

Meridian says state law dictates how city grows

'Takings' laws support private property rights

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MERIDIAN — It's hard for booming Idaho cities like Meridian to limit housing and commercial growth the way many residents want because the state's laws support private property rights, land-use experts say.

Idaho law prohibits cities and counties from reducing a property's value or restricting — through land-use policies, conditions or fees — how its owners develop it. The law refers to such actions as a "taking."

Idaho lawmakers adopted even tougher "takings" laws as recently as 2003 that require local municipalities to tell landowners they can ask for a breakdown on whether government decisions create a taking, said Quentin Knipe, a Boise land-use attorney. In fact, a group of developers recently sued Meridian after the city denied a complicated development application for land inside city limits.

Meridian city leaders and staff say they don't want the city to grow in a way that harms residents' quality of life. They also say they want to accommodate business and residential expansion so it doesn't go west to Canyon County. State law gives the city few tools to limit growth, they say.

But Meridian residents like Rob Knawa and Sharon McKee say they want residential growth slowed to ease road congestion, cut the number of kids in crowded schools and reduce the loss of undeveloped farmland.

Idaho's takings laws prevent Idaho cities and counties from denying applications just to slow growth, according to land-use and political experts. But the same experts also say that state law gives cities some tools to manage their destinies.

"We have a strong takings law because of Idaho's heritage and the political culture," said Jasper LiCalzi, chairman of Albertson College of Idaho's department of political economy. "I agree with the people in Meridian. Their hands are tied by state law."

Idaho and other Western states have a history of supporting the rights of property owners to use their land how they see fit. LiCalzi calls it the political culture of "individualism," in which a citizen makes decisions with little government interference.

Annexation is one tool Meridian does use

Meridian focuses on making sure development follows the city's comprehensive plan and that new subdivisions don't result in poor quality of life for existing residents by creating problems like overwhelming traffic or safety hazards, Meridian Mayor Tammy de Weerd said.

Meridian continues to be one of Idaho's fastest-growing cities: Its population increased by about 8,500 residents in the past year to about 56,100. Just five years ago, Meridian had about 35,000 residents, according to estimates from the Community Planning Association of Southwest Idaho.

Sharon McKee has lived in her rural Ada County home on a one-acre lot off South Eagle Road near Victory Road for about seven years. McKee said she likes new stores and jobs that come with growth but doesn't like clogged roads, crowded schools and the loss of open farmland.

"Living in Meridian, I would like to see growth slowed down," McKee said. "We are a little out of control."

City Attorney Bill Nary, a former City Council member, acknowledges some residents complain to city leaders about growth. But he says residents' complaints focus more on growth's byproducts, such as traffic snarls or crowded schools.

"It's the noise, it's the traffic, it's the congestion," Nary said. "Those are fair concerns. But we have tried to always tell people, 'If you look at it from a private property rights perspective, these property owners have rights, too.' "

The best tool any Idaho city has to control growth is the decision whether to annex new land, Nary said. The city of Meridian can simply deny an application or set specific conditions for land it accepts into the city, Nary said.

"We have the ability to say we are not going to allow that here. We get to control when we grow, how we grow and what happens when we grow into that area," Nary said.

Meridian has used that tool at least once in recent months: The City Council denied annexation to the developer of the proposed Kingsbridge subdivision because neighbors objected to the project along Eagle Road south of Interstate 84.

McKee said she's happy the city took that action because it forced the developer to rethink plans to put in a subdivision with three homes per acre next to her neighborhood's one-acre lots. The city and neighbors eventually accepted Kingsbridge after the developer agreed to build homes on lots of about half an acre each. The city approved a preliminary plat last week; a final plat has not been approved.

Idaho law protects owners from 'taking' of their land

The Kingsbridge project didn't end up in the courts because Meridian had not annexed the land into city limits, Nary said.

"Normally, you can't sue if we don't annex you," Nary said.

But Meridian risks being sued when a property owner wants to develop land within city limits in a way that doesn't match a city's comprehensive plan, he said.

Nary cited a proposed Meridian development called Sadie Creek as an example. Sadie Creek would include commercial and multifamily units on Ustick Road near Eagle Road.

The owners of four connected properties were involved in the proposal. One owner opted out of the deal, creating access problems for cars entering and exiting from Ustick Road. Ustick Road just west of Eagle Road draws more than 10,800 cars each day, according to 2003 Ada County Highway District data.

So in late 2004, the city denied the application, and the remaining property owners sued in District Court. The developer recently put the legal dispute on hold, apparently while they sell the property, Nary said.

Meridian has been sued over land-use decisions five or fewer times in the past seven years, said Brad Hawkins-Clark, a city planner. But the city has to be careful to avoid decreasing property value through zoning ordinances or other conditions placed on a specific piece of land, said Anna Borchers Canning, planning director for Meridian.

City leaders want to avoid lawsuits over developments like Sadie Creek. The desire to stay out of court, however, can make it tough to uphold the goals in the city's comprehensive plan — which De Weerd calls a priority — even when a developer's plans conflict with the city's goals for a piece of land.

Meridian did avoid a lawsuit after the city denied a 2003 application from a developer who wanted to build a residential subdivision at Ustick and Ten Mile roads near the city's sewer treatment plant. The city denied the application because the land is zoned for industrial uses and because future residents would be exposed to the plant's smell.

