

Local Government Law classnotes, Fall 2005. Will Herrington.

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Friday, August 26

Syllabus

- Grading: 350–400 points total
 - Final examination: about 150 points
 - Short research paper (6–15 pp.): about 150 points
 - Exercised in class, quizzes, and participation: about 150 points
 - Must attend 1+ [3] city council or P&Z meetings

Local government generally

- Top-down versus bottom-up
 - (Herrington: the stuff in the book is not a good description of how local government works in Idaho.)
 - Counties
 - The casebook sees these as top-down
 - In Idaho, counties have been taking more and more power and discretion, and so have become more bottom-up.
 - For instance, ambulance services. It used to be that there was a void—there was no duty delegated to *any* government entity to create these. But now, most cities have jumped in and provided it. Now, counties can form and control ambulance districts.
 - So, Herrington sees Idaho counties as maybe a little top-down, but mostly bottom-up.
- Types of local government entities
 - Counties
 - Sheriff: elected in Idaho, but without a purse. The sheriff used to control just highways and livestock, but now he's got much more power.
 - Government: three-member board of commissioners. *But*, the board's only only has *budgetary* control over county elected officials (like the sheriff).
 - Also elected:
 - Prosecutor
 - Assessor
 - Coroner
 - County clerk
 - School districts
 - They can:
 - Buy property
 - Hire teachers
 - Educate children
 - Cities
 - Strong mayor form:

- Mayor is elected and serves as a supervisor (like a city manager).
 - Council is elected—four or six members.
- City manager form:
 - Council elects a mayor from among its elected members (five or seven total).
 - A city manager is hired—and has more skills than most elected mayors would have.
 - Lewiston has a city manager form of government.
- Service districts:
 - Such as water & sewer, library, dyke (!), school, fire, highway, hospital, recreation.
 - Water & sewer districts allow Idaho cities to *sprawl*—cities used to be the only entity that could provide water and sewer.
 - The benefits of these are that, otherwise, a city would have to do this stuff with its own funds. With a special service district, though, that district can tax.
 - What happens with all of these? Well, there's lots of entities in one area. This destroys some economies of scale, and creates inefficiencies. But, they provide more opportunities for citizens to participate.
 - Citizens can petition for these.
- General purpose versus special purpose local governments
 - The idea here is that general purpose governments have more latitude to provide services. The state is much less likely to tell one of these that it's outside of its authority (even if there's no statute authorizing that particular service explicitly).
- Law review articles in the text
 - Frug: supportive of more participatory democracy at the local level.
 - Herrington says that Frug probably sees town meeting style of government as ideal (and notes that to do this, you need small communities—and notes the impracticability of it generally).
 - Briffault: this article tries to address recent phenomena like increased mobility and technology—which create a lot of issues about participation. The article notes that investors are the main beneficiaries of these changes.
 - Herrington says that many communities want to grow—and growth becomes their primary focus, sometimes at the expense of other services they should be providing.
 - Note how some cities are hiring economic development directors (!!).

Friday, September 2

Strickfaden (Idaho 1926) (h/o)

- Why so much space etc. devoted to who's liable?
 - Well, it was 1926, and maybe the court wondered why someone

- couldn't just *see* this ditch.
- But, mainly, this is the old issue of whether the sovereign could be sued—this was a case of first impression wrt. finding this kind of liability.
- Nowadays, there's the MUTCD, which would require certain signs and barricades.

Clemens (Idaho 1959) (h/o)

- Unconstitutional creation of a water district.
- The district court threw out the entire creation statute. The Idaho Supreme Court severed the unconstitutional provisions.
- Even though the creation election was invalid, the water district still existed as a *de facto* municipal corporation, because only the state can actually challenge creation (otherwise, there would be too many challenges, is what the court was worried about).

Local government as an agent of the state

Hunter (1907) (p63)

- Consolidation of Pittsburgh and Allegheny.
- Idaho consolidation: the state probably wouldn't order it, as in *Hunter*. Rather, two cities would just get together and make the decision. Herrington isn't sure whether the legislature even has the power to consolidate cities.

