

Chapter 2: PROPERTY RIGHTS

Discussion

Both the United States and Idaho constitutions provide that private property may not be taken for use by the government without just compensation for the value of that use. Courts have recognized that just compensation is required when a government:

- a. Causes physical occupation of property,
- b. Causes physical invasion of property, or
- c. Effectively eliminates (by regulation) all economic value of the property.

Laws or regulations governing private property use should depend heavily upon the government's authority and responsibility to protect public health, safety, and welfare. Based on this premise, the courts have supported the limitation of property use through land use planning, zoning ordinances, setback requirements, and environmental regulations. However, if such regulations and/or laws destroy a fundamental property right or impose a substantial and significant limitation on the property, it could be considered a taking.

In the 1994 Legislative Session, Sections 67-8001, 8002, and 8003 were adopted. This imposed a duty upon state agencies to follow a "checklist" developed by the Attorney General's office to ensure that regulations did not result in a taking of private property rights. The Attorney General issued an opinion and checklist, which is included in Appendix A.

Goal 1: Implement the property rights checklist.

The City of Chubbuck wishes to ensure that land use policies, restrictions, conditions, and fees do not violate private property rights, adversely impact private property values, or create unnecessary technical limitations on the use of the property.

Policy:

- a. To evaluate related actions, the City will make the following considerations (taken from the checklist prepared by the Attorney General):
 1. Does the regulation or action result in the permanent or temporary physical occupation of the property
 2. Does the regulation or action require a property owner to dedicate a portion of property or grant an easement?
 3. Does the regulation deprive the owner of all economically viable uses of the property?
 4. Does the regulation have a significant impact on the landowner's economic interest?
 5. Does the regulation deny a fundamental attribute of ownership?
 6. Does the regulation serve the same purpose that would be served by directly prohibiting the use or action; and does the condition imposed substantially advance the purpose?