"The court decisions by and large have always landed on the side of private property rights over the city," Canning said. "As the planning director, I wish the state legal rulings put more emphasis on the comprehensive plan. The court rulings say the comprehensive plan is just a guide."

Longtime Treasure Valley lawyer Bill Gigray said city leaders must be careful to act within their authority, and that their decisions balance the public's needs against private property rights.

"This is what I would call a private property rights-oriented jurisdiction," Gigray said. "There is an inviolate dedication to private property right ingrained in our consciousness and law."

Landowners can sue in federal and state courts, Nary said. And federal courts have awarded civil damages to developers in cases in which the courts determined city decisions were arbitrary, he said. Courts tend to support governments that follow their codes and have sound legal reasons to back up their decisions, he said.

"If (city leaders) say you can't build as many homes on your land as you want to, they better have a good reason for it," LiCalzi said. "They have to show it's in the best interest of the public."

Who really has control over how an Idaho city grows?

Knawa, a retired construction project management consultant, has lived in Meridian for three years. He worries that developers have too much control over the city's growth.

"We can still allow people the freedom to develop their property, but not in any uncontrolled fashion," said Knawa, who sits on a city task force to address transportation issues and prioritize road-improvement projects.

The conflict between state law, city power to slow growth and residents' desires for less congestion will only get worse in the future, LiCalzi said, noting the Idaho Legislature is dominated by lawmakers from slow-growing areas who are less sympathetic to urban issues like rapid development and traffic problems.

"Developers and landowners have a lot more influence on the Legislature than the woman who is trying to get out of her driveway," LiCalzi said. "That's who they are tailoring the laws to."

One size doesn't fit all, but state growth limits are rigid


Many Idaho cities aren't faced with the same conflict as rapidly growing cities like Meridian, Caldwell, Nampa or Kuna, LiCalzi said. But Idaho law treats every city and county the same, regardless of population or growth rate. And Idaho's laws hold most of the power at the state level, he said.

"What you have is the state environment is changing, and the laws are going to have to change along with it," LiCalzi said. "The state has to give more latitude to the localities on this. A one-size-fits-all for the whole state doesn't work anymore."

De Weerd has said she doubts a change in state property rights laws would get much support from state legislators who represent slow-growing parts of Idaho.

Ada County Commissioner Fred Tilman, a former state legislator, agrees state code gives more weight to private property rights than to local municipalities. Any requests to change state law would have to come from groups like the Association of Idaho Cities or Association of Idaho Counties, Tilman said, because Ada County isn't likely to take that step.

"There may be some changes needed in state statute to get where we need to go," Tilman said. "All of us are trying to plan and somehow account for all those different visions. It's challenging, to say the least."

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Rob Knawa, Meridian, says the Meridian city leadership doesn't have the desire to slow growth and joins a group of citizens that think Meridian is growing too fast.

Land use in Idaho

Idaho law specifically directs how each county and city in Idaho may plan for future growth and development. Local governments have only the powers the state allows, said Ada County Commissioner Fred Tilman, a former state legislator. For example, Idaho Code 67-6508 on local land-use planning says each city must create a comprehensive plan for future growth, including some of the following components:

- Cities must make sure their land use policies, zoning or rules don't reduce property values or put unnecessary conditions on using land.
- Cities must analyze future needs for public school capacity and transportation based on development and growth plans.
- An analysis of the area's economic base, including employment, industries, jobs and income levels.
- An analysis of environmental concerns and what each piece of property is suited for.
- General plans for sewage, drainage, water supply, fire stations, libraries, schools and public safety facilities and recreation areas.

How Western states' laws compare to Idaho's

Western states' laws vary on the ability of local municipalities to plan for and control growth. Here's a quick look at how Idaho laws compare to other states from around the West:

- Idaho: The state gives cities and counties the ability to create their own zoning and comprehensive plans. Counties must approve the cities' plans. Cities and counties negotiate agreements for areas of impact, or future growth, outside the cities' limits. State law requires a consistent review process to determine whether governmental actions result in a "taking" of private property.
- Oregon: Local jurisdictions' plans must comply with statewide goals. A state commission has ultimate control over local land-use decisions.
- Utah: A strong private property protection act requires governments to report on potential damage to property values caused by government rules or restrictions. Authority rests mainly in the counties and cities.
- Montana: All local governments can create planning boards to make policies for subdivisions, development of public ways, public structures and utilities and issue location permits. A local government may not pass any laws that are less stringent than state laws.

Source: The American Planning Association, "Growing Smart"

Meridian zoning

In 2002, the city of Meridian revised its comprehensive plan, a guide for future growth. Zoning ordinances enforce the goals of a comprehensive plan, but Meridian's weren't updated at the same time as the growth plan.

Meridian city staff, a consultant and a volunteer committee recently revised every page of the zoning ordinances. Meridian's Planning and Zoning Commission has recommended that the City Council approve the changes after the council holds a public hearing on the revised zoning.

The changes are meant to help the city limit traffic congestion, create more options for housing, limit lookalike subdivisions and clearly outline city expectations for new development.

— Kathleen Kreller