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ADMINISTERING COUNTY ZONING: A BASIC GUIDE FOR CITIZENS & LOCAL OFFICIALS

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ADMINISTERING COUNTY ZONING A BASIC GUIDE FOR CITIZENS & LOCAL OFFICIALS

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DEDICATION

This guide is dedicated to the countless county citizens and local officials who constructively seek to understand and apply zoning to implement county land resource management plans. May this guide further enhance your abilities to effectively manage the development of your communities.



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INTRODUCTION

It is very easy for people who encounter zoning for the first time, to get confused or lost in a maze of unique zoning terms and procedures. This is true for both new county officials and for property owners seeking to, or opposing, changes in the use of land. If you are a recently appointed member of the Zoning Commission, Planning Commission, or Zoning Board of Appeals, or are a citizen concerned about zoning, this guide is designed to help you. It takes you through THE ZONING MAZE identifying "who does what" in county zoning matters and "how they do it".

This guide identifies the basic responsibilities of each body or official exercising various zoning tasks as well as the basic procedures associated with these activities. It is not a zoning ordinance nor a substitute for one. It is limited to questions that commonly arise in the administration of county zoning and does not address other related matters or procedures such as those involved in county planning programs, capital improvement projects or subdivision regulations. THIS GUIDE ASSUMES THAT YOUR COUNTY ORDINANCE IS CONSISTENT WITH THE COUNTY RURAL ZONING ENABLING ACT, P.A. 183 OF 1943, AS AMENDED THRU 1982. IT ASSUMES YOUR ORDINANCE HAS BEEN PROPERLY ADOPTED AND IS CONSISTENT WITH THE PLAN AND STUDIES USED TO DEVELOP IT. Consequently, this guide is not designed to resolve problems associated with antiquated zoning regulations, poorly drafted provisions, or an improperly adopted zoning ordinance. It can, however, help quickly orient you to county zoning and if you are a county official, to aid you in getting full measure out of the zoning resources that exist within the county. If you find after reading this guide that there are procedures, roles or responsibilities described within that differ from those contained in your county zoning ordinance, or as practiced in your county, then you should bring the inconsistency to the attention of the Zoning Commission or the Planning Commission (if the zoning powers have been transferred) for their study. It may be necessary to seek technical assistance from qualified planners and legal counsel in preparing any proposed changes to the ordinance that are necessary to insure it remains in conformance with state law.

NOTE: Most Michigan counties with a county zoning ordinance have a Planning Commission. This guide assumes the statutory powers to develop and carry out zoning have been transferred from the Zoning Commission to the Planning Commission (as authorized by Section 6 of the County Planning Act, P.A. 282 of 1945 as amended). Therefore, the terms Planning Commission or Planning Commission/Zoning Commission are used in this guide. The term means Planning Commission only if the powers of the Zoning Commission have been transferred. If this transfer of powers has not occurred in your county, then references to the Planning Commission should be interpreted as Zoning Commission (established by Section 4 of the County Rural Zoning Enabling Act, P.A. 183 of 1943, as amended).

CHAPTER I

UNLOCKING THE SECRET OF THE ZONING MAZE

The Zoning Maze

Zoning and other public regulatory tools are frequently described as "confusing", "puzzling", or "like a maze". This is especially true for the citizen or local official encountering a zoning procedure for the first time. It is unfortunate that this sentiment exists, since zoning procedures are designed to insure fairness and equal treatment to all property owners and to thereby prevent arbitrary and capricious regulation of private property. The remedy to this problem is to improve citizen and local official understanding of county zoning. This involves identifying the key to unlocking the secret of the zoning maze.

What is the Key?

- Clue: Zoning originated in the minds of persons greatly concerned with the concepts of consistency, orderliness, certainty, step-by-step progress, fairness, and rational thinking. Notably, these are attributes of the attorneys and planners who greatly influenced early development of zoning.
- Clue: Zoning typically seeks to identify appropriate locations for various types of land uses and to provide minimum standards for insuring compatibility between adjacent uses of land.
- Clue: There are in reality, only three or four basic procedures which guide the entire range of most county zoning activities. It is the characteristics of the form and function of these activities and not their names which identify them.

