of not having a statewide methodology for impact fee determination are of a policy rather than a legal nature. Developers would likely argue that conforming development applications to the individual requirements of each county is inefficient. Those who favor existing law would argue that since it is the subdivisions of the State that provide to the people many of the services that they demand, it is those subdivision who are best situated to calculate the financial impact of development. From a legal standpoint, a practical implication of having multiple methods would be that each ordinance's constitutionality could be challenged in court. However, not even a single statewide method would preclude a lawsuit challenging the implementation of an impact fee each time one was assessed.

Question 4. Could it be argued the mitigation fee is a tax and is unlawful without impact fee authority apart from ordinance promulgation?

Response to Question 4

Arguing that a fee is really a disguised tax and therefore impermissible is a familiar legal argument used to attack any assessed fee as unconstitutional. Idaho Attorney General Opinion 93-5 (copy enclosed) describes the three-pronged test that an Idaho court would likely use to decide this question. The test involves an examination of:

Whether the ordinance conveys a benefit not shared by members of the general public;

Whether the impact fee is a forced contribution; and


⁴ See Idaho Code §§ 67-8211 and 67-8212.

3. Whether the fee is to compensate government for its expenses in providing services or to raise revenue.

While Opinion 93-5 did not definitively conclude whether impact fees assessed by Ada County Highway District Ordinance 184 were legitimate fees or a disguised tax, its discussion is instructive as to how an Idaho court might consider and decide a challenge to any impact fee ordinance.

I hope that the information contained in this letter and enclosure is responsive to your request. Please contact me if I may be of further assistance.

Kind regards,


MITCHELL E. TORYANSKI
Deputy Attorney General

MET *Imdw*

Enclosure

Attorney General Opinion No. 93-5