

April 11, 2023

THE URBAN RENEWAL AGENCY BOARD OF THE CITY OF LEWISTON, IDAHO, met in a regular meeting Tuesday, April 11, 2023, at Lewiston City Hall. Chair JoAnn Cole-Hansen called the meeting to order at 12:00 p.m.

I. CALL TO ORDER

BOARD MEMBERS PRESENT: JoAnn Cole-Hansen, Chair; Sheila Bond, Vice Chair; Don Beck; Joe Anderson; Rick Tousley;

BOARD MEMBERS EXCUSED: Tim Switzer

STAFF MEMBERS PRESENT: Shannon Grow, URA Director; Dawn Ortiz, Community Development Specialist; Aaron Butler, IT; Luke Antonich, City Engineer; Katie Hollingshead, Assistant URA Director; Mayor Dan Johnson

OTHERS PRESENT: Jennifer Douglass, URA Attorney; A.L. "Butch" Alford;

II. CITIZEN COMMENTS

None

III. CORRECTIONS OR ADDITIONS TO AGENDA

None

IV. ACTIVE AGENDA (ACTIVE ITEM)

A. Approval of Minutes, February 14, 2023 and March 21, 2023

Board members Beck and Anderson moved and seconded, respectively, to approve the February 14, 2023 with approved corrections and March 21, 2023 minutes. The motion carried 5-0.

B. Approval of Financial Summary, February 2023, March 2023

Director Grow pointed out that on the March 2023 financial summary includes a balance for monies owed by the URA to the City of Lewiston.

Board members Beck and Anderson moved and seconded, respectively, the approval of February 2023 and March 2023 Financial Summaries. The motion carried 5-0.

C. Approval of Invoice

1. Douglas Law, PLLC, January 2023, \$425

Board members Anderson and Tousley moved and seconded, respectively, to approve payment of an invoice for Douglas Law, PLLC January 2023 in the amount of \$425. The motion carried 5-0.

2. Douglas Law PLLC, February 2023, \$375

Board members Beck and Anderson moved and seconded, respectively, to approve payment of an invoice for Douglas Law, PLLC February 2023 in the amount of \$375. The motion carried 5-0

3. TPC Holdings, Annual Report Publication \$29.

Board members Bond and Anderson moved and seconded, respectively, to approve payment of an invoice for TPC Holdings in the amount of \$29. The motion carried 5-0.

D. Approval of Amended Bylaws

Board members Tousley and Beck moved and seconded, respectively, to approve the amended Bylaws. The motion carried 5-0.

E. Resolution 2023-01, Parties authorized to endorse checks and drafts for the agency and providing an effective date.

Board members Beck and Tousley moved and seconded, respectively, to read Resolution 2023-01 out loud. The motion carried 5-0.

Board members Anderson and Tousley moved and seconded, respectively, to approve Resolution 2023-01 with the approved corrections. The motion carried 5-0.

V. UNFINISHED AND NEW BUISNESS

A. URA Statute Review – A presentation by Meghan Conrad from Elam & Burke

Meghan Conrad with Elam & Burke verbally reviewed key points of the presentation in regard to Urban Renewal 101. See Appendix A for the presentation.

Mrs. Conrad pointed out that the URA can acquire and sell the property. It would need to include specific sideboards in the RFP such as the property will be used for affordable housing or a mixed use development.

Board member Beck asked if the URA could work with private entities. Mrs. Conrad stated that the URA could work with a private entity by a developer reimbursement agreement.

B. Main/East Main RAA #4 Review

Director Grow provided a memo to the URA board and presented a spreadsheet showing a prediction of what the URA RAA #4 would accumulate up to 2029. There are a couple of projects still in this plan when adopted in 2017. One is pedestrian improvements to move from the Hells Canyon Grand Hotel area to locomotive park and continue moving North to the Levee trail system. URA would be responsible for the full cost of this project, as the city was not successful in obtaining a grant for this project.

Board member Beck asked if the plan went below the bridge. He stated concerns regarding traffic flow.

Director Grow stated it could, but assured the URA Board that there would not be an additional crossing. This proposed project would go from the new intersection through Locomotive Park to the Levee trail system. The URA would need to work with the US Army Corps of Engineers (USCAE), ITD and the Railroad.

Board member Tousley brought up that there is no parking near that area besides near the hotel.

Director Grow stated the 2nd project was the water main from Lapwai Road, which continues along Mill Road to the City limits. There are concerns from the Fire Department on the existing line in regard to fire flows. Future development is restricted as there is not enough fire flow. The City has made it clear that this is not a priority for them. There might be possibilities of working with private owners.

Jennifer Douglass asked if this project was designed yet. Director Grow stated no it has not.

Chair Cole-Hansen stated that she believed if there is not a 50/50 cost share for either of these projects then the URA should not move forward. Chair Cole-Hansen expressed that other entities, LOID for example, have been required by the URA to share costs for replacement of aging infrastructure. Discussion was had regarding fairness considerations

Board member Beck stated the land owner near the county could be approached in regards to assisting with the water project.

Jennifer Douglass stated they could not contract with anyone until there is a bidding process. Mrs. Douglas suggested that the URA share information and cost sharing possibilities with all landowners who would be affected by projects or benefitted by projects to see if there is interest from any of them. Discussion was had regarding fairness considerations

Director Grow stated URA could move forward with just gathering information, research further, and reach out to the landowners who would be affected by this line. URA should consider if upgrading this water line would encourage growth and economic development.

