

MINUTES
HOUSE LOCAL GOVERNMENT COMMITTEE

DATE: Tuesday, February 18, 2014

TIME: 1:30 P.M.

PLACE: Room EW05

MEMBERS: Chairman Barrett, Vice Chairman Sims, Representative(s) Barbieri, Luker, Perry, Clow, Hancey, Harris, Holtzclaw, Horman, Malek, Chew, Kloc, Meline

**ABSENT/
EXCUSED:** None

GUESTS: The sign-in sheet will be retained with the minutes in the committee secretary's office until the end of the session. Following the end of the session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.

Chairman Barrett called the meeting to order at 1:32 p.m.

MOTION: **Rep. Kloc** made a motion to approve the minutes of the February 10, 2014, meeting. **Motion carried by voice vote.**

H 480 **Rep. Morse** presented **H 480**, a bill which amends two code sections in the Local Planning Act. The first amendment under 67-6508(m) makes design powers for aesthetics and beautification a voluntary requirement for building. The second change in 67-6511(1)(a) clarifies the authority for aesthetic design only extends to surface finish, and does not entail authority to require structural design modifications to otherwise conforming structures for commercial and industrial use. The amendment requires all design standards be clear and direct as required by 67-6535.

Rep. Morse stated under existing law there should be a degree of uniformity within zoning districts of standards as outlined under 67-6511(a). The issue of building beautification is right on the edge of an individual's or company's ownership rights and government rules become an interplay with the uniformity standards of zoning districts. He stated when dealing in the area of aesthetics and beautification, it is extremely clouded with subjectivity.

Rep. Morse stated if an individual cannot build on land in a cost efficient manner, s/he suffers from major impairments or the individual does not have a feasible project. **H 480** deals with how those rights are allocated, how to address those risks, and how to draw lines between what is appropriate community involvement, and what decisions should be made by property owners. Rep. Morse stated design control ignores the cost of the mandated design and is based upon subjective beautification. The owner and market should make the decisions, and it should not be mandated by the government.

Rep. Morse cited a city's design review which states in part, "The proposal is consistent with the comprehensive plan." He stated under design review a city will incorporate all kinds of extraneous information. He stated it does not comply with the mandates of existing planning statutes. The decision making criteria must be direct and clear. Comprehensive plans create a situation where decisions are subjective and the decision criteria becomes subjective and political.

Rep. Anderst stated his background is in real estate and as a land owner, and he believes this is a property rights issue. He stated it is understood when building within city limits there are restrictions on what the uses can be. He explained there has been a trend over the last few years where the city is establishing more rights within the municipality's power and there is less individual rights. He stated if individuals do not establish some line of demarcation moving forward, that line will cross over. Rep. Anderst stated his concern is an individual being told what to build, rather than the owner having the option to decide.

In response to questions from the committee, **Rep. Morse** stated under Section 67-6508(m), the change that was made was "voluntary building." He stated within the planning duties, which are optional, he believed that allowed communities and governing boards to look at those issues. He stated we wanted to make sure building beautification was a voluntary act within the planning authorization. Rep. Morse explained if it is voluntary it would be voluntary for both the government entity and property owner. He stated his intent with the ordinance is that structural design mandates that are done for aesthetic purposes would not be allowed under this amendment.

Rep. Morse stated local control is better than state or federal, however when he looked at the ordinances around the state, he found there is a huge degree of subjectivity to the extent that local control means local political decisions. He stated he questioned whether that was good for property rights and economic development.

Daren Fluke, President, American Planning Association Idaho (APA ID), testified **in opposition to H 480**. Mr. Fluke explained design review is about creating places that people care about. Mr. Fluke stated a good design does cost more money, however citizens have an expectation a community will be built to a certain standard. He stated although the process is messy, it is best left to local officials to determine the design and where citizens can define a community's appearance.

In response to committee questions, **Mr. Fluke** stated public buildings are built to a higher standard. He stated he was not aware of any design projects that had gone through the review process which did not pass.