Gomillion (1960) (p69)

- Redefinition of boundaries—from square to a 28-sided figure, cutting out blacks.
 - The Court says that the state has no power to redraw municipal boundaries, especially with obvious discrimination in violation of the U.S. Constitution.
 - Yet, Herrington asks, how is this much different than legislative gerrymandering?? (Is it that there's no exclusion there, because folks can still vote—just elsewhere??)

Rogers (5th Cir. 1979) (p75)

- Standing and ability of a city to sue its state.
 - The court says that there are some claims that the city can sue over, and some that it can't.
- Another issue itc. is whether a court can order a city to do something that the state doesn't give it power to do?
 - In Washington, the answer is “yes.”

Local government as autonomous

Avery (1968) (p81)

- How far down into state-local levels does U.S. Equal Protection reach down?

- Here, there's a significant precinct discrepancy, population-wise, in local elections (70K versus 400, 800, and 400).
- The Court says that Equal Protection does cover local government elections. But, the Court left open the questions as to special purpose districts.
- Idaho county commissioners: there are three, but they're elected at large—even though they have districts (the only requirement is that the respective commissioner must live in his district).

Holt Civic Club (1978) (p96)

- Nonresident fees for city services and disenfranchisement of nonresidents.
 - The Court says it's okay to disenfranchise nonresidents despite significant regulation of nonresidents by city ordinances.
 - Note Brennan's dissent.
- How could the people of Holt remedy this?
 - Incorporate (to get autonomy).
 - Annex (to get a vote).

Milliken (1974) (p107)

- Note the tie-in with bussing—if you're bussing kids across school district lines, what kind of participation folks get? Any??

Local government as a quasi-proprietary firm

Kessler (2d Cir. 1998) (p135)

- Claim by renters in a special district (a Business Improvement District) in midtown Manhattan.
 - The district didn't exercise all powers of a municipal corporation—general government powers, specifically—and so Equal Protection didn't apply.
- Note that downtown Moscow might be creating a BID.

Idaho cases

Harrell (Idaho 1973) (h/o)

- “Promises don't count” when the city is promising a building permit—until the council votes you don't have anything, Herrington says.
- Note the Local Planning Act (1976).

Foster's (Idaho 1941) (h/o)

- Parking meters—a new technology at the time of itc. Businesses on the test street bring multiple challenges.
 - Borrowing issue: municipalities *are* prohibited from borrowing money into a coming year. I.e., the current council can't bind a future council to something.

- Thus, long-term contracts must have clauses allowing future councils to get out.
- Revenue issue: cities must be sure what they're doing isn't a tax, unless they've followed the state code for taxing.
 - Note bonding.

Condie (Idaho 1974) (h/o)

- City etc. is licensing without standard for how to get the license. The message etc. is: “cities—provide standards.”

Gumprecht (Idaho 1983) (h/o)

- Initiative to create height limit along Lake Coeur d'Alene.
 - The Idaho Supreme Court said that the Local Planning Act must be followed to create zoning districts, and affected property owners must have a right to be heard. And this initiative process doesn't protect property owners. So, there.

Friday, September 9

Ball (1981) (p124)

Belle Terre (1974) (p117)

- N.b. broad state powers versus limited state powers—introductory material in the text.

Specht (S.D. 1995) (p239)

- Why did the firefighters challenge this? Well, as a union (and employees), they'd probably built up employment rights and privileges, like seniority.
- Why did the city do this? Probably for cheapness and efficiency.
- What is the court concerned about, really? Lack of control by people and elected officials.
 - Herrington: had the commission been subject to more control, the court might have upheld this as a quasi-municipal entity.
- Idaho special commissions: there are lots of them, but elected officials have lots of control over them.
 - N.b. urban renewal commissions: once these are appointed, they're independent bodies, and there's not much removal power.
 - TIFs: money can be used for lots of purposes, including things like grants.

Dillon's rule

- Municipalities are limited to what the state gives them:

- Express grants
- Necessarily and fairly implied grants *incident* to the express grants
- Essential powers for accomplishing these purposes and objects

Arlington County (Va. 2000) (p269)

- Domestic partner benefits ordinance.
- Note the notes following itc.

