

ORDINANCE NO. 292

AN ORDINANCE CREATING AN APPEALS PROCEDURE FOR MADISON COUNTY, IDAHO PLANNING, ZONING, SUBDIVISION, AND BUILDING ISSUES; PROVIDING FOR APPEALS; ESTABLISHING HEARING PROCEDURES; PROVIDING FOR ADDITIONAL HEARING PROCEDURES; PROVIDING FOR HEARINGS TO BE TAPED; PROVIDING FOR A DECISION RECORD; PROVIDING FOR DEFINITIONS; AND, SETTING FORTH THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MADISON COUNTY, IDAHO, AS FOLLOWS:

1. APPEALS. Any decision of the administrator or commission may be appealed using the procedure described here. A notice of appeal must be filed with the Planning and Zoning Department or with the County Clerk's office within 28 days after the administrator's notice of the decision. Notice of the decision is complete upon mailing to the recipient's address on file with the Planning and Zoning department. Appeals from decisions of the administrator are heard by the commission. Appeals from decisions of the commission are heard by the board.

A. The appellant shall file a properly completed notice of appeal, the required supporting materials, and the required appeal fee with the administrator. If a notice of appeal alleges that the decision of the administrator or commission constitutes a taking of property without just compensation, the administrator shall direct the appeal to the county attorney.

B. The county attorney shall review the allegation that a decision of the administrator or commission constitutes a taking of property without just compensation. This review shall be based on the Idaho Attorney General's checklist (Appendix A) and other information the county attorney deems relevant, including the property rights policy of the plan.

C. The administrator shall place a hearing on the appeal on the agenda of the next regular commission or board meeting for which the attorney's review (if relevant) and notice requirements can be met, and at which time will permit its proper consideration. Notice requirements for an appeal shall be the same as for the original permit application.

D. The commission or board shall conduct a hearing on the appeal following the procedure established in section 2, below. No appeal shall be heard if the appellant and the developer or their representatives, are not present.

E. The commission or board shall determine whether the decision being appealed is in compliance with the comprehensive plan and this ordinance, and affirm, modify, or overturn that decision accordingly. Where a taking of property without just compensation is alleged, the commission or board shall also consider the county's review of the decision, as provided by subsection B, above.

F. The administrator shall notify the appellant and interested parties of the commission or board's decision within 15 consecutive days.

2. Hearing Procedure. This procedure shall be followed in all hearings before the commission or board.

A. The presiding officer shall announce the purpose and subject of the hearing.

B. The presiding officer shall determine whether proper notice of the hearing has been provided. If proper notice has not been provided, the hearing shall be re-scheduled.

C. The presiding officer shall ask if any commission/board member wishes to declare a conflict of interest, as defined by I.C. 67-6506, in the matter to be heard and excuse any member who declares such a conflict from participation in the hearing.

D. The presiding officer shall ask the administrator to present a report on the proposal being considered.

E. The presiding officer shall direct questions from commission/board members to the administrator. Questions asked at this time shall be solely for the purpose of clarifying the location and nature of the proposed development.

F. The presiding officer shall remind those present that all statements given must address the merits of the proposed development as measured by its compliance or lack of compliance with the comprehensive plan and this ordinance.

G. The presiding officer shall ask for a statement from the developer or his or her representative. Commission/board members may ask questions following this statement. All questions and replies shall be directed through the presiding officer.

H. Following the developer's statement, the presiding officer shall ask for statements from the public. Persons giving statements shall begin by stating their name and mailing address. Commission/board members may ask questions following this statement. All questions and replies shall be directed through the presiding officer.

I. When all statements have been given, the presiding officer shall ask if the appellant wishes to speak in rebuttal to other statements or to clarify their statement. Neither new statements nor the introduction of new evidence shall be permitted at this time. Questions from commission/board members may follow the rebuttal or clarification.

J. The presiding officer shall close the public hearing and call for discussion by the commission/board resulting in action, as provided by this ordinance.

K. Written statements, plans, drawings, photographs, or other materials offered in support of statements at a hearing are part of that hearing's record and shall be retained by the county supporting materials shall be left with the administrator after each statement is made.

3. Additional Hearing Procedures. These procedures may be used without prior notice to assist in the conduct of large or controversial hearings.

A. The commission/board may impose time limits on the statements given in order to assure completion of its agenda.

B. The commission/board may require persons who wish to make a statement to register their intention to do so with the administrator before the hearing. The presiding officer shall use the register to call on persons to present their statements.

4. Hearings to be Taped. As required by I.C. 67-6536, the administrator shall keep a transcribable tape record of all hearings on file for at least six months after the final hearing, including appeals hearings.

5. Decision Record. All decisions of the commission and board shall be reported in the form of findings of fact and conclusions of law, as required by I.C. 67-6519. The completed decision record shall include the application materials, any report prepared by or on contract for the administrator, and a performance standards checklist, if any. The administrator's report shall be presented in a form that can serve as a basis for the commission's findings of fact. The completed performance standards checklist shall be considered to constitute the conclusions of law.

6. All terms set out herein shall be defined as established in Madison County Zoning Ordinance No. 176.

7. Effective Date. This ordinance shall be in full force and effect, from and after its passage, all as provided by law.

PASSED THIS 13th DAY OF NOVEMBER, 2006.

BOARD OF COUNTY COMMISSIONERS
MADISON COUNTY, IDAHO

ROGER MUIR, CHAIRMAN

ATTEST:

MARILYN R. RASMUSSEN, CLERK