Chair Cole-Hansen asked this to be moved to the active agenda for the next meeting.

C. City of Lewiston's Comprehensive Plan Phase I Survey

Katie Hollingshead, Assistant Planner provided the URA with a survey in regards to the City of Lewiston’s Comprehensive Plan. This survey will close at midnight on May 14, 2023.

D. Board Member Comments

Chair Cole-Hansen stated that she will be resigning from the URA, this meeting will be her last.

E. Staff Comments

None

VI. ADJOURN (ACTION ITEM)

There being no further business, Board members Beck and Anderson moved and seconded, respectively, to adjourn. The motion carried 5-0 and the Urban Renewal Agency Board adjourned at approximately 2:04 p.m.

RESPECTFULLY SUBMITTED,

ATTEST:

DAWN ORTIZ,
RECORDING SECRETARY

URBAN RENEWAL AGENCY CHAIR

Approved this _____ day of _____, 2023.

Appendix A

URBAN RENEWAL 101: AUTHORITY, OVERSIGHT, AND IMPLEMENTATION

Presented by Meghan S. Conrad

Elam & Burke, PA

March 14, 2023



URBAN RENEWAL AGENCY AUTHORITY

STATUTES ▪ LIMITATIONS ▪ POWERS ▪ FINANCING

Urban Renewal Agency Authority

- Local Economic Development Act, Title 50, Chapter 29, Idaho Code
- Idaho Urban Renewal Law of 1965, Title 50, Chapter 20, Idaho Code
- Idaho Constitution—Article VIII, § 4, Art. XII, § 4
- Separate and distinct legal entity with independent authority—*Yick Kong v. BRA*, (entirely lay person board) *Hart v. Rexburg URA* (mix of lay persons and council members). These two Idaho Supreme Court decisions also authorize urban renewal agencies to incur long term debt without the necessity of a public vote (2/3 majority) as required of other public entities; Article VIII, § 3 of the Idaho Constitution.
- City Council approval of an urban renewal plan does not create a liability on the part of the city which would implicate Article VIII, § 3 of the Idaho Constitution. *Hoffman et al. v. City of Boise*.
- Models throughout the state vary widely; though after HB606 (2016), models should become more uniform, mix of lay appointees and elected officials; but latter cannot constitute a majority.

Limitations On Urban Renewal Agencies

- An urban renewal agency is prohibited from funding real property improvements to privately owned property (which includes non-profit entities) and granting funds to private entities (again, including non-profit entities).
- An urban renewal agency can fund real property improvements to real property owned by another public entity (either local, state, or federal) and may grant funds to another public entity.
- Urban renewal agencies may only expend public funds for the benefit of the public. The agency should be very cautious in considering funding improvements to private property or formally participating with private entities as a partner, joint venture, etc. Funding could be ultimately deemed a loan or grant or gift of public funds to the private property owner and thus a violation of the Idaho Constitution. [Art. VIII, § 4, Art. XII, § 4, Idaho Constitution]

Limitations, Continued

- Idaho does not permit its urban renewal agencies to grant tax money to private interests for development or to lend its credit to back loans to private interests.
- NOTE – The application of Art. VIII, § 4 to urban renewal agencies has never been specifically interpreted by the Idaho Supreme Court.

No county, city, town, township, board of education, or school district, or other subdivision, shall lend, or pledge the credit or faith thereof directly or indirectly, in any manner, to, or in aid of any individual, association or corporation, for any amount or **for any purpose whatever**, or become responsible for any debt, contract or liability of any individual, association or corporation in or out of this state.

Idaho Constitution, Art. 8, § 4 (emphasis added).

Limitations, Continued

- The Idaho Supreme Court has held the purpose behind Art. VIII, § 4 of the Idaho Constitution is to prevent private enterprises from gaining any competitive advantage at the expense of the taxpayers.
- An urban renewal agency must demonstrate that TIF funded improvements were primarily beneficial to the public.
- If actions challenged as unconstitutional, the agency could face a substantial risk of costly litigation and potentially an award of costs and attorney fees.

Limitations, continued

- A second constitutional provision also addresses limitations on a public entity to provide a donation, raise money, loan its credit, or aid any company or associated:
- Attorney General Opinion No. 95-07 regarding loaning state employees to the United Way to assist in its annual fundraising campaign

No county, town, city, or other municipal corporation, by vote of its citizens or otherwise, shall ever become a stockholder in any joint stock company, corporation or association whatever, or raise money for, or make donation or loan its credit to, or in aid of, any such company or association: provided,

Idaho Constitution, Art. 12, § 4.

What Powers Do URA's Have?

