

STATEMENT OF PURPOSE

RS19632C1

Three recent 3-2 decisions of the Idaho Supreme Court regarding the zoning of specific parcels of property have caused much confusion with respect to the standard to be applied in reviewing such decisions on appeal. In *Highlands Development Corp. v. City of Boise*, 145 Idaho 958, 188 P.3d 900 (2009), and in *Burns Holdings LLC v. Madison County*, 146 Idaho 660, 214 P.3d 646 (2009), a majority of the Court held that such decisions were not subject to judicial review under Idaho Code §§ 67-6521 because they did not pertain to a "permit authorizing the development," under the Local Land Use Planning Act, Title 67, Chapter 65, Idaho Code (LLUPA). On the other hand, in *Taylor v. Canyon County*, 147 Idaho 424, 210 P.3d 532 (2009), a different 3-2 majority found that a decision regarding a rezone with a conditional zoning development agreement pursuant to Idaho Code § 67-6511A was subject to judicial review because the development agreement was found to be a "permit authorizing the development" under Idaho Code §§ 67-6521.

Decisions regarding changes in the zoning of particular parcels or sites are quasi-judicial decisions of local governmental entities in exactly the same manner as decisions on applications for permits which directly authorize particular development such as subdivisions, variances and special use permits. There is no rational reason why they should be treated differently, and the Idaho Supreme Court had made no such distinction for over 25 years prior to the *Highlands* decision. See *Burns Holdings*, 214 P.3d at 650-53 (J. Jones, J., dissenting); *Highlands Development*, 145 Idaho at 962, 199 P.3d at 904 (J. Jones, J., dissenting).

This bill remedies the confusion arising from these decisions by expressly providing that all final decisions applications for the establishment of one or more zoning districts upon annexation, changes in the zoning of specific parcels or sites, and conditional rezoning would be subject to judicial review by the District Court, where the standard of review set forth in Idaho Code § 67-5279 would apply in exactly the same manner as with subdivisions, variances, special use permits, or other similar applications required or authorized under LLUPA. This bill also includes attorneys within the class of persons who may act as a hearing examiner, clarifies that all final decisions on land use applications must be accompanied by a notice of the applicant's right to request a regulatory takings analysis under section 67-8002, Idaho Code, and makes other miscellaneous technical corrections.

FISCAL NOTE

There would be no impact to the General fund.

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