

## CHAPTER 23

### PROCEDURAL REQUIREMENTS FOR MEETINGS AND HEARINGS

#### 23-1. PURPOSE

The purpose of this Chapter is to establish orderly procedures for the conduct of the formal business of the planning and zoning commission and board. The procedures are intended to provide adequate opportunity for the citizens in Jerome County to promote and to protect their rights under the concept of due process. These procedural requirements are established pursuant to the provisions of the Local Planning Act of 1975 as presently codified in Idaho Code, Title 67, Chapter 65 as it now exists and as it may be amended.

#### 23-2. BY-LAWS

23-2.01 The planning and zoning commission shall adopt, amend or repeal Bylaws in accordance with any order of the board, this ordinance or the Idaho Code. All such action shall occur at a meeting and will become effective upon majority vote.

#### 23-3. ORDER OF BUSINESS

23-3.01 The order of business at regular meetings of the planning and zoning commission shall be:

- a) Call to order.
- b) Reading of minutes of prior meeting and the taking of appropriate action.
- c) Consideration of old business and the taking of appropriate action.
- d) Consideration of new business and the taking of appropriate action.
- e) Reports concerning current activities of the administrator and/or building official.

#### 23-4. RECORD OF MEETING

23-4.01 A verbatim record of all business transacted at meetings of the planning and zoning commission shall be made by way of recording equipment and/or stenographer. A meeting of the planning and zoning commission shall not proceed unless it is being properly recorded.

#### 23-5. QUASI-JUDICIAL HEARING PROCEDURES OF THE PLANNING AND ZONING COMMISSION AND THE BOARD

Unless otherwise stated, this section shall pertain to only those matters that are quasi-judicial in nature (typically characterized by a particular permit

being applied for by a particular applicant for a particular piece of property to be used in a particular manner).

#### 23-5.01 BURDEN OF PROOF

The burden of proving that the governing body should act favorably toward the applicant/appellant rests solely upon the applicant/appellant.

#### 23-5.02 CONDUCT OF HEARING

Hearings before a governing body shall be conducted in general conformance with each of the procedures set out in the individual paragraphs below, although the order that such paragraphs are taken at any particular hearing does not have to be the order shown below. The chairman shall determine the appropriate order for a particular hearing and shall announce it prior to the start of that hearing.

- 1) Generally: All individuals presenting evidence at any quasi-judicial hearing shall be sworn or affirmed before the governing body. The chair of the governing body may limit testimony and scope of the hearing. With permission from the chair, members of the governing body may at any time during the hearing freely inquire of anyone at the hearing, including staff, without limit of time. The chair of the governing body shall rule on all questions of procedure and the admission of evidence, with such ruling being made in accordance with the bylaws of the applicable governing body, this ordinance or the Idaho Code.
- 2) Report: Hearings before a governing body may commence with a report from staff. Such report will be given without limit of time. The report may be written or oral, at the pleasure of the governing body and may include testimony from witnesses. The report may contain recommendations, however the governing body shall not be bound by any such recommendations.
- 3) Applicant/Appellant Comments: The applicant/appellant, and those favoring the applicant/appellant's position shall be allowed an opportunity to support the applicant/appellant's position by presenting evidence in the form of oral or written testimony and/or documentary evidence presented in the manner prescribed in section 23-5.02(6) . An applicant/appellant may be represented by counsel. Except for section 23-5.02(5) , at the chairman's discretion, testimony for and against an application may be presented in rotating order.
- 4) Opponent and General Comments: Those opposing the applicant/appellant's position or having general questions or comments shall be provided an opportunity to refute the evidence presented on

behalf of the applicant/appellant by presenting evidence in the form of oral or written testimony and/or documentary evidence presented in the manner prescribed in section 23-5.02(6) .

- 5) Applicant/Appellant Rebuttal: When the opponents, if any, have all concluded the presentation of their evidence, the applicant/appellant shall be allowed a brief period for rebuttal.
- 6) Written testimony and Documentary Evidence:
  - a) Those wishing to present written testimony and/or other documentary evidence at a quasi-judicial hearing shall mail or hand-deliver the appropriate number of copies to the administrator's office seven days prior to the scheduled hearing. The "appropriate number" equals the number of governing body members plus three (3) additional copies (# of body members + 3 = total # of copies to be submitted).
  - b) Any written or documentary evidence not meeting the seven day requirement shall not be reviewed or considered by the governing body, although one copy of such shall be retained by the administrator in a sealed envelope and kept as part of the record. The outside of the envelope shall be clearly marked with an index of the materials placed inside, the date such materials were submitted, and the name of the person who submitted such materials. If these materials are not reviewed and remain sealed from the governing body, the record shall reflect that such were not reviewed or considered and shall state the reason why.
  - c) Section 23-5.02(6) does not apply to the staff or witnesses called by the governing body.

