



# Memo

To: Mayor Forssell and Members of the Council &  
Chair Davis and Members of the Planning and Zoning Commission  
From: Donna Phillips, Community Development Director  
Date: September 30, 2022  
Re: Standards of Approval

In a recent City Council meeting, questions were posed regarding the standards of approval. The information provided below is in response to those questions should the City Council and/or Planning and Zoning Commission wish to follow up with staff.

## **Standards of Approval – what are they and why does the City need them?**

Simply put, they are the standards by which approvals are made for various types of requests that come before a hearing body. Standards have changed over time as can be seen from the history of the code as adopted by Ordinances of the City. For example, the following is a summary of the code amendments to various code sections, which have standards of approval today:

<b>Year Adopted</b>	<b>Ordinance #</b>	<b>Summary</b>
1968	49	Zone Code was established
1979	132 & 133	Variance & Special Use Permit were established
1980	141	Replaced #49, 132, & 133
1985	176	Formerly repealed several ordinances including #49, 132, & 133
1993	220	Replaced Ordinance #141 & all of its amendments
2002	316	Replaced Ordinance #220 & all of its amendments
2015	542	Introduced the Subdivision Standards
2016	559	Amendments to Include the Zone Amendment Standards and PUD Standards
2017	578	Amended the Subdivision Standards
2021	619	Replaced Ordinance #316 & all of its amendments

## **Idaho State Statutes, Local Land Use Planning Act (LLUPA):**

But to understand what can and cannot make a standard, the City's laws (our codes) cannot be created in a bubble but must be in conformance with the Idaho State Statutes more commonly

referred to as the local land use planning act (LLUPA). Land use planning laws are found in Idaho State Statute Title 67 State Government and State Affairs Chapter 65 Local Land Use Planning. In this Chapter, references to meeting the requirements of the Plan [adopted Comprehensive Plan] and the zoning ordinance are identified. In a review of the LLUPA, it indicates that a comprehensive plan and a zoning ordinance are distinct concepts serving different purposes. The Supreme Court has held that a comprehensive plan does not operate as legally controlling zone law, but rather serves to guide and advise the governmental agencies responsible for making zoning decisions. The Board may, therefore, refer to the comprehensive plan as a general guide in instances involving zoning decisions such as revising or adopting a zoning ordinance. A zoning ordinance, by contrast, reflects the permitted uses allowed for various parcels within the jurisdiction.

Idaho Code Section §67-6508 mandates: "The plan shall consider previous and existing conditions, trends, desirable goals and objectives, or desirable future situations for each planning components." LLUPA contemplates the plan will include "maps, charts, and reports."

Council President Roetter identified at the last City Council meeting that land use applications implicate the property rights both of the developer and his or her neighbors. It is for this reason, that the courts have recognized that many land use applications are "quasi-judicial" proceedings, and that the affected parties have a right to notice and a hearing before a decision is made. This requirement has raised another set of often time complicated issues, as Planning & Zoning commissions and City Council's struggle with how to offer court-like proceedings on land use matters.

As has been stated many times, zoning decisions do not have to conform exactly with the comprehensive plan; however, they do have to adopt a decision based on findings of fact and conclusions of law, and to reserve the right to the property owner to appeal those findings if they were insufficient to support the decision. An example of this can be found in the case of Bone V. City of Lewiston in 1984 as follows:

In Bone, the Idaho Supreme Court rejected a developer's argument that he was entitled to a rezone (an upzone) because it was consistent with the comprehensive plan. The property owner had appealed the City of Lewiston's denial of his request to rezone property from a residential zone to a commercial zone. The land use map in the comprehensive plan depicted the property to be suitable for commercial use. The Idaho Supreme Court held that the comprehensive plan map designation did not mandate that the city council approve the request to approve the commercial zoning of the property. Rather, the decision of whether the requested zoning designation was in accordance with the comprehensive plan was a case-by-case factual determination. The Court remanded the matter to the city council to adopt findings of fact and conclusions of law.

With zone amendments (code/map), Idaho State Statute §67-6511(2)(a) states particular consideration shall be given to the effects of any proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction. This section continues in (2)(b) ... After considering the comprehensive plan and other evidence gathered through the public hearing process, the zoning or planning and zoning commission may recommend and the governing board may adopt or reject an ordinance amendment pursuant to the notice and hearing procedures provided in section §67-6509...

Therefore, bringing the question back to the standards which the City of Hayden hearing bodies rely upon should address the existing conditions, the desirable future situations, the preservation of areas of importance (i.e. natural resources, historical landmarks, etc.), and ability of service providers to provide services. As also, identified above, the hearing process is quasi-judicial and it must rely on findings of fact and conclusions of law, not on personal like or dislike of a particular project or request.