Consistent with the urban renewal plan, to:

- Construct/reconstruct streets, utilities, parks, recreation facilities, off-street parking and public facilities, public buildings and other improvements.
- Acquire and dispose of property or buildings.
- Improve, renovate, clear and prepare for redevelopment properties or buildings.
- Acquire property to eliminate unsanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to public welfare.
- Invest and borrow money, issue bonds, and accept loans and grants.
- Work cooperatively with other public entities.
- Facilitate Local Improvement Districts (LIDs) and Business Improvement Districts (BIDs).
- Potential lease conduit financing in appropriate circumstances. *Greater Boise Auditorium District v. Frazier*

Authorized Activities under the Law and the Act

- Urban Renewal Project as defined by the Idaho Urban Renewal Law of 1965 (the “Law”) and
- Project or Urban Renewal Project as defined by the Local Economic Development Act (the “Act”)
- The definition of “urban renewal project” contained in the Law is nearly identical to the definition contained in the Act
- The definition of “project costs”



The Act: Title 50, Chapter 29, Idaho Code

(13) "Project" or "urban renewal project" or "competitively disadvantaged border areas" may include undertakings and activities of a municipality in an urban renewal area for the elimination of deteriorated or deteriorating areas and for the prevention of the development or spread of slums and blight and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan. Such undertakings and activities may include:

See also – I.C. 50-2018(10)

- (a) Acquisition of deteriorated area...
- (b) Demolition and removal of buildings...
- (c) Installation, construction, or reconstruction of streets...
- (d) Disposition of any property...
- (e) Carrying out plans for...repair...
- (f) Acquisition of real property ... to be rehabilitated
- (g) Acquisition of other property ...to eliminate unsafe conditions, etc. ...
- (h) Lending or investing federal funds...
- (i) Construction of foundations...

The Law: Title 50, Chapter 29, Idaho Code

14) "Project costs" includes, but is not limited to:

- (a) Capital costs, including the actual costs of the construction of public works or improvements, facilities, buildings, structures, and permanent fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures, and permanent fixtures; the acquisition of equipment; and the clearing and grading of land;
- (b) Financing costs, including interest during construction and capitalized debt service or repair and replacement or other appropriate reserves;
- (c) Real property assembly costs, meaning any deficit incurred from the sale or lease by a municipality of real or personal property within a revenue allocation district;
- (d) Professional service costs, including those costs incurred for architectural, planning, engineering, and legal advice and services;
- (e) Direct administrative costs, including reasonable charges for the time spent by city or county employees in connection with the implementation of a project plan;
- (f) Relocation costs;
- (g) Other costs incidental to any of the foregoing costs.

Project Financing Options

- Pay-as-you-go
- Developer reimbursement agreements
- Owner participation agreements
- Conventional bank loans
- Bonds
- Note: Often no tax increment available to fund projects on a pay-as-you-go method until at least two years after plan creation. Many projects require infrastructure immediately in order for a project to go – requiring financing of improvements.
- Participation policies

Project Financing Options, Continued

- Agency decisions regarding project financing are: properly noticed on agendas, decisions are made in open, public meetings, and by agency resolution.
- Before financing occurs, there must be a showing the project is economically feasible and a determination that an agency is credit worthy.

How Does Revenue Allocation Financing Work?

(Local Economic Development Act)

- When a revenue allocation area is formed, property valuation is calculated on a parcel-by-parcel basis. This is the base assessment roll of the revenue allocation area.
- Base assessment roll for the geographic area under consideration (or collectively if more than one district) cannot exceed 10% of the current assessed value for the entire city.
- Due to redevelopment, it is anticipated the property values will rise. If property values increase above the base value, the added value is called the ***increment***.

Revenue Allocation Financing, Continued

- Budget for City, County, and other non-school taxing districts limited to previous year's budget plus 3% and credit for value of new construction and annexation subject to 8% cap, as a result of legislation in 2021 and 2022. By virtue of amendments in 2007, value of new construction within a revenue allocation area is not included in that credit amount. At the time of termination of a revenue allocation area, 80% of the increment value is placed on the new construction roll and available for the overlapping taxing entities to increase budget capacity above the 8% budget cap. County Assessor sets property values.
- County determines tax rate needed to produce budget submitted by City, County, and other taxing districts.
- Tax rates applied to full value of property outside revenue allocation areas; to the base value of property inside revenue allocation areas.
- Taxes from the base value go to the taxing districts.
- Property tax revenue from the incremental value, if any, goes to the urban renewal agency for a limited period of time (20 year max, except for "grandfathered" projects primarily 24 years).

Revenue Allocation Financing, Continued

- The increment or revenue allocation that goes to the urban renewal agency is used to pay for improvements within the urban renewal area.
- An urban renewal agency does not determine property valuation or tax rates.
- Funds received by an urban renewal agency for a given revenue allocation area must be spent in that revenue allocation area with limited exception.
- Funds are invested in activities that are intended to increase prosperity of the revenue allocation area.
- Result is often an increase in property values which would not have otherwise occurred but for redevelopment.
- For project areas established after 2008 and voter approvals after 2008, the urban renewal agency will not receive taxes generated by voter approved levies, such as general obligation bonds, school district plant facilities levies, and supplemental levies.
- Also, no school district emergency levy available to urban renewal agency.