Hutchinson (Utah 1980)

- Local campaign finance reform.
 - The court abrogates Dillon's rule.
- Herrington looks at this case as a realist—that the court liked the regulation and so figured out how to justify it.

- Can general welfare delegations coexist with Dillon's rule? Herrington thinks they can.

Kalodimos (Ill. 1984) (p285)

- Firearm ban ordinance.
- Note that following itc., the NRA lobbied all states to occupy this field.
 - Idaho did it. This can be a problem if the state isn't careful—it could, e.g., prevent cities from keeping handguns out of schools and public buildings.

Preemption

Goodell (Iowa 1998) (p345)

- Livestock confinement ordinance.
- Note the inconsistency versus exceed analysis.
- Most places regulate these things through zoning (but that doesn't work itc. because of the express prohibition of agricultural zoning in the Iowa code).

Idaho cases

Clark (Idaho 1965) (h/o)

- What powers might the county have had in mind when they argued that the state conferred to them power to do this? Probably zoning.
- Herrington: the court itc. took a fairly broad view of the county's powers.
- Note:
 - Recitals of authority in ordinances.
 - Burden of proof on ordinance challenge is on the challenger.
- LLUPA, now: makes it clear that subdivision ordinances aren't only proper, they're *required*. See *Gumprecht* (Idaho) (9/2 classnotes).

Caesar (Idaho 1980) (h/o)

- Bronco stadium fall case.

- The end result here is that the state can do whatever it wants when building are state building (wrt. building code).
 - So, e.g., UI had to buy Moscow a ladder truck after it built tall buildings.

Friday, September 16

Big Sky Paramedics (Idaho 2004) (h/o)

- Note that Herrington argued for the district in this case.
- Do itc. jibe with Dillon's rule??
- What could the fire district could have done if the court had decided the case the other way?
 - Well, it could have formed a nonprofit organization to do ambulance services. This is a good way to spread liability. It also allows for different pay levels for firefighters and EMTs.
- Is there a better way for the fire district to have argued itc.?
 - Well, it could have gotten other fire districts to join or file amici briefs. I.e., it's always good to make a record in the district court of a *statewide* problem.

Brewster (Idaho 1998) (h/o)

- Would itc. be different if the fee was for something that municipal corporations could *not* have taxed for?
 - Herrington thinks that if a city wants to charge a fee for something traditionally taxed for, the fee probably won't fly.

Mayors and councils in Idaho

- The statutes aren't very detailed on mayors and councils, compared with other states.
- Advantages and disadvantages or strong mayor versus city manager: with a city manager, you get a professional in city issues (like planning, budgeting, etc.)
- Recall—relatively easy in Idaho. Herrington thinks that it's so easy that maybe it should be made a little more difficult.

Public employment

Police Association of New Orleans (La. 1995) (p860)

- Residence requirement.

Rathert (7th Cir. 1990) (p862)

- Male earring.
- What if a gender-distinguishing rule (e.g., men can't have earrings, but women can)? Then, maybe intermediate scrutiny.

Rutan (1990) (p871)

- Patronage.
- Herrington: governor etc. shouldn't have gone so far with this. He could have gotten away with less (or the same if he did it discreetly).

Loudermill (1985) (p870x)

- Pretermination hearing.
- Herrington: this is an important local government case. It establishes the requirement of some kind of hearing before disciplining or terminating an employee.
 - Idaho courts have recognized etc. as the law in Idaho.

Friday, September 23

County commissioners

- Districts must be equal in population.
 - Recall the Texas case of completely unequal districts.
- § 31-710 regulates meetings—these are more formal than are required for other public bodies.
- The commissioners have power to pass ordinances (§ 31-714). This provision has the “health, safety, and prosperity” language. Note that “prosperity” could be stretched pretty broadly.
- Most boards have adopted Robert's Rules of Order as their parliamentary law, despite only having three members (and sometimes only two are present (!!!)).
 - Herrington suggests getting boards to abandon Robert's Rules.
- Counties ought to appoint a county executive (like a city manager).
 - However, county commissioners:
 - Don't usually want to do that.
 - And the board may not have the political or statutory power to do it.