### **Changes to Standards for the City of Hayden:**

So how have the City of Hayden's codes met the requirements of Idaho State Codes and been in keeping with the adopted comprehensive plan and zone codes.

### ***Zone Map/Text Amendment:***

As identified above, zone map amendments must take into consideration service providers, zone district requirements, and adopted comprehensive plan requirements at a minimum. Previous to 2016, the standard was simply, "If the request is in accordance with the adopted comprehensive plan, the city council may adopt the ordinance amendment." In this standard, there was no mention of service providers or the existing zone district. During updates to code text in 2016, amendments were approved for standards of approval for zone amendments to include the following:

If the request is in accordance with the adopted comprehensive plan meets the following standards of approval, the city council may adopt the ordinance amendment under the notice and hearing procedures as herein provided; and

1. Is the rezoning or amendment consistent with adopted plans?
2. Does the rezoning or amendment further public health, safety and welfare?
3. Is the infrastructure present or can it be available within two years to support the development that the rezone or amendment will allow for?
4. Are there circumstances that justify the rezoning or amendment?
5. Is the rezoning or amendment consistent with the neighborhood context?
6. Does the rezoning or amendment align with the zone district's purpose and intent?
7. Would it result in consistent regulations for each property with the same zoning designation citywide?

Again, based on the requirements of Idaho State Statute it was determined that the above standards did not address the requirements that the City must address per Idaho State Statute, and as a result, the above code section was amended in 2021 as follows:

Standards of Approval: If the request meets the following standards of approval, the City Council may adopt the ordinance amendment:

1. ~~Is the rezoning or amendment consistent with adopted plans?~~
2. ~~Does the rezoning or amendment further public health, safety and welfare?~~
3. ~~Is the infrastructure present or can it be available within two years to support the development that the rezone or amendment will allow for?~~
4. ~~Are there circumstances that justify the rezoning or amendment?~~

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- ~~5. Is the rezoning or amendment consistent with the neighborhood context?~~
  - ~~6. Does the rezoning or amendment align with the zone district's purpose and intent?~~
  - ~~7. Would it result in consistent regulations for each property with the same zoning designation citywide?~~
  - a. The commission shall consider the existing zoning district or regulations, and may recommend approval, conditional approval, modification, or denial of the proposal or the commission may defer action until completion of such studies or plans as may be necessary to determine the advisability of the proposal.
  - b. The City Council may impose conditions upon rezoning where such conditions are required to ensure that proposed uses of the area are consistent with community needs and its public health, safety, and general welfare. The Planning Commission may recommend conditions upon rezoning for the City Council's consideration.
  - c. Amendments to the zoning map and zone text shall be in accordance with the future land use map and the goals and policies in the Hayden Comprehensive Plan.
  - d. Amendments to the zoning map and zone text shall align with the zone district's purpose and intent.

***Conditional (Special) Use Permit:***

With respect to Conditional {Special} Use Permits, Idaho State Statute §67-6512 identifies the following:

A special use permit may be granted to an applicant if the proposed use is conditionally permitted by the terms of the ordinance, subject to conditions pursuant to specific provisions of the ordinance, subject to the ability of political subdivisions, including school districts, to provide services for the proposed use, and when it is not in conflict with the plan. Denial of a special use permit or approval of a special use permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with requirements established thereby.

During updates to Title 11 in 2021, amendments were approved to the standards of approval for a Conditional Use Permit (formerly known as a Special Use Permit) as follows:

11-7-3: General Standards Applicable to all Conditional Uses:

- A. The Planning and Zoning Commission shall review the particular facts and circumstances of each proposed special use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location meets the following:
  - ~~1. Will, in fact, constitute a special use as established in this title for the zoning district involved;~~
  - ~~2. Will be harmonious with and in accordance with the general objectives or with any specific objective of the comprehensive plan and/or the zoning ordinance;~~
  - ~~3. Will be served adequately by essential public facilities and services such as highway, streets, police and fire protection, drainage structures, refuse disposal,~~

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~~water, sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;~~

- ~~4. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area.~~
- ~~5. Will not create excessive additional requirements as to public cost for public facilities and services and will not be detrimental to the economic welfare of the community;~~
- ~~6. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;~~
- ~~7. Will have vehicular approaches to the property which shall be so designed as to not to create an interference with traffic and surrounding public thoroughfares; and~~
- ~~8. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.~~
1. The proposal is in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or the zoning ordinance;
2. The location, design, and size of the proposal are such that the development will be adequately served by streets, police and fire protection, drainage structures, refuse disposal, water sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;
3. The design and planning (to include construction, operation and maintenance) of the site is compatible with the location, setting and existing uses and the intended character of the general vicinity.