LURA Administers four (4) Project Areas

- Bryden Avenue expires 2038
- East Orchards expires 2037
- Main East Main expires 2029
- Downtown/Normal Hill expires 2041

5th Street entrance into
downtown Lewiston from Levee
Bypass



PUBLIC OVERSIGHT

OPEN MEETINGS ▪ PUBLIC RECORDS ▪ REPORTING REQUIREMENTS

Operating In The Public Eye

- Public Record Law – Idaho Code §§ 74-101 to 74-126
- Open Meeting Law – Idaho Code §§ 74-201 to 74-208
 - Notice of Meetings – Agendas, Idaho Code § 74-204
 - Executive Sessions – When Authorized, Idaho Code § 74-206

Procurement Rules and Procedures

- Title 67, Chapter 28, Idaho Code
 - Public Works Construction Bidding
 - Threshold amounts for both formal and informal bidding processes
 - Best interests of Agency from \$0 to \$50,000
 - Informal bidding from \$50,000 to \$200,000
 - Formal bidding over \$200,000
 - Public Procurement of Goods and Services Bidding
 - Best interests of Agency from \$0 to 50,000
 - Informal bidding from \$50,000 to \$100,000
 - Formal bidding over \$100,000
- Idaho Code § 67-2320
 - Professional Service Contracts with Design Professionals, Construction Managers, and Professional Land Surveyors
- Idaho Code § 54-4511
 - Construction manager/general contractor

Financial Reporting Requirements: Audit, Annual Report, Budget and Other

- Audit and Annual Report
 - Idaho Code §§ 50-2006(5)(c) and (d)
- Budget
 - Idaho Code §§ 50-2903(5) and 50-1002; see also 50-2006(5)(d)
- State Controller's Office local government registry and reporting portal (agency and financial information)
 - Idaho Code § 67-1076
- State Tax Commission reporting portal (urban renewal plans)
 - Idaho Code § 50-2913
- Amendment certification
 - Idaho Code § 50-2903A (For plans adopted post-July 1, 2016)

5TH Street view of downtown
Lewiston from Levee Bypass

IMPLEMENTATION

BOARD ■ CREATION ■ PLAN ■ RECENT CHANGES ■ TAX COMMISSION

Board Composition And Limitations

- The agency's Board of Commissioners may have 3 to 9 members, who are appointed by the Mayor and confirmed by the City Council (or by County Commission for County urban renewal agencies).
- Currently approximately 48 Idaho cities have urban renewal agencies. Most of these agencies have one or more City Council members on the Board of Commissioners, but members of the local governing body shall constitute less than a majority of the agency board members.
- Many of the agencies are staffed by city employees; typically through a city-agency agreement; some use independent consultants; economic development entities; few have full time employees; some cities/ agencies share costs of city employees.

Board Composition, Con't

- Members of the local governing body can only represent less than a majority of the agency board
- Allows the local governing body to terminate the appointed board and designate itself as the board for not more than one (1) calendar year (viewed as a last resort action – rogue or runaway board)
 - Must be by ordinance; “local governing body” does not include the mayor
- Requires board members to be residents of the county where the agency is located

Conflict Of Interest Laws

- Urban Renewal Law – Interested Public Officials, Commissioners or Employees, Idaho Code § 50-2017
- Ethics in Government Act of 2015 – Chapter 4, Title 74
 - Gifts/gratuities/events
- Prohibitions against Contracts with Officers – Chapter 5, Title 74

Ethics in Government Act of 2015: Describes the Public Trust and Fiduciary Obligation

POLICY AND PURPOSE. It is hereby declared that the position of a public official at all levels of government is a public trust and it is in the public interest to:

- 1) Protect the integrity of government throughout the state of Idaho while at the same time facilitating recruitment and retention of personnel needed within government;
- (2) Assure independence, impartiality and honesty of public officials in governmental functions;

- (3) Inform citizens of the existence of personal interests which may present a conflict of interest between an official's public trust and private concerns;

- (4) Prevent public office from being used for personal gain contrary to the public interest;

- (5) Prevent special interests from unduly influencing governmental action; and

- (6) Assure that governmental functions and policies reflect, to the maximum extent possible, the public interest.

I.C. § 74-402

Ethics in Government: Defines Conflict of Interest

- A serving board member has an important fiduciary duty to that entity.
- The Ethics in Government Act defines a conflict of interest.

“Conflict of interest” means any official action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the **private pecuniary benefit** of the person or a member of the person’s household, or a business with which the person or a member of the person’s household is associated

I.C. § 74-403(4)

Ethics in Government: Exception to Conflict of Interest Provision

- Exceptions to the conflict of interest provision:
 - Where the actions of the public body provide a benefit to a certain class of people, and a public official happens to be a member of that class.
 - There is a de minimis value of goods and services that a public official may receive without violating any of these provisions.
 - A specific exception for non-compensated public officials is set out in I.C. §74-405. This exception applies only when the contract for services has been subject to public bid and the appointed official submitted the lowest bid.

When a person is a public official by reason of his appointment or election to a governing board of a governmental entity for which the person receives no salary or fee as compensation for his service on said board, he shall not be prohibited from having an interest in any contract made or entered into by the board of which he is a member, if he strictly observes the procedure set out in section 18-1361A, Idaho Code.

I.C. § 74-405.

Urban Renewal Law: Contains a Broader Conflict of Interest Prohibition

- I.C. § 50-2017 prohibits board members from having an interest in a contract or real property connected to an urban renewal project, whether or not the urban renewal agency itself is a contracting party or not.
- Provision has not been amended since the Urban Renewal Law was enacted in 1965.
- Provision likely based on a model act required by HUD to receive federal funding assistance.
- Provision was likely intended to prevent a board member from investing in real estate in an urban renewal area.