Ethics in government

Simmons (Idaho 1986) (h/o)

- Conflict of interest issue.
 - Some councilmembers owned property in the core zone. Plaintiffs argued that these councilmembers shouldn't have participated in the decision. (In fact, five of seven councilmembers owned or leased property downtown.)
 - The court says no problem. Note that if the court had said that it was a problem, then we'd have trouble in the future, e.g. with comprehensive plans.

- One thing that the city did that helped, wrt. to the LID issue, was hire a consultant. Also, because the city knew there were lots of protestors, it held a public hearing all day, on a Saturday.
- Herrington on itc.--how to charge for your legal work: the attorney itc. did it on a contingency basis. When a Lewiston LID issue came up, he did it on an hourly basis—but after he did all the research on the Moscow case. So, he should have done it the opposite way.

I.C. §§ 59-201 to -204

- § 59-201: officers cannot be interested in contracts made by them in the official capacity.
- § 59-201A: exemptions for remote interests.
- Key case: a newspaper publisher in Orofino was elected to council. Then the council goes to his newspaper for a legal publication contract.
 - So, when in a small town, these sections become key provisions. They mean that bank presidents usually can't be on council, e.g.
- Note that land use conflicts of interest are governed by separate provisions.
- Violation of these sections: the contract is void; there can a penalty also.

I.C. §§ 59-701 *et seq.*

- The policy and purpose of these provisions
- The key action in conflicted transactions is *disclosure*.
 - Also, you can go to the city attorney and he can essentially give you a pass by proclaiming that there's no conflict.
 - However, a court could say that the city attorney was wrong.
- What do you do when you *need* possibly conflicted officials to vote, on an important decision.
 - It's legislative, then it doesn't matter. Officials must disclose, but they can still vote. (To do extra, though, and be extra safe, you should do a written and an oral disclosure, and get an outside legal opinion in addition to the city attorney's.)

Public records

- This is a big pain in the ass for municipalities, Herrington says.
- The general policy is openness.
- Newspapers and media are the biggest proponents of open records laws.
- Who can request? Anyone.
- Requests go to a clerk, in writing.
 - Requiring a form would probably be okay, Herrington says.
- Response time: three days, or ten if a good reason (and the reason must be given in three days).
- Can require advance payment.
- Important areas of denial are criminal investigations and especially personnel records.

Friday, September 30

Idaho Local Planning Act

- § 67-6501 *et seq.*
- 6502: purpose: note that (a), the first purpose, is protection of property rights. this was intentionally—in an amendment—put first.
- 6503: LLUPA is mandatory. (Yet a couple counties still aren't doing comprehensive planning.)
- 6504: P&Z commissions.
- ***6506: conflicts of interest
 - Recognized *economic* conflicts of interest only.
 - A standard conflict is where there's a realtor on the commission or board.
 - What about a nearby property owner on the commission or board??
- ***6508: planning duties
 - Note again: property rights are put up front.
 - Sets out what must be in a comprehensive plan.
 - Note that there's a City of Hailey case about a comprehensive plan missing a required part.
 - Comprehensive plans
 - Like a constitution—very rarely are arguments made directly from it.
 - It sets out a vision that should be implemented in ordinances.
- 6509: procedural requirements for comprehensive planning.
 - At least one hearing is required.
- 6509A, B: manufactured homes provisions—this just shows the power of the manufactured homes lobby.
- 6510: mediation.
 - This can be useful sometimes.
 - You've only got 28 days to appeal these cases, and by requesting mediation you can toll this.
- 6511: mandates a zoning ordinance.
 - Most municipalities have six to twelve zones (two to three commercial, two to four residential, professional office (used as a buffer, often) and others).
- 6511A: development agreements.
 - Allows rezoning to be tailored to public concerns.
 - The problem is keeping track of everything. You end up with a zoning map with lots of asterisks.
- ***6512: special use permits.
 - Sometimes, the city's own uses require a SUP. (Note the possible conflict of interest.)
- 6513: subdivision ordinances.
 - Mandatory.
 - In other states, there's much more than a single section on subdivisions.

- Note also the platting statutes.
- ***Note the mitigation provision here.
- Note that impact fees must comply with the impact fee ordinance.