These clues suggest that the key to understanding zoning and unlocking the secret of the zoning maze is contained in the old adage:

There is a place for everything and everything must be in its place.

If you feel you've been handed a key you don't know how to use, then journey with us through the zoning maze and find the meaning to this key.

Defining Zoning

The first step in this journey is to define zoning. Zoning is an important tool used to bring about orderly development of communities. It works by regulating various aspects of how land may be used. Its name derives from the division of land within the community into zones (also called districts) each of which permits certain uses of land according to specific standards. There are a number of objectives to be achieved through zoning. These include:

- conserving and protecting property values by preventing incompatible land uses from locating in a given area;
- facilitating adequate and economical provision of public improvements;
- providing for orderly community development;
- insuring the needs of the state's citizens for food, fiber, energy and other natural resources are met;
- limiting overcrowding of land and congestion of population, transportation systems and other public facilities; and

- when necessary, developing special programs to achieve specific land management objectives and avert or solve specific land use problems.

Zoning principally achieves these objectives by controlling land uses, density, building height and bulk, lot sizes, yards and open spaces, setbacks, and accessory uses. Different regulations may be established to carry out specific purposes stated for each zone, although within each zone land uses are treated similarly.

A zoning ordinance consists of two distinct parts — the district map and a written text. The text sets out the purposes, uses and district regulations for each district, the standards for special land uses and for administration of the ordinance. Zoning has a direct effect on the health, safety, and general welfare of the community by influencing traffic and parking, congestion, slum prevention, sewers, water supply, schools, parks, playgrounds, fire prevention, community revenues and expenditures, and, of course, property values. The zoning map graphically illustrates into which zones or districts all of the land within the community is classified. Each mapped district relates back to the regulations applicable to that zone as stated in the text of the ordinance. The zoning map usually illustrates various residential, commercial, industrial, institutional and special district zones.

Zoning typically seeks to achieve its objectives by grouping compatible uses within a district and thereby separating incompatible uses. Uses of land are typically incompatible if the characteristics of the use of the land may create negative consequences on adjacent property. This may occur, for example, if residential uses adjoin land uses with large amounts of noise, dust, odors, traffic, or smoke. Together, community plans and zoning should establish an orderly land use pattern related to transportation facilities, utilities, other public facilities and services as well as to both the natural suitability of the land for the intended purposes and adjacent uses of land. An appropriate balance of various land uses within the community is typically sought. Likewise, grouping land uses with similar needs or direct relationships one to the other, helps maximize efficiency and minimize friction, while protecting land values, amenities and reducing public service costs. For example, schools and parks may be good neighbors for residential areas; while intensive commercial or industrial developments may not be.

Zoning regulations do constrain the uses to which a property owner may put land and the arrangement of those uses on a single parcel. However, at the same time, zoning protects each property owner from the uncontrolled actions of others. Without zoning, uses of land such as junkyards and asphalt batching plants could be developed adjacent to your home. While these land uses provide valuable services to the community, their appropriate location is not adjacent to residential areas. Yet, zoning is not merely a "negative" act — aimed at keeping certain land uses out of a community — but also is a "positive" one — creating desirable and harmonious places for people to live, work and play. It is based upon local goals and helps insure the future embodied in community plans is built, piece by piece. Thus, zoning controls are a means to an end and not an end in themselves.

A county is authorized to adopt zoning by state statute. The County Rural Zoning Enabling Act, Public Act 183 of

1943, as amended, permits, but does not require a county to zone. Under the Act, zoning may promote the public health, safety and general welfare through reasonable regulations which are adopted and implemented in accord with the statute. These regulations are contained in the County Zoning Ordinance. Zoning is not retroactive and does not prevent use of already developed lands which do not conform with the regulations of the district in which they are now located. Zoning must provide for reasonable use of land and cannot be arbitrary or confiscatory. The ordinance must be adopted in accordance with the procedure stated in the County Rural Zoning Enabling Act and after adoption must be administered consistent with statute procedures.