...voluntarily acquiring any personal interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project in such municipality or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the agency and such disclosure shall be entered upon the minutes of the agency.

I.C. § 50-2017

Urban Renewal Law: Exception to Conflict of Interest Prohibition

- There is an exception created for board members that own property in the urban renewal project area at the time the member is appointed.
- Provision is likely intended to address those situations of appointing a board member who may own property within the urban renewal project area.

...If any such official, commissioner or employee presently owns or controls, or owned or controlled within the preceding two (2) years, any interest, direct or indirect, in any property which he knows is included or planned to be included in an urban renewal project, he shall immediately disclose this fact in writing to the agency, and such disclosure shall be entered upon the minutes of the agency, and any such official, commissioner or employee shall not participate in any action by the municipality (or board or commission thereof), or urban renewal agency affecting such property.

I.C. § 50-2017

Conflict of Interest Under I.C. § 18-1359: Criminal Misdemeanor

- Care must be taken that information obtained in your position as Board Member be disclosed or used which would benefit you or a person in whose welfare you have an interest (i.e. family members).
- Violation of I.C. § 18-1359 is a criminal misdemeanor.

"No public servant shall:

(a) Without the specific authorization of the governmental entity for which he serves, use public funds or property to obtain a pecuniary benefit for himself.

(b) Solicit, accept or receive a pecuniary benefit as payment for services, advice, assistance or conduct customarily exercised in the course of his official duties. This prohibition shall not include trivial benefits not to exceed a value of fifty dollars (\$50.00) incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

(c) Use or disclose confidential information gained in the course of or by reason of his official position or activities in any manner with the intent to obtain a pecuniary benefit for himself or any other person or entity in whose welfare he is interested or with the intent to harm the governmental entity for which he serves

(d) Be interested in any contract made by him in his official capacity, or by any body or board of which he is a member, except as provided in section 18-1361, Idaho Code.

I.C. § 18-1359(1)(a) through (d)

How Are Urban Renewal Areas Formed?

- Idaho Urban Renewal Law first adopted in 1965 states there exists in municipalities deteriorating areas which justify the powers conferred by the Act and use of public funds for that purpose.
- City Council (or County Commission) must make preliminary finding there are one or more deteriorating areas within city (or county) (or competitively disadvantaged border community) in order to activate an urban renewal agency.
- Mayor and City Council (or County Commission) appoint urban renewal agency board members.
- Same agency board governs/oversees the several project areas; urban renewal plans with the municipality.

Steps to Create a RAA

- Designate a study area for potential creation of an urban renewal district
- Determine whether conditions within the study area meet the criteria established in State Law (Idaho Code §§ 50-2903(8), 50-2018(8) and (9)) and make the requisite findings in an eligibility report
- Retain independent, third party consultant to review area and prepare study report. Supports credibility of findings.

Definition of Deteriorated Area – I.C. § 50-2903(8)-see also, I.C. §§ 50-2018(8) and (9)

"Deteriorated area" means:

(a) Any area, including a slum area, in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare.

(b) Any area which by reason of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, results in economic underdevelopment of the area, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use.

(c) Any area which is predominately open and which because of obsolete platting, diversity of ownership, deterioration of structures or improvements, or otherwise, results in economic underdevelopment of the area or substantially impairs or arrests the sound growth of a municipality. The provisions of section 50-2008(d), Idaho Code, shall apply to open areas.

(d) Any area which the local governing body certifies is in need of redevelopment or rehabilitation as a result of a flood, storm, earthquake, or other natural disaster or catastrophe respecting which the governor of the state has certified the need for disaster assistance under any federal law.

(e) Any area which by reason of its proximity to the border of an adjacent state is competitively disadvantaged in its ability to attract private investment, business or commercial development which would promote the purposes of this chapter.

(f) "Deteriorated area" does not mean not developed beyond agricultural, or any agricultural operation as defined in section 22-4502(1), Idaho Code, or any forest land as defined in section 63-1701(4), Idaho Code, unless the owner of the agricultural operation or the forest landowner of the forest land gives written consent to be included in the deteriorated area, except for an agricultural operation or forest land that has not been used for three (3) consecutive years.

Steps, Continued

- Agency Board concurs with the conclusions of the eligibility report and forwards it to the City Council
- If the City Council adopts the findings in the eligibility report, then the City Council directs the preparation of an urban renewal plan for the area; plan must include certain information with specificity – see I.C. 50-2905
- Agency prepares and approves the plan and forwards it to the City Council
- City Council receives the plan and refers it to the Planning and Zoning Commission for a determination that the plan is consistent with the City's Comprehensive Plan

Steps, Continued

- City Council refers the plan to the affected taxing entities and provides at least 30-days' notice of the public hearing
- Planning and Zoning Commission determines that the plan is consistent with the City's Comprehensive Plan.
- City Council holds public hearing; determines whether to adopt plan and form the revenue allocation area.
- City Council adopts the plan, including a revenue allocation financing provision, by ordinance
- Those cities/counties that did not already have an urban renewal agency established prior to July 1, 2011, must seek voter approval to establish the agency
- Generally, the plan approval process takes about 6 months for a clearly defined project; oftentimes can take 12+ months