Friday, October 7

- 6515: planned unit developments: must follow the requirements for SUPs.
- 6515A: transfer of development rights: this is a difficult right to use in Idaho because there aren't enough restrictions (!) to make TDRs valuable or usable.
- 6516: variances.
 - E.g.:
 - Let's say there's a house on a lot with a new porch that's a bit over the setback. Variance? No. Yet often cities will weigh the law against reasonableness and sometimes gamble against the law.
 - The city could do this another way—not a variance *or* a SUP, but some kind of other “exception” to the zoning ordinances.
 - What about a steeply sloping lot, with a setback? Probably right for a variance (although maybe the lot shouldn't have been platted in the first place).
- 6517: future acquisitions map.
 - The city can designate planned future acquisitions, giving it—in effect—a 30-day right of first refusal.
 - But 30 days isn't usually enough time for a city to come up with money for this.
 - Nevertheless, it's a good planning tool, because it forces cities to think about planning more carefully.
- ***6518: development standards.
 - This is pretty broad. E.g., what if there's a requirement for all residences to have front porches that stick out more than 120 square feet? This would probably be allowable (and it's even been done, Herrington thinks, in Portland).
 - Cities that don't adopt standards often run into trouble.
- 6519: permit process.
 - Enacted after *Cooper* to bring LPA into consistency with caselaw.
 - Reasons for decision must be clearly enunciated.
 - Note a Teton county case on this.
 - How do you comply, as a city attorney?
 - Have two decisions ready??
 - In any case, it's important to have a well-written decision.
 - 28-day appeal window—no cases on when this starts (so, if you're an applicant, you'll want to use the earliest possible date (before the written decision is issued)).
- 6520: hearing examiners.
 - Examiners are usually planners or architects (not usually attorneys).

- When you're before hearing examiners, you must be more thorough than when before P&Z or a board (who are more easily swayed by emotions).
- 6521: appeals.
 - This has been interpreted broadly—to allow petitions even where a permit would not be required for the action (!).
 - “Affected person”: probably at least everyone within 300 feet (i.e., all those who get notice).
- 6522: (unimportant)
- 6523: emergency ordinances.
 - This was modified in 2003 to allow a little more time for emergency moratoria, *but* to not allow more than one in a row.
- 6526: area of city impact.
 - Note the *Blaha* case—the county has ultimate control here.
 - This is more strict than in many states, in part due to constitutional provisions limited cities' powers outside of the city limits.
- 6527: penalties: cities can create misdemeanor and infractions if they want.
- 6528: applicability.
 - The state of Idaho must comply with local ordinances.
 - But:
 - UI says it's unique, as a constitutional entity.
 - Caselaw says that the state need not comply with building codes.
 - There's a Blaine county case about this (only a couple years old) provision that says that it doesn't apply to state trust lands.
- 6529: agricultural land: this is a unique provision to Idaho, probably. Idaho is a “right-to-farm” state. This allows restrictions on large agricultural uses, however.
- 6530: shelter homes: eight or fewer people in such homes must be treated as a single family residence.
- 6533: SOBs.
- 6534: cities *must* adopt an ordinance to say how they conduct public hearings.
- 6535: requirements for quasi-judicial decisions.
 - A written decision requirement (again); see 6519.
- 6536: requires a transcribable record. This is a difficult step for small communities.
- 6537: groundwater.

Friday, October 14

Zoning and land use

Village of Euclid (1926) (h/o)

- This is the first Supreme Court case upholding zoning (other zoning statutes had been upheld, but none had ended up at the Court).
 - Why is the Village of Euclid the Δ ? Because, Herrington thinks, the IIs thought a small town would be easier to beat than a big city.

- In Idaho, the burden for overturning a zoning ordinance is pretty heavy.