Once enacted, a zoning ordinance is not static. Changes can be obtained in several ways. An amendment to the text of the ordinance or a rezoning of the map can be adopted by the County Board of Commissioners. Permission to establish a special land use may be obtained after a review of a proposed site plan by the Planning Commission to insure conformance to the standards stated in the ordinance. Appeal of an administrator's decision or a request for a variance due to a practical difficulty or unnecessary hardship can be sought from the Zoning Board of Appeals. These various actions can be confusing. Which is the appropriate action in a particular situation? This and other questions will be addressed in the following sections of this guide.

Zoning is Constitutional

Zoning has been the subject of a great volume of litigation, but courts long ago upheld the constitutionality of the valid exercise of zoning in a community. This includes both the U.S. Supreme Court in 1926 in the case of Euclid v Ambler Realty Co. 272 US 365 and the Michigan Supreme Court in 1928 in the case of Dawley v Ingham Circuit Judge 242 Mich 247. In the celebrated case of Padover v Township of Farmington 374 Mich 622 (1965) two Justices of the Michigan Supreme Court had the following to say about zoning:

Surely the function of zoning is to plan a modern day community for continuance and growth over a period of years. The growth cannot possibly come at once any more than a seed can spring into a tree overnight. Unless the pattern is set and followed, proper growth can never materialize. The alternative is to pay the price of crime, juvenile delinquency, inadequate sewers, inadequate roads, inadequate schools, inadequate parks, and worst of all, inadequate human beings — a pattern that has been all too clearly evident upon the American scene. A city, village, or township is entitled to work out a better destiny for itself under such clear statutory authority.

Zoning is just one function of local government. It should not be an isolated function. It should be coordinated with plans and related development regulations. It should be done properly. Individual property owners have good reason to expect responsible zoning administration and coordinated development review procedures. County officials have a responsibility to fulfill this expectation. Hopefully, this publication will help prevent misinformation and lack of information from causing the erection of unnecessary barriers to effective zoning in your community.

WHAT IS ZONING?

- Zoning is a means of avoiding land use conflicts between one neighbor and another.
- Zoning is a tool used to insure that new uses and structures will have characteristics generally compatible with others in the area in which it is located. It is a means for promoting the welfare of the Community by guiding its growth along orderly lines.
- Zoning is a method of implementing official community development policies.

- Zoning is a legal, enforceable document which is prepared by a planning or zoning commission and adopted by the legislative body (the County Board of Commissioners).

WHAT ZONING CAN DO FOR YOUR COUNTY

Speculative real estate investments, land division into vacation sites, loss of farm land, patterns of sprawl development and rapid growth are common concerns in many Michigan counties. Even normal growth can cause problems if it occurs without public watchfulness. Community planning and land resource management are essential to insure orderly community development.

Zoning Can:

- Help stabilize and preserve property values by preventing undesirable land uses and controlling land speculation;
- Prevent adverse social and economic impacts of new development from impacting upon existing developments;
- Control development densities so that areas considered appropriate for increased development can be economically serviced when necessary with roads, sewer, water, electricity, fire and police protection, schools and recreation;
- Stabilize and protect existing rural and semi-urban areas from losing their identity or character; and
- Help conserve energy with compact land use patterns.

HOW CAN ZONING DO THIS?

A zoning ordinance is a legal document which prescribes and controls the . . .

- Use of buildings, land and natural resources for trade, industry, residence and conservation;
- Location, height and bulk (yards and setbacks) of uses, buildings and other structures;
- Area or size of a lot (and that portion of the lot which may be occupied or left for open space); and the
- Density of population and intensity of development.

RELATIONSHIP TO OTHER LAND REGULATIONS

A zoning ordinance is not a . . .

- Building Code. Zoning is not meant to be the main device to control the internal materials and manner of constructing a building.
- Land Subdivision Control Ordinance. Zoning does not directly regulate the individual design and layout of land division into lots, streets, etc.
- Health Code. Zoning cannot directly regulate the design and layout of septic systems other than to require locational standards and compliance with local health codes.

Zoning regulations should be coordinated with building, health, subdivision and other local land regulations. This helps insure that public policy is consistently implemented and prevents unnecessary delays and additional development costs which a land developer can easily incur from uncoordinated development review procedures.

