

PROPERTY RIGHTS

Relevant Constitutional & Statutory Provisions

Article I, Section 1 of the Idaho Constitution guarantees inalienable rights, including possessing and protecting property.

Article I, Section 14 of the Idaho Constitution sets forth the scope of the power of eminent domain, and also states that while private property may be taken for public use, just compensation must be paid to the property owner whenever such a taking occurs.

Idaho's Constitution follows the Fifth Amendment to the United States Constitution which provides that no person be deprived of life, liberty or property without due process of law, and that private property cannot be taken for public use without just compensation. The Fourteenth Amendment reiterates that no state may deprive any person of "property, without due process of law."

The purpose for zoning regulations in Kootenai County is three-fold: (1) to promote the health, safety and general welfare of the County; (2) to carry out the policies of the Comprehensive Plan; and (3) to provide standards of orderly growth and development and avoid undue concentration of population and overcrowding of land.

In carrying out these stated purposes, property values and rights must be considered when making land use decisions in conjunction with the Local Land Use and Planning Act, Idaho Code § 67-6501 *et seq.* (LLUPA), county ordinances enacted under the authority of LLUPA, and other relevant federal and state laws and county ordinances.

Takings

In general, there are three (3) basic circumstances in which a compensable taking occurs:

1. When a government action causes physical occupation of property;
2. When a government action causes physical invasion of property;

3. When a government regulation effectively eliminates all economic value of the property.



In the absence of the circumstances designated above, rarely have Idaho or federal courts found that a taking has occurred. Zoning and other regulatory devices are seldom deemed takings except in highly unusual circumstances. Nevertheless, safeguards to ensure property rights have been enacted for the benefit of property owners in Idaho.

One of these safeguards is the Idaho Regulatory Takings Act, Title 67, Chapter 80, Idaho Code (IRTA). IRTA establishes "an orderly, consistent review process that better enables state agencies and local governments to evaluate whether proposed regulatory or administrative actions may result in a taking of private property without due process of law." IRTA is not intended, however, to expand or reduce the scope of private property protections provided in the state and federal constitutions.

This process is embodied in the Idaho Regulatory Takings Act Guidelines ("the IRTA Guidelines"), published yearly by the Idaho Office of the Attorney General. Enacted by the Idaho Legislature in 1994 (for state action) and 1995 (for local governments), the checklist is utilized by public officials to prevent "takings" without compensation. It also allows a property owner to request, in writing, a regulatory takings analysis if governmental actions appear to

conflict with private property rights. The IRTA Guidelines, including citations to statutes and cases, can be found at www.ag.idaho.gov.

The IRTA Guidelines contains a checklist which asks the following six (6) questions:

1. Does the regulation result in a permanent or temporary physical occupation of private property?
2. Does the regulation or action require a property owner to dedicate a portion of property or to grant an easement?
3. Does the regulation deprive the owner of all economically viable uses of the property?
4. Does the regulation have a significant impact on the landowner's economic interest?
5. Does the regulation deny a fundamental attribute of ownership?
6. Does the regulation serve the same purpose as if it was a directly prohibited use or action, and does the regulation advance that purpose?

In addition to the regulatory situations discussed in the checklist above, local governments are faced with issues involving zoning changes, amendments to the Comprehensive Plan, fee increases, new restrictions or requirements for developers, environmental concerns and future land use planning. All such decisions have the potential to invoke a "takings" challenge.

Court decisions in effect at the time of adoption of this Comprehensive Plan, however, have been consistent in holding that zoning, even when it reduces the value of property or deprives an owner of the highest and best use, is not a taking. This is also generally true with respect to the exercise of the legitimate power of government to exercise police power to protect the public welfare and safety. On the other hand, there are instances in which a taking has been found to have occurred when a business was

completely eliminated and when vested development rights have been removed.

Emergency and Interim Moratoriums and Ordinances

Idaho Code § 67-6523 also provides for the use of *emergency* moratoriums or ordinances upon a finding of imminent peril to the public health, safety or welfare. Such a moratorium or ordinance may remain in effect for a definite period of time not to exceed one hundred eighty-two (182) days. During the moratorium period, permits may be denied for such activities as building, and hearings on new developments may be held in abeyance until the moratorium ends. Court decisions in effect at the time of adoption of this Comprehensive Plan have found that moratoriums enacted under these circumstances do not constitute a taking.

Under Idaho Code § 67-6524, an *interim* moratorium or ordinance may halt selected classes of permits when a new Comprehensive Plan is being formulated or amended. The interim moratorium requires proper notice and hearing, and can remain in effect for a period of time not to exceed one (1) year.

Summary

Private property rights are highly regarded and protected in Idaho's Constitution and in the laws and polices enacted by federal, state and local governments. However, these laws do not prevent the exercise of legitimate governmental authority to ensure the public's safety and well being, including, for example, penalties for failure to keep a property in good repair or for nuisance violations, and zoning and development regulations which ensure the County's ability to provide safe and adequate fire, police and infrastructure to its residents.

The Comprehensive Plan acknowledges that private property rights are fundamental. It also intends that future land use policies be more environmentally sound, fiscally responsible and inure to the benefit of the public at large. Current zoning and development regulations contemplate the necessity to control foreseeable overcrowding and to provide standards for orderly growth.

Safeguards should be in place at the County level requiring sound building practices to carry out the legitimate oversight function of local government. These objectives should be enacted and enforced in an efficient and fair manner as provided by state law, County zoning and development regulations, adopted building codes, and other available tools. Greater cooperation and planning with other agencies on traffic concerns, water and sewer requirements, environmental issues, schools, housing needs and preservation will also assure continuing protection of private and public property in Kootenai County.

GOALS AND POLICIES

The goals and policies in this chapter are intended to articulate the community vision toward property rights and not to be regulatory, but provide specific guidance for the adoption and implementation of development regulations which will ensure conformity with the Comprehensive Plan.

GOAL 1: Protect private property rights while implementing overall policies to ensure the public's well being.

Policies and Implementation Strategies

- R-1 A. Provide County officials and decision makers with a current copy of the Idaho Attorney General's Regulatory Takings Act Guidelines and legal support in interpreting and assessing any current or new regulations enacted by Kootenai County.
- R-1 B. Make the public aware of the option to file a written request for a regulatory takings analysis and provide the form to effectuate that request.
- R-1 C. Develop new zoning and development regulations that support the Comprehensive Plan's Goals, Policies and Implementation Strategies, and prevent conflicting rules and ordinances to the greatest extent possible.
- R-1 D. Promote a clear and concise process to resolve conflicts between the use of private property and the public interest.

GOAL 2: Protect property rights and the orderly process of government by ensuring land

development permit decisions are reviewed and decided in a timely and predictable manner.

Policies and Implementation Strategies

- R-2 A. Review, update and modify the current County planning and zoning requirements and rules. All regulations, processes, permit applications and enforcement procedures should be clearly stated and user friendly. Fees should be reasonable and necessary. Penalties should be sufficient to encourage compliance.
- R-2 B. Assure predictability to the public by enacting and adhering to new zoning and development regulations which support and reflect the Goals, Policies and Implementation Strategies of the Comprehensive Plan.
- R-2 C. Develop a checklist for permit applications that determines "technical completeness" for purposes of vesting. The application would be considered vested upon completion of each of the requirements contained in the checklist. Applications submitted prior to a determination of completeness shall not be considered vested.