Dawson Enterprises (Idaho 1977) (h/o)

- (This was the first case that Herrington worked on, as a young attorney.)
- Comprehensive plan issue
 - The zoning ordinance and the comprehensive plan were one in the same, here (or, you could say that there just wasn't a comprehensive plan).
 - The court says that under the old law (pre-LPA, which is the law to be applied etc.), that's okay.
- Reasonableness of the zoning ordinance issue
 - Itc. says that it's okay to have aesthetic considerations in zoning.
 - Even so, you probably want more than just an aesthetic reason for your ordinance.
 - Note that the court says that zoning is legislative, etc. (this is no longer the case, of course).
 - What other arguments could you use to convince the court, here??
 - If the county had lost this case, you would have strip development throughout this corridor, Herrington things.
- (N.b.: the P's attorney etc., Olson, was very well-known and the court seems careful as it decides against him. This, Herrington notes, is a way that commercial organizations can crush opposition—by hiring really prestigious attorneys to face unseasoned, unknown attorneys.)

Bone (Idaho 1984) (h/o)

- This is an important case—it's cited all the time.
- It's one of the first cases to rely strongly on the APA (the LPA references the APA for judicial review standards).
- The court remands this all the way to the city council.
 - But, generously, the court gives the council direction—saying that the zoning ordinance need not be in total agreement with the comprehensive plan.

Cooper (Idaho 1980)

- Recall *Dawson Enterprises*, where zoning was still considered a legislative function. This case changes the game.
- Requirements:
 - A hearing
 - A verbatim record
 - To be safe, you should consider using both an audio and a video recorder
 - Written findings and conclusions that must explain the reasons for the decision

Nollan (1987) (h/o): Herrington says that if the local entity here had put more into the ordinance than just aesthetic reasons—e.g., public safety reasons—this might have worked.

Lucas (1992) (h/o): Herrington says that this case means that you must always leave propertyowners with *something* they can do to their property if you want to avoid it being a taking.

Friday, October 21

- Guest speaker: Gary Riedner, Moscow City Administrator
 - Budget process:
 - Council sets priorities
 - Staff develops a budget
 - The city administrator works on the budget
 - The mayor works on the budget
 - Council makes the final approval
 - Resolutions versus ordinances
 - Tax and revenue
 - Local government is funded almost entirely by taxes and fees
 - Property taxes in Idaho a limited to a 3% increase on the prior year.
 - Cities want a “local option tax” ability—all you can do in idaho is to ask voters to tax themselves.
 - Idaho impact fees statute: this doesn't have enough teeth, Riedner says. And there's too much procedure required, especially for small towns.

Friday, October 28

Eminent domain

Dolan (1994) (h/o)

- Itc. is about a floodplain that the city wants turned into a greenway and a bike path.
 - Herrington: why would the owner even want to keep this floodplain? Probably she's just stubborn and wants to fight the government, Herrington suggests.
- Herrington hopes that the Court today would look more favorably on the bike path condition.
- This case is sort of a throwback to *Penn. Coal*, which took a strong property rights position.

- This would probably work as an easement.

I.C. § 7-701 et seq.

- These are shorter and less sophisticated than eminent domain statutes in other states.
 - But, perhaps unlike other states, because there is such a strong property rights philosophy in Idaho, municipalities use these statutes very conservatively—they try to obtain property in any possible way other than eminent domain.
- § 7-701: authorized uses
 - Highways, etc.
 - (1): “all other public uses authorized by the legislature”; and (2) “all other public uses” are the broadest provisions here.
- § 7-702: the city can take a fee simple, *or* an easement, *or* a right of entry.
- § 7-703: types of property that can be taken.
- § 7-704: prerequisites to taking:
 - Authorized use
 - The taking must be necessary for the use
- § 7-705: the government can go on the property to determine what it is
 - In most case, you'll want to do a survey and make a legal description.
- § 7-711A: (this should come after § 7-705):
 - The city must offer the appraised value.
 - Thus, after surveying, the city needs to get an appraisal done.
 - And a smart property owner will get his own appraisal done.
 - The city must send a form to all target property owners.
 - This section is newer than the rest of the chapter—so, to be safe a local entity should follow all the requirements set out in the § 7-711A form.
 - In the § 7-707 complaint, the local entity should indicate that it did the § 7-711A form, and attach it.
- In Idaho, it's hard to get a jury that doesn't have a couple members with strong feelings on property rights. As a city attorney, you'll want people who are willing to agree that sometimes the city simply has to condemn. And, you'll want a really good paper trail showing that you were really fair to the property owner.
- Condemnations can be huge cases—use good experts, maybe use a paid test-jury.
- Value is determined as of the date of the summons.
- § 7-709: who can defend.
- ***§ 7-721: this is used a lot, because cities often need property right away (yet condemnations can take years).
 - The city can deposit the appraised value with the court and take the property. Δs can withdraw up to 80% of the money.
- As a city attorney, you should use every method possible before doing a condemnation. And don't start the project until you have all of the land

required, especially if the project is something (like a park) that will push the value of adjoining land upwards.