Additional Considerations

- Must demonstrate that the proposed area and plan of work is financially feasible
 - Obtains an independent, third-party consultant to prepare the economic feasibility study. Supports credibility of the findings.
- Must determine that the combined base assessment value of all existing urban renewal districts and any proposed urban renewal districts does not exceed 10% of the total city assessed value (taxable value comparison)
- Owners of “agricultural operations” and “forest lands” must provide written consent

Deannexations

- Pursuant to Idaho Code § 50-2903A, deannexations to a RAA do not trigger a re-set of the base assessment roll values.
- Deannexations are authorized by statute, but not much more guidance is provided.
- The City Council cannot deannex parcels from a RAA without going through the plan amendment process, which includes creation of a plan amendment, new maps/legals, agency recommendation, 30 day notice of the public hearing, transmittal of the plan and attachments to the taxing entities, city council public hearing, and ordinance adoption.
- Revenue from the parcels to be deannexed, or the RAA, may be security for an agency obligation requiring lender consent.

Deannexations, Continued

- County will have to provide you with the base and increment values on a parcel by parcel basis
- In a deannexation there are two benefits: 1) full value of the property is available to the taxing districts to be used in the budget-levy setting process; and 2) 80% of the increment value is placed on the new construction roll, which is used to calculate a budget capacity increase (above 3% and 8% budget caps).
- In order to avoid significant levy swings, it is important for the deannexation process to be completed (meaning ordinance published, recorded and transmitted) no later than the **4th Monday of July**, which means the process must start early.
- Provide the STC with maps/legals as early in the process as possible to avoid issues.

Urban Renewal Plan - Generally

- A revenue allocation area exists for 20 years (pre-2011 plans grandfathered for longer term of 24 years)
- The urban renewal plan provides the Agency with a process and a basic framework within which to consider and proceed with specific projects
- Due to the length of time a plan is in existence, the plan maintains some flexibility to allow the Agency to respond to changing market and economic conditions.
- Amendments are limited by I.C. § 50-2033 and 50-2903A
 - Cannot amend plan to extend term beyond max term allowed by law
 - Can amend plan one time to add geographic area – limited to 10% of existing RAA
 - Permissible to amend plan to add new projects
 - Plans adopted post-2016 cannot be amended without resetting the base value to current value; limited exceptions

Sample Analysis When Considering a New Project

- Is the proposed project within the boundaries of an existing RAA?
- Is the proposed project permitted by the Urban Renewal Law or the Local Economic Development Act?
- Is the proposed project a municipal building or a multipurpose sports stadium complex?
- Is the proposed project consistent with the urban renewal plan?
- Is the plan a pre-or-post July 1, 2016, plan?
- Is a plan amendment possible or necessary?
- Is the proposed project within the jurisdictional boundaries of the city?
- Is the proposed project consistent with the City's comp plan?
- Does the property at issue have an ag exemption, or has the property been used for ag purposes within the last 3 years?
- Funding?

Property Acquisition

- Agency has the authority to acquire property; however, the definition of “urban renewal plan” in the Law requires identification of property to be acquired by the Agency. See, I.C. § 50-2018(12)
- The Agency may acquire property by negotiation or condemnation. See, Idaho Code § 50-2010 subject to limitations which require city council approval. The Agency’s ability to exercise the power of eminent domain subject to the limitations set forth in Title 7, Chapter 7, Idaho Code, specifically I.C. § 7-701A (advisory capacity to City Council)

Property Disposition

- Procedures for the disposition of property are set forth in Idaho Code § 50-2011. Property cannot be given to a private person/entity/non-profit without going through a competitive bidding process.
- Idaho Code § 50-2011(f): Property previously acquired or acquired by an agency for rehabilitation and resale shall be offered for disposition within three (3) years after completion of rehabilitation, or an annual report shall be published by the agency in a newspaper of general circulation...listing any rehabilitated property held by the agency in excess of such three (3) year period, stating the reasons such property remains unsold and indicating plans for its disposition.

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 606, As Amended,
As Amended in the Senate, As Amended in the Senate
BY THE HOUSE OF REPRESENTATIVES