EFFECTIVE ZONING

Zoning can be successful if:

- It is based on a sound understanding of the community's needs and reflects the citizen's desires and concepts of what the community should be;
- competent legal and other technical assistance is sought as needed;
- it is based on a properly structured and enacted zoning ordinance;
- it is consistently, fairly and impartially administered and enforced;
- it is administered in strict compliance with procedures required by statutes and all procedures specified in the township zoning ordinance;
- it is periodically reviewed and updated;
- it is understood and supported by the public;
- it is an integral part of the mechanisms adopted by the community to implement community plans and growth management programs.

WHAT ZONING IS NOT OR SHOULD NOT BE*

Zoning is not a medium or cure of all urban and rural ills; it is not intended to lend public support to economic, racial and religious sanctions; it is not an enforcer of private deed restrictions; nor is it a device for intervention in neighborhood feuds or personal quarrels. It does not guarantee an Eden untouched by machines, wandering dogs, or other noisy participants of the urban scene.

Zoning is not a magic potion to stir in with the tax base for cure of past fiscal mistakes. It is not designed to suppress individuality, or to increase tax revenues by making construction of housing as expensive as possible. It should not be used as a device for enforcing narrowly parochial views on style, color, texture, or shape.

Zoning does not assure development. It merely permits it. Thus, excessive commercial zoning does not mean that commercial development will take place. It merely removes the land from categories from which it might more logically be used.

Zoning is not a means for artificially reducing the value of land so that it can be acquired for public use at reduced price.

Zoning is not a weapon to be used in the political arena to assist supporters or punish opponents. Neither is it a scale on which the thumb rests in favor of friends and to the detriment of strangers.

Zoning is not a popularity contest. Where well-considered planning requires an action, it should be taken even in the face of anguished outcries at public hearings. Head counts don't help; reasonable debate does. In such cases, the answer should be conversion where possible. It should never be capitulation.

*Adapted from: "ZONING: A special Report to Appointed Local Planning and Zoning Officials" by the Florida Planning and Zoning Association, Inc., Tallahassee, Florida.

EXCLUSIONARY ZONING PROHIBITED

The County Rural Zoning Enabling Act provides that:

A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a county in the presence of a demonstrated need for that land use within either the county or surrounding area within the state, unless there is no location within the county where the use may be appropriately located, or the use is unlawful (sec. 27a., P.A. 183 of 1943, as amended).

Benefits of County Zoning

At this writing there are 28 counties in Michigan with county zoning ordinances. These ordinances are principally in counties in the north half of the lower peninsula and in the upper peninsula. County zoning offers a very important alternative to individual township zoning in rural Michigan. County zoning can be developed and administered in a way that meets most individual township needs while offering a higher level of professional administration at potentially lower costs than if each township were to have their own ordinance, and in a way which readily coordinates building inspection with zoning when building inspection is also a county function.

An added bonus with county zoning is the fact that the County Prosecutor's office is available to provide legal assistance on matters related to ordinance adoption and amendment, enforcement, prosecution, and defense of any lawsuits. This is no small benefit given the costs of litigation and increasing threats of expensive liability potentially facing zoning authorities. Additionally, a small rural township can sometimes face enormous pressure to approve a bad land use proposal because of the potential taxes that may be generated or the costs of a threatened lawsuit that may be waved in front of them by a developer. These potential threats are less likely to be as significant when the decision is made by a county planning/zoning commission. Counties therefore ought to take special care and pride in running a smooth zoning operation that meets the needs of individual townships as well as county growth management objectives. If this is done, county zoning will remain a viable county function for many years to come, providing a valuable public service at a lower public cost than if each township were to develop and administer their own ordinances.

NOTES:

CHAPTER II

WHO DOES WHAT IN COUNTY ZONING

Three Basic Zoning Functions

There are three basic functions inherent in every zoning ordinance. They are often called legislative, administrative and quasi-judicial. These terms reflect the basic nature or characteristics of each function as it should be exercised. Different bodies and officials carry out these responsibilities and it is important to understand "who does what". Unfortunately, one of the most common local zoning mistakes is to have the wrong body take action on a matter which properly is in the realm of another body. When this happens, the legal status of that decision is in jeopardy if challenged and public confidence in the local zoning program may be eroded.