- § 7-718: costs and attorney's fees—these are important in condemnation cases.

Kelo (2005) (h/o)

Friday, November 4

Annexation

- With larger annexations, things boil down to an election—because a mailing goes out and requires majority-like approval.
- Note that citizens annexed against their will don't end up being good citizens of their new city, usually.
- Note Oregon's Urban Growth Boundaries (UGB).
- Category B & C annexations (I.C. § 50-222):
 - Require an annexation plan
 - Note the special category C procedures
- Developer consent to annexation situation: this is where the developer gets city services in exchange for an agreement to consent to annex.
 - Herrington builds into his development agreements an agreement for impact fees, too.

Recent Idaho Supreme Court planning cases

Davisco Foods Int'l v. Gooding County, 115 P.3d 116 (Idaho 2005)

- A cheese factory that wanted to expand, in Jerome county.
 - The expansion would create more waste, and so the factory wanted to do “land application” of the waste in Gooding county—and needed a rezone.
- Issues:
 - Ex parte contact (comments made during a political campaign)
 - Standing (people more than three miles away from the property were appealing): the slight possibility that odor might reach these property owners (*if* something went wrong) was enough for standing (!!).
 - This could be covered by a SUP condition that said the SUP would be lost if odor becomes a problem.
 - This standing ruling is significant because the court kind of gives a distance on standing—or at least says that folks three miles away have standing if there's the possibility of even the smallest effect.
 - Note that this distance may even cross county

boundaries (the statutory 300 ft. notice area doesn't, e.g.).

Fisher v. City of Ketchum, No. 29469 (2005)

- The court requires a diligent following of steps to adopt an ordinance. Here, the body made a decision and only came up with a reasoned analysis later—this was no good.
- Also, the court says that the 28-day time for appeal in the LPA begins when the *written* decision is issued, not when an oral decision is given.

Regan v. Kootenai County, 140 Idaho 721 (2004)

- *Itc.* is about exhaustion of administrative remedies. Here:
 - The *II* could have requested elected officials to give an opinion on whether use of his property for an airstrip was proper.
 - The *II* could also have asked for permission to use his property for an airstrip.

But he didn't, so he couldn't go to court yet.

In re application for zoning change, 140 Idaho 512 (2004)

Monday, November 28

Regional governance

- Regional special districts
 - *Hoogasian* (Ill. 1974) (p472)
 - Delegation by legislature to regional transportation authority is okay because intelligible standards are given.
 - These regional districts can be pretty important, Herrington says. Especially in large metros.
 - The RTA here had substantial authority, including taxing authority.
 - *Seto* (Ore. 1991) (p475)
 - Herrington notes the concern about public participation, especially where regional bodies are appointed, or elected in lopsided districts (see *Four-County*, n2p478).
 - In Idaho, regional transportation boards are permitted. See COMPASS in the Treasure Valley.
 - *Angel Fire* (N.M. 1990) (p481)
 - A regional hospital district is okay despite taxing not in proportion to benefits received.
 - Compare highway districts, Herrington points out, which are paid for in part by city residents not near the highways. In

Idaho, these are upheld because the city residents drive in the country.