### 23-5.03 RECORD

The staff report shall automatically become part of the record, as shall any documents submitted by the applicant/appellant, the proponents and/or the opponents, as shall all testimony given at the hearing. At the conclusion of the hearing, the governing body shall close the record unless the governing body determines, in its discretion, additional evidence is required, in which event, it may proceed as follows:

- 1) Close the record with the exception of allowing the submission of specifically requested information; or
- 2) Leave the entire record open for the submission of additional evidence to a date certain; or

- 3) Continue the hearing to a date certain for the purpose of receiving additional evidence and conducting such further proceedings as may, in its discretion, be advisable. The applicant/appellant shall always be provided a reasonable opportunity to rebut any additional evidence allowed into the record.

#### 23-5.04 REOPENING THE RECORD IN MATTERS BEFORE THE BOARD.

In matters before the board, the board may, prior to issuing a written decision, and for good cause demonstrated, reopen the record for the purpose of receiving additional evidence. Only the applicant/appellant or an affected person as defined under Idaho Code Sections 67-6519(4) and/or 67-6521(d), may seek to reopen the record by concurrently filing a timely motion to reopen the proceedings containing information therein to demonstrate good cause, along with a payment of the estimated costs that will be incurred by the Jerome County in having to comply with applicable law governing notice and hearings. If the actual cost is more than the estimated cost, the person seeking to reopen the hearing shall then pay the remaining amount before any action is taken on his motion. If the actual cost is less than the estimated cost, then the balance shall be returned to the payer of the estimated cost. The board shall decide at a recorded meeting whether good cause has been demonstrated, and shall state such on the record. The board may, within the time allowed herein, reopen the record for good cause on its own motion. If the board determines to reopen the record, it shall thereafter comply with applicable law governing notice and hearing procedures, including those set forth in this chapter.

#### 23-5.05 DECISIONS

When the record has been closed, the governing body may then deliberate towards a decision based on the record, or it may take the matter under advisement for the purpose of deliberating towards a decision based on the record at a later date. After deliberating, the governing body shall on matters that are quasi-judicial in nature, render a decision within one hundred eighty (180) days from the date when deliberations cease that is in accordance with Idaho Code Section 67-6535, as it may be amended from time to time, or other applicable law.

#### 23-6 NONQUASI-JUDICIAL (LEGISLATIVE) PROCEDURES

- A. The purpose of this section shall be to provide procedures for hearing public comment during the legislative process; this opposed to public comment being offered during a quasi-judicial proceeding which is governed by section 23-5 of this chapter.

- B. This section shall be applicable to those portions of the legislative process where public comment is allowed, either by way of this ordinance or Idaho code.

#### 23-6.01 PROCEDURES

- A. Unless otherwise limited by this ordinance or Idaho code, a governing body engaged in a legislative process shall not be under a limit of time to complete such process.
- B. At the time set to hear public comment on a legislative matter, the chair of the governing body shall determine the best procedures for receiving the public's comment. The only exception to the chair's discretion is that the following must be complied with:
  - 1) Proper notice has been given as required by the applicable portion of this ordinance or Idaho Code.
  - 2) Members of the public receive a reasonable opportunity to be heard on the matter that is being discussed.
- C. The chair's procedural discretion may include, but not be limited to, the following:
  - 1) Require members of the public to be sworn in.
  - 2) Limit the amount of time given for individual comment, as well as the scope of the discussion.
  - 3) Allow members of the governing body to freely inquire of anyone at the meeting, including staff.
  - 4) Allow a continuance upon passage of a proper motion in order for the matter to be discussed with persons not present at the meeting or to acquire additional information be gathered.
  - 5) Require additional notice and hearings be given.
  - 6) Take any other action that he sees in the best interest of the topic before the governing body.

#### 23-6.02 DECISIONS

An ordinance or amendment thereto that results from a legislative decision shall not become effective until such ordinance is passed and signed by the board and published per the parameters of Idaho Code Section 31-715.

23-7 APPEAL OF QUASI-JUDICIAL DECISION

23-7.01 PROCEDURE

- A. A governing body acting in an appellate capacity shall hold a public appeals hearing following the same notice requirements, unless otherwise stated, required of the matter when originally brought before the decision maker below, and in addition, mailed notice shall be sent to all those persons who testified, provided a mailing address, and indicated in writing at the original hearing that he or she wished to be notified of any appeal.
- B. At the appeal hearing, the governing body shall consider the order, requirement, permit, decision, or determination of the decision maker below, and any attached conditions thereto. The governing body, following the procedures of section 23-5, shall also consider any additional evidence that may be offered by the public, applicant, administrator, and/or decision maker below.
- C. The governing body may affirm, reverse, modify, in whole or in part the order, requirement, permit, decision, or determination appealed from, or make or substitute any additional conditions that in its deliberations it may find warranted.
- C. Any person falling within the parameters of Idaho Code sections 67-6519(4) and/or 67-6521(d), may appeal a final county action as outlined therein.