

## Dawn Hofheimer

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**From:** SUSAN PASSOVOY <sjpassovoy@icloud.com>  
**Sent:** Tuesday, June 23, 2026 11:01 AM  
**To:** Participate  
**Subject:** Importance of Concepts of Health, Safety and Welfare in Design Review

Dear Commissioners, and Staff:

CC: City Council and Mayor

RE: Importance of Concepts of Health, Safety and Welfare in Design Review

Now that I am no longer on the Commission, I want to take the opportunity to highlight a tool that is available to you in design review. This is both for your current review activities (including appeals), but also for the revisions being considered for the zoning code.

One of the conundrums faced by the Department and the Commission when reviewing the design of a proposed project is the scope of that review.

Pursuant to KMC §16.07.030.C.2.d, the Commission must determine the following prior to granting Design Review approval:

1. The project does not jeopardize the health, safety, or welfare of the public.
2. The project generally conforms with the design-related goals, policies, and objectives of the adopted comprehensive plan.
3. The project conforms to all applicable standards and criteria as set forth in the Code, including §16.04.080, Design Review

Unfortunately, the staff and our Commission might not have looked closely enough at the first of these criteria -- **health, safety and welfare** -- as we might have, so I want to focus on that in this memo.

The bottom line is that the impact of a project design on must be evaluated in terms of its impact on community and neighborhood health, safety and welfare in a serious and thorough manner. To date it has been too easy to trivialize those terms and not give them the weight to which they are entitled in the balancing process.

Throughout Idaho land use law (Local Land Use Planning Act (LLUPA) and related judicial opinions), the terms health, safety and (general) welfare serve as the core constitutional justifications for regulating the use of **private property**. **The legislative intent, clearly stated in the law, is to promote the public health, safety and welfare.** Under the law regulators are required to consider private property rights, but this must be done in balance with deep considerations of the health, the safety and the welfare of the PUBLIC. **Idaho courts have historically deferred to the City's determination of the impact of a development on the community's sense of aesthetics, appropriateness and community values.**

The concept of "compatibility" encompasses these values—it should not just be whether the superficial design elements meet some architectural definition. The health and welfare of a community are highly influenced by and dependent upon the physical characteristics of a project. The respect and consideration shown by property developers for the community values as expressed in the Comprehensive Plan are important as a community assesses the impact-- on its aesthetics, appropriateness and community values especially as expressed in the Comprehensive Plan.

Of course, this is not a legal opinion, and I would encourage you to ask the City Attorney for a comprehensive review of relevant cases on the subject and advise you on the extent decisions can rely on the welfare concept as expressed in the community's sense of aesthetics, appropriateness and values.

I should also note that we hope that the scope of that review will be expanded under the revisions to the zoning ordinance.

Regards,

Susan Passovoy

June 23, 2026