



**V A R D**

February 4, 2009

Teton County BoCC  
89 North Main Street  
Driggs, Idaho 83422

RE: Letter in support of newly proposed fee structure.

Dear Commissioners,

Up for adoption is a proposal to amend the county zoning and subdivision fees so they will better reflect the cost to the county for reviewing and administering permits pursuant to the Idaho Local Land Use Planning Act (LLUPA)<sup>1</sup>. This Board has the authority to impose and collect these fees, pursuant to I.C. § 31-870(1) so long as the fees are reasonably related to, but do not exceed, the actual cost of the service being rendered. The new fees are a necessity because of substantial ordinance and procedural changes which have increased the staff time and county resources required to process applications.

**Requirements for a valid fee.**

In addition to the power granted by I.C. § 31-870(1), the authority for this Board to impose fees which fund regulatory programs is also implicit in the police power under

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<sup>1</sup> I.C. §§ 67-6501-67-6538. LLUPA requires the county to adopt permit procedures for subdivisions, variances, conditional use permits, and other permits. LLUPA also allows the county to adopt planned unit development permit procedures as well.

Article 12 § 2 of the Idaho Constitution and thus requires no statutory authorization.<sup>2</sup> Such police power regulation allows for collection of revenue incidental to the enforcement of that regulation, however, the funds generated thereby must bear some reasonable relationship to the cost of enforcing the regulation.<sup>3</sup> If the fee is imposed primarily for revenue raising purposes, or provides funds for public services at large instead of being individually assessed on the regulated activity, it is essentially a general tax and will only be upheld under the power of taxation.<sup>4</sup>

It is important to note that the “reasonable relationship” standard does not require total precision. For example, in *Foster’s Inc v. Boise City*, 63 Idaho 201 (1941) the Idaho Supreme Court upheld parking meter fees which generated somewhat more income than was required to cover the cost of the meters. The small overage in fees was permissible so long as the spread between the actual cost of administration and the amount of the fee was not so great as to imply that the fee was masquerading as a revenue raising measure.<sup>5</sup>

**The proposed fees are perfectly valid.**

Looking at new fees currently proposed, there is no question that they are valid under both Article 12 § 2 of the Idaho Constitution and I.C. § 31-870(1). They bear more

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<sup>2</sup> *Idaho Building Contractors Association (IBCA) v. City of Coeur d’Alene*, 126 Idaho 740, 742-43 (1995); *Brewster v. City of Pocatello*, 115 Idaho 502, 504 (1988); *see also* Idaho Land Use Handbook, Givens Pursley LLP, 2008, pages 185-187.

<sup>3</sup> *Brewster*, 115 Idaho at 504. Such police power regulation may provide for the collection of revenue incidental to the enforcement of that regulation. If municipal regulations are to be held validly enacted under the police power, funds generated thereby must bear some reasonable relationship to the cost of enforcing the regulation. *See also*, *State v. Nelson*, 36 Idaho 713 (1941), *supra*; *Foster’s Inc. v. Boise City*, 63 Idaho 201 (1941).

<sup>4</sup> *IBCA*, 126 Idaho at 743-744.

<sup>5</sup> *Foster’s Inc.*, 63 Idaho at 219.

than a “reasonable relationship” to the costs incurred by the county; they are directly calculated by the time and resources consumed when reviewing and processing applications. The fees are not being used to fund general planning and services for the public at large, but are directly tied to off-setting the staff hours and department costs of processing each application. The fees are not levied on the general community, but only levied on those who apply for a permit from the planning office.

There may be some small overages in the newly proposed fees, but it is practically impossible to calculate the precise cost to review each and every application because there are unique features to every project. By design, any excess amount generated by the new fees will be only incidental, and will be used to fund the review of other applications in process. And finally, the fact that the planning department is proposing the “little guy exemption” by levying different fees for “significant” versus “insignificant” applications demonstrates how earnestly the department is trying to capture the true cost of processing each unique application.

#### **Additional considerations for this Board.**

As you review and hopefully adopt these new fees, please consider these additional suggestions:

1. Please leave room in the fee calculation for those resources that the county still needs to obtain. I understand that the Planning Administrator has used interactive mapping and visualization software in the past, and perhaps may wish to use it here as well. Another suggestion would be to either budget for

hiring a staff biologist, or biological consultant to help the county process the natural resources inventories that are now required under the new PUD ordinance.

2. Perhaps you want to define “significant” versus “insignificant” applications so it will be less work for the planning staff to have to determine who qualifies for the little guy exemption. Here is an example of a disclaimer that could be added to the fee sheet:

*The planning administrator will determine whether an application is significant or insignificant, taking into account factors such as:*

- 1. If the application is for a home or home business,*
- 2. the amount of time and county resources required to process the application,*
- 3. and any other relevant factors that based on the administrator’s professional judgment, should be considered.*

Such a disclaimer may cut down on the administrator’s staff time and also ensure that the exemption is not deemed arbitrary and capricious for lack of set criteria.

I think these two suggestions will enable to the planning department to acquire the tools that they still want to have in their quiver for processing applications, and will cut down on staff time. Thank you once again for all of your hard work and service.

Sincerely,

Anna Trentadue  
VARD Program / Staff Attorney