With respect to the changes, as all of the previous standards were re-worded, if the standard was addressed in the code in another section or within an adopted policy or standard and would be addressed through the development of the site, it was removed from the standards as follows:

Previous Standard	Summary of change
1) Will, in fact, constitute a special use as established in this title for the zoning district involved	The request wouldn't come forward if it wasn't indeed a Special Use – not a standard
2) Will be harmonious with and in accordance with the general objectives or with any specific objective of the comprehensive plan and/or the zoning ordinance;	New Standard #1: <u>The proposal is in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or the zoning ordinance;</u>
3) Will be served adequately by essential public facilities and services such as highway, streets, police and fire protection, drainage structures,	New Standard #2: <u>The location, design, and size of the proposal are such that the development will be adequately served by streets, police and fire protection, drainage structures, refuse disposal, water sewer and schools; or that the persons or agencies</u>

<p>refuse disposal, water, sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;</p>	<p><u>responsible for the establishment of the proposed use shall be able to provide adequately any such services;</u></p>
<p>4) Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area.</p>	<p>New Standard #3: <u>The design and planning (to include construction, operation and maintenance) of the site is compatible with the location, setting and existing uses and the intended character of the general vicinity.</u></p>
<p>5) Will not create excessive additional requirements as to public cost for public facilities and services and will not be detrimental to the economic welfare of the community;</p>	<p>See Hayden City Code §11-4-7(A)(4) – For projects which may result in potential negative impacts from the proposed development, additional studies to evaluate the impacts and identify potential mitigation measures may be required as part of the site plan review process. Such studies may include, but not be limited to those identified in 12-3-4(A) (19). Under this subdivision code in Title 12, these studies could include Transportation Impact Analysis, Sewer Collection and pre-treatment infrastructure analysis, Stormwater analysis, Geotechnical and/or Environmental studies.</p>
<p>6) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;</p>	<p>See Hayden City Code Title 11 Zoning and Title 4 Nuisance.</p> <p>Additionally, see New Standard #3 <u>The design and planning (to include construction, operation and maintenance) of the site is compatible with the location, setting and existing uses and the intended character of the general vicinity.</u></p>
<p>7) Will have vehicular approaches to the property which shall be so designed as to not to create an interference with traffic and surrounding public thoroughfares;</p>	<p>See Hayden City Code §11-4-7 Site Plan Standards; and Transportation Access Management Policy</p>
<p>8) Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.</p>	<p>See New Standard #1 <u>The proposal is in accordance with the general objectives or with any specific objective of the Comprehensive Plan and/or the zoning ordinance;</u></p> <p>Comprehensive Plan identifies Living and Natural Environment in Chapter 6 and Community Design in Chapter 11 and goals and policies.</p>

Then in that same chapter (Conditional Use Permit), the code goes on to state in §11-7-9: Action by the Commission, conditions which may be attached to the permit should it be approved as follows:

- 7 A. Upon granting of a conditional use permit, conditions may be attached to a conditional use permit, including, but not limited to, those:
1. Minimizing adverse impact on the other development;
  2. Controlling the sequence and timing of development;
  3. Controlling the duration of development;
  4. Assuring that development is maintained properly;
  5. Designating the exact location and nature of development;
  6. Requiring the provisions for on site or off site public facilities or services; and
  7. Requiring more restrictive standards than those generally required in an ordinance.

***Conclusion:***

Part of the reason for the code amendments to the standards of approval have been to address inconsistencies between our code and state code, but it has also been to better reflect the Idaho Supreme Court's stance on how the decision can be determined without it becoming arbitrary and capricious. The Givens Pursley LLP Land Use Handbook provides clarification regarding the standards by which a decision could be considered arbitrary and capricious:

“[a]n agency decision would be arbitrary, capricious, or an abuse of discretion if it were not based on those factors that the legislature thought relevant, ignored an important aspect of the problem, provided an explanation that ran counter to the evidence before the agency, or involved a clear error of judgment. The focus of this inquiry is on the methods by which the agency arrived at its decision: for example, did the agency not only consider all the right questions, did it consider some wrong ones? Does the relationship between the facts found and the conclusion reached reveal gaps in the logic of the reasoning process? Again, the question of judicial review largely devolves into a question of whether the agency was reasonable.”

Standards should enable the hearing body to make a decision based on findings of fact and to not lead the hearing body to a decision based on perception or feelings, which may cause inconsistencies in those decisions.