- Regional multipurpose government
 - *Cunningham* (W.D. Wash. 1990) (p488): a one-man, one-vote challenge to a metro government in Seattle succeeds.
 - *Tomasic* (Kan. 1998) (p496)
 - Delegation okay because definite and sufficient standards.
 - Also, challenge to adoption of a regional government plan, as unlawful amendment without a bill, failed because the court says the voters were exercising the authority expressly granted by the state legislature.
 - Herrington notes that good boilerplate with all amendments is to handle any potential new inconsistencies.
 - Note itc. that the head person of the regional area is to be called “mayor.” Herrington thinks this is weird.
 - Herrington could not find the consolidation statutes for Idaho. They might have been failed legislation, he says. In any case, they left local offices mostly intact.
- Interstate compacts
 - These require congressional consent.
 - These entities get challenged a lot. See, especially, the Tahoe regional planning entity; and see the Tahoe takings case, where the U.S. Supreme Court said that a three-year development moratorium was not a taking.
 - *Eastern Paralyzed Vets* (N.J. 1988) (p507)
 - Local (one state's) law can't govern an interstate compact, unless the law is paralleled in the other states in the compact.
 - This is a little like *Caesar* (the Bronco stadium case).
 - Sovereign immunity? The cases say no—a presumption of no sovereign immunity for compacts (see n4p512).

Sprawl

- Note the definition of sprawl at ¶2p513—a pretty good definition, Herrington says.
- Preserving farming:
 - Note that there's a Montana county that determined that the minimum lot size for a viable farm is 640 acres there. And so they made the minimum lot size in the county 640 acres.
 - Another approach is to only apply your minimum lots size requirement to “prime” agricultural and forest land (as in Latah County). Depending on how this is done, it can either combat or promote sprawl. E.g., it can allow wealthy to buy the big lots and take them out of production.
- Good things about sprawl: it lets people live where they want and use their property as they want.
- But, you can't really do public transportation if you have it.
- Note that Idaho taxes land by actual use, not real value. This promotes speculation and jumping development.

- *Home Builders* (Fla. 1991) (p515)
 - Herrington says that itc. reflects a general reaction to sprawl in Florida. There, the state has established a state entity to review local comprehensive plans.
- *Rosemont* (Ore. 2001) (p519)
 - UGBs: outside the UGB, permitted uses are very limited. And the effect is dramatic—cities expand quickly and just to the UGB (probably because land is taxed at real value).
- Note how both Florida and Oregon have created statewide entities to tell localities how to deal with sprawl. This isn't being done in Idaho.
 - Would Dillon's Rule apply to these commissions? Herrington thinks it would in Idaho, at least.

Taxation

Feil (Idaho 1913) (h/o)

- Note the city's argument that it would keep water revenues separate from the general fund.
 - The court responds viciously, saying that argument is “repugnant” to the constitution.

Pocatello v. Peterson (Idaho 1970) (h/o)

- Herrington says that this case illustrates that “a good lawyer knows the law, a great lawyer knows the judge.”
 - Also, note that this is a friendly case.
- Voters turned down a bond issue for a new airport.
- The court says that building a “new” airport was “ordinary & necessary” because an improvement is like a repair, and a repair is ordinary and necessary.
 - Note the irony, since in *Feil* a *water* system was not ordinary and necessary. Herrington says that itc. wouldn't have come out this way if the lawyers involved weren't well-connected.
- To justify the new airport as ordinary and necessary, the city points to the statutory authority of cities to acquire land for airports.
- Note the dissent, which makes much more sense than the majority, Herrington thinks (McFadden writes good opinions, Herrington adds).
- Itc. allowed local governments to be more creative when funding improvements. Unless there's overwhelming public support, cities now will use the ordinary and necessary exception, going to court (quietly) to get a determination on the bond issue first.
 - The key to ordinary and necessary is to structure the project to be attractive to community needs.
 - Nevertheless, if someone responsible objects, courts are hesitant to agree that something's ordinary and necessary.

Asson (Idaho 1983) (h/o)

- This is another friendly case.
 - It's a throwback to *Feil*.
 - Note the history of WPPSS: it planned to build five nuclear power plants, but the program was so poorly managed that the projects ran as much as ten times overbudget. Small Idaho cities entered contracts for power with WPPSS, and got in over their heads, and would have had to pay for projects that would never be built. (WPPSS ultimately defaulted on its bonds.)
 - So, the cities got people they knew to challenge the contracts.
- This case trio:
 - Ordinary and necessary is now broad, mostly.
 - Cities now lease facilities (as in *Peterson*), instead of buying.
 - The court could have decided *Peterson* on the lease issue, since the city wasn't binding future councils with a lease, n.b.

Friday, December 2

[missed class]