RELATING TO URBAN RENEWAL; AMENDING SECTION 50-2006, IDAHO CODE, TO REVISE PROVISIONS FOR THE MAKEUP OF THE BOARD OF COMMISSIONERS OF AN URBAN RENEWAL AGENCY, TO ALLOW FOR THE ELECTION OF COMMISSIONERS, TO REVISE PROVISIONS REGARDING THE FILLING OF VACANCIES, TO PROVIDE RESIDENCY REQUIREMENTS FOR COMMISSIONERS, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 50-2933, IDAHO CODE, TO PROVIDE REQUIREMENTS FOR AMENDMENTS; AMENDING SECTION 50-2905, IDAHO CODE, TO REVISE THE DEFINITIONS OF "DE-ANNEXATION PROJECT," "PLAN" OF "URBAN RENEWAL PLAN" AND "PROJECT COSTS"; AMENDING CHAPTER 29, TITLE 50, IDAHO CODE, BY THE ADDITION OF A SECTION TO PROVIDE FOR THE EFFECT OF AN ORDINANCE TO MODIFY AN URBAN RENEWAL PLAN AND TO PROVIDE EXCEPTIONS; AMENDING SECTION 50-2905, IDAHO CODE, TO PROVIDE THAT ANY CHANGES TO AN URBAN RENEWAL PLAN SHALL BE NOTICED AND COMPLETED IN AN OPEN PUBLIC MEETING; AMENDING CHAPTER 29, TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 50-2905A, IDAHO CODE, TO PROVIDE FOR AN ELECTION ON CERTAIN PROJECTS AND TO DEFINE TERMS; AMENDING CHAPTER 29, TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 50-2913, IDAHO CODE, TO PROVIDE THAT URBAN RENEWAL PLANS BE SUBMITTED TO THE STATE TAX COMMISSION AND TO PROVIDE PENALTIES FOR FAILURE TO REPORT; AMENDING SECTION 50-3611, IDAHO CODE, TO PROVIDE FOR INCLUSION ON THE NEW CONSTRUCTION ROLL WHEN A MODIFICATION OF AN URBAN RENEWAL PLAN OR DE-ANNEXATION OCCURS AND TO MAKE A TECHNICAL CORRECTION; PROVIDING SEVERABILITY; AND PROVIDING EFFECTIVE DATES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 50-2006, Idaho Code, be, and the same is hereby amended to read as follows:

50-2006. URBAN RENEWAL AGENCY. (a) There is hereby created in each municipality an independent public body corporate and politic to be known as the "urban renewal agency" that was created by resolution as provided in section 50-2005, Idaho Code, before July 1, 2011, for the municipality; provided, that such agency shall not transact any business or exercise its powers hereunder until or unless: (1) the local governing body has made the findings prescribed in section 50-2005, Idaho Code; and provided further, that such agency created after July 1, 2011, shall not transact any business or exercise its powers provided for in this chapter until (2) a majority of qualified electors, voting in a citywide or countywide election depending on the municipality in which such agency is created, vote to authorize such agency to transact business and exercise its powers provided for in this chapter. If prior to July 1, 2011, the local governing body has made the findings prescribed in subsection (a) (1) of this section then such agency

shall transact business and shall exercise its powers hereunder and is not subject to the requirements of subsection (a) (2) of this section.

(b) Upon satisfaction of the requirements under subsection (a) of this section, the local governing body shall have the authority to transact the business and exercise the powers hereunder by a board of commissioners to be established as follows:

(1) Unless provided otherwise in this section, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners for an urban renewal agency, which shall consist of not less than three (3) commissioners nor more than nine (9) commissioners. In the order of appointment, the mayor shall designate the number of commissioners to be appointed, and the term of each, provided

that the original term of office of not less than (2) commissioners shall expire in the same year. The commissioners shall serve for terms not to exceed five (5) years, from the date of appointment, except that all vacancies shall be filled for the unexpired term.

(2) For ineffectiveness, neglect of duty or misconduct in office, a commissioner may be removed by a majority vote of the local governing body only after a hearing and after he shall have been given a copy of the charges at least ten (10) days prior to such hearing and have had an opportunity to be heard in person or by counsel. Any commissioner position which becomes vacant at a time other than the expiration of a term shall be filled by a majority vote of the board. The board may elect any person to fill such vacant position where such person meets the requirements of a commissioner provided for in this chapter. The mayor or chair of the board of county commissioners, if that is the local governing body, by and with the advice and consent of the local governing body, including the mayor, if applicable, and shall be filled for the unexpired term.

(3) By enactment of an ordinance, the local governing body may appoint and designate itself from among its members to be members of the board of commissioners of the urban renewal agency, provided that such representation shall be less than a majority of the board of commissioners of the urban renewal agency of the members of the local governing body on and after July 1, 2017, in which case all the rights, powers, duties, privileges and immunities vested by the urban renewal law of 1965, and as amended, in an appointed board of commissioners, shall be vested in the local governing body, who shall, in all respects when acting as an urban renewal agency, be acting as an arm of state government, entirely separate and distinct from the municipality, to achieve, perform and accomplish the public purposes prescribed and provided by said urban renewal law of 1965, and as amended.

(4) By enactment of an ordinance, the local governing body may terminate the appointed board of commissioners and thereby appoint and designate itself as the board of commissioners of the urban renewal agency for not more than one (1) calendar year.

(5) By enactment of an ordinance, the local governing body may provide that the board of commissioners of the urban renewal agency shall be elected at an election held for such purpose on one (1) of the November dates provided in section 34-106, Idaho Code, and the ordinance may not

Idaho Code § 50-2903A

Plans adopted post-July 1, 2016, are subject to base reset upon modification except in limited circumstances.

The effect of a base reset is the loss of the increment value resulting in an immediate loss of revenue to an urban renewal agency leading to default on existing obligations. This statute will impact plans adopted post-July 1, 2016, and subsequent modifications to those plans.

Idaho Code § 50-2903A (continued)

A modification shall not be deemed to occur in the following limited circumstances:

- (1) To make technical or ministerial plan amendments
- (2) To make a plan amendment that increases the revenue allocation area boundary by up to 10%
- (3) To de-annex parcels from a revenue allocation area. Provides statutory justification and process
- (4) To make a plan amendment to support growth of an existing commercial or industrial project in an existing revenue allocation area**

This exception can only be used in limited circumstances and is subject to varying interpretations.