John Eaton, Idaho Association of Realtors, testified **in favor of H 480**. He stated the subjectivity of the process is the problem and cited an example. He stated there is an appointed group in the design review process which act as gatekeepers. Mr. Eaton explained this is occurring nationwide, and these powers are normally with city council members or planning and zoning. He explained gatekeepers determine what designs are approved, and the process is timely and costly.

In response to questions, **Mr. Eaton** stated the proposed legislation is a step towards curbing the problem developers are facing in the review process.

Brad Clark, Planning Director, Emmett, ID-APA/City of Emmett, testified **in opposition to H 480**. Mr. Clark stated Emmett's historical downtown area is important to the community, and there is a set basic design criteria for the community. Existing property owners want the area to be attractive for tourists. The design review for Emmett is a separate board appointed by the mayor. Mr. Clark questioned if what is at stake is the issue of design cost, then why does it exempt historic sites, cell towers, etc. Mr. Clark stated there is a big hole in this legislation.

In response to questions, **Mr. Clark** stated before a building owner embarked on redesigning a building, building ordinances would be communicated to the owner. Mr. Clark stated the ordinance has been in place since 2009, and has not deterred potential builders. Mr. Clark responded final approval is with elected officials.

Andy Erstad testified in opposition to **H 480**. Mr. Erstad stated he was an architect, and involved in the development of many designs projects. He communicated developers considered this bad business and the state should not be in the role of dictating to cities what to do and what not to do. Mr. Erstad explained within every community there is the opportunity for an appeal process.

Pam Eaton, Idaho Retailers Association and Idaho Lodging & Restaurant Association (ILRA), testified in favor of **H 480**. Ms. Eaton stated large businesses have teams and a staff which deal with design committees and zoning issues. The larger businesses have the expertise and will jump through the hoops to get the design accepted. She explained the small independent business owner does not have the money and time to expend on this effort. For this reason, a small business will not expand or renovate due to the cost and time required to obtain approval of the design. She explained **H 480** would help with economic growth.

In response to questions, **Ms. Eaton** stated we have the trust issue that if a new business comes in, it will mimic or come close to blending into the adjacent or surrounding building structures. Ms. Eaton stated you have to trust businesses in the community.

Dave Yorgason, Tall Timber Consulting, testified in favor of **H 480**. Mr. Yorgason explained he had developed houses and buildings and explained from his experience clarification was needed. Mr. Yorgason stated the challenge is when an individual gets in front of the design committee, it does add costs. In his experience, he noted applications were not filed with cities because of the burdensome process within the city.

In response to questions, **Mr. Yorgason** stated he was aware of a small business which chose to build in a certain city. However, after speaking with others about the process and added costs, the builder opted to build in another city.

Geoff Schroeder, City Council, Mountain Home, testified in opposition to **H 480**. He stated the amendment removes choices, and the most effective government is a government that governs the least.

Brian Billingsley, Planning & Zoning Director, Caldwell, testified in opposition to **H 480**. Mr. Billingsley stated the intent of the city is to protect the downtown vision. When designer standards were not enforced, businesses suffered. He stated small business are beginning to come back to the downtown area. Lack of oversight destroyed the downtown business.

In response to questions, **Mr. Billingsley** stated if the bill was passed it would hurt downtown Caldwell. He stated Caldwell had a past reputation of not having higher standards, and the city is on the path to improving those standards.

Larry Benton, Benton Ellis and Associates, testified in opposition to **H 480**. Mr. Benton emphasized the bill is on the right track, however suggested involving stakeholders and nearby property owners.

Bruce Chatterton, City of Meridian, testified in opposition to **H 480**. Mr. Chatterton stated it is about community character, and the local communities make decisions about what choices are reflected in renovated buildings or new designs. Mr. Chatterton stated Meridian is one of the fastest growing communities, and the administrative process allows the city to understand developer's intent. Through compromise, better projects are developed.

MOTION:

Rep. Harris made a motion to send **H 480** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Reps. Clow, Hancey, Kloc**, and **Meline** requested that they be recorded as voting **NAY**. **Rep. Morse** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 3:35 p.m.

Representative Barrett
Chair

Lisa Hamlin
Secretary