The LEGISLATIVE function of zoning refers to adoption of the original zoning ordinance, as well as any amendments to the text or zoning map which are adopted later. This action can only be taken by the County Board of Commissioners, the elected legislative body. The County Board of Commissioners is the policy making body and acts after receiving the recommendation of the Planning Commission. Only the County Board of Commissioners, as an elected body, can legally adopt county ordinances and amendments to them.

The ADMINISTRATIVE function of zoning relates to the day-to-day activities involving administration of the provisions and requirements of the zoning ordinance. The Zoning Administrator (often the Building Inspector) and Planning Commission frequently share in the administrative tasks. The administrative function is the main function with which people get involved when seeking zoning approval.

Lastly, the QUASI-JUDICIAL function refers to the appeals process regarding the interpretation and enforcement of individual provisions of a local zoning ordinance. Although this County function is not purely judicial and not conducted in a court of law, it is established in order to insure equal justice. An appeals mechanism is necessary because occasions or situations will arise when the strict enforcement of the zoning ordinance may create physical or practical difficulties or unnecessary hardships on an individual property owner. This function also involves interpretation of the ordinance as necessary. A Board of Appeals is created to carry out this important function. An appeal of a decision of a Board of Appeals is taken directly to Circuit Court.

These three basic functions are summarized on Chart One. The chart references the appropriate sections of this guide where detailed zoning procedures are summarized.

In addition to these three basic zoning functions, there is an important supplemental element of zoning which can be called the technical element. This involves fact finding, technical assistance in processing requests and receiving advisory opinions related to the land use issue(s) at hand. The variety of groups which a county may employ for zoning (and planning) technical assistance are the county prosecuting attorney, community planners, engineers and other professional experts; when and as necessary. Depending upon the size, need and economy of the county, professional planning assistance can be obtained by either (1) hiring a county planner; (2) retaining a professional consultant or firm by contract; or (3) seeking advice, when the need arises, from a regional or state planning agency.

The Public Officials Who Carry Out Zoning Functions

There are, as previously identified, a number of county officials concerned with the proper execution of the ordinance. In Michigan counties, these include the following as listed below according to function:

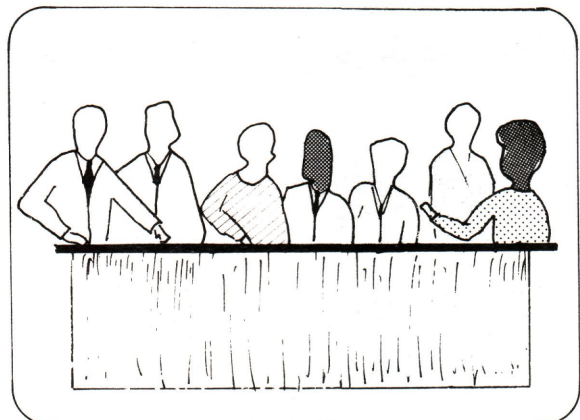
Legislative Body

COUNTY BOARD OF COMMISSIONERS (IN MATTERS OF ZONING)

The County Board of Commissioners is the legislative or governing body of the County. All the members are elected by the citizens. As the legislative body, only the County Board of Commissioners has the authority to formally adopt a zoning ordinance and amendments to the text and zoning map.

Responsibilities:

When county zoning is first contemplated, the County Board of Commissioners under Act 183 of 1943 may create a Zoning Commission pursuant to Section 4 of the County Rural Zoning Enabling Act, or may transfer this responsibility to the Planning Commission. This body researches, studies, and proposes a draft ordinance according to a plan, for consideration by the County Board of Commissioners. The process of developing the ordinance, holding the required public hearing, having the draft ordinance reviewed by the Michigan Department of Commerce and resolving initial public concerns is generally carried out before the County Board of Commissioners formally receives the proposed ordinance. The Board reviews and considers the text, map and all public comments. Furthermore, it looks to see how or



Legislative Body

CHART ONE

PRINCIPAL ZONING FUNCTIONS: THE ZONING MAZE

WHO	DOES WHAT	HOW
		General Procedures See Page _____ of this Guide
<u>Zoning Bodies & Officials</u>	<u>Zoning Functions/