Effect of I.C. § 50-2903A - Summary

- Plans may be amended for any reason (subject to the statutory limitations set forth in Idaho Code §§ 50-2033 and 50-2904) without risk of a base re-set
- For plans adopted post July 1, 2016, there is no ability to amend the plan to support an unanticipated economic development project without risk of a base reset.
 - Required to comply with attestation

“With specificity” Idaho Code 50-2905

Idaho Code § 50-2905 was amended to address the contents of a plan

- a. Requires that a revenue allocation area plan must state with specificity details about the types of projects that are contemplated [no definition of specificity].
- b. Requires that any changes to an urban renewal plan be noticed and completed in an open public meeting.

Plan specificity – what does that mean?

- Requiring “specificity” will limit an agency’s ability to respond to new economic development opportunities.
- Additionally, as a plan is implemented, it is not uncommon for there to be changes to the location of improvements. At what point does a change deviate from the specificity requirement to require a plan amendment?

Idaho Code § 50-2905A – Limitation on use of TIF to fund construction of municipal buildings and multipurpose sports stadium complex

- Three-part test:
 - After July 1, 2019, revenue allocation funds or revenue allocation funds aggregated with any other “public funds” may not contribute to 51% or more of the total “project cost” (excludes federal funds and federal funds administered by a public body); AND
 - the project is for construction of a “municipal building,” or a “multipurpose sports stadium complex,” or a remodel of either; AND
 - the total project cost exceeds \$1M
- Voter approval: if triggered, 60% of the participating qualified electors residing within the borders of the qualified municipality; election subject to consolidated election laws

Impact of I.C. § 50-2905A

- Definition of “public funds” includes funds collected or received by a “public body.” Excludes: grants or donations from private entities or individuals to the public body, and federal funds or federal funds administered by a public body
- Definition of “public body” refers to I.C. 50-2018(3), which means “the state or any municipality, township, board, commission, authority, district, or any other subdivision or public body of the state.”
- Definition of “multipurpose sports stadium” is broad: indoor or outdoor venue for sports, concerts, or other events with a field or other playing surface partly or completely surrounded by a tiered structure
 - based on debate portable bleachers/stages, etc are not included in this definition
 - likely captures amphitheaters in parks
- Definition of “municipal building” is limited: administrative building, city hall, library, courthouse, public safety or law enforcement building, other judicial buildings, fire stations, jails and detention facilities
 - not subject to property taxation
 - are/intended to be owned or operated by or leased to a public body for the public’s benefit

I.C. § 50-2905A - Exception

- Exception to “project cost” – certain infrastructure improvements are not subject to 51% limitation
 - “any infrastructure or belowground improvements including, but not limited to, water, sewer, storm drainage, electrical, natural gas, telecommunication, or other similar systems and lines, streets, roads, curbs, gutters, sidewalks, walkways, parking facilities, or unoccupied auxiliary structures.”
 - presumably exception applies to hard costs, soft costs, admin costs and professional service costs

Idaho Code § 50-2913

State Tax Commission Repository

Idaho Code § 50-2913 established urban renewal reporting requirements and penalties for non-compliance.

HB587 (2020) – Highway District Levies

- For RAA first formed or expanded to include property on or after July 1, 2020, all taxes levied by any highway district, unless the local governing body that created the RAA has responsibility for the maintenance of roads or highways is allocated to the highway district. Agency and highway district may enter into an agreement for a different allocation. A copy of the agreement shall be submitted to the state tax commission and to the county clerk no later than September 1 of the year in which the agreement takes effect.

SENATE BILL 1044 (2021)
SESSION LAW CHAPTER 87
IDAHO CODE §§ 7-701A, 50-2006

Amends existing law to provide a certain limitation on the use of eminent domain by an urban renewal district and to provide that property of an urban renewal agency shall revert to the municipality upon dissolution of the urban renewal agency.

SENATE BILL 1107 (2021)
SESSION LAW CHAPTER 273
IDAHO CODE § 40-1415

Amends existing law to provide that a highway district shall be financially responsible for certain urban renewal projects, but only if it reaches an agreement with the urban renewal agency.

SENATE BILL 1086 (2021)
SESSION LAW CHAPTER 284
IDAHO CODE § 67-2346

Establishes the Anti-Boycott Against Israel Act, which prohibits public entities from entering into contracts that will boycott goods or services from Israel or territories under its control.



ISSUES IDENTIFIED OVER THE YEARS

BY THE IDAHO LEGISLATURE AND URBAN RENEWAL CRITICS

Issues

- Definition of blight/
deteriorating conditions
- The development of open
land/Greenfield
development
- Board composition/
qualifications /conflict of
interest/election
- Enforcement of the 10%
rule/compliance/punishment
if the limit is exceeded
- Perceived lack of
accountability/ transparency
to the general public
- Long term debt without
vote
- Reset of base assessment
value
- “Distinguish TIF use for
“blight” from economic
development/mixed use
projects
- Provide taxing entities with
meaningful input/
comment/consultation/
consent rights
- Rebates to taxing districts
- Property tax impact
- “Giveaways”
- Penalties for non-
compliance
- Limitations on types of
projects that can be funded



URBAN RENEWAL IN IDAHO

A Valuable Tool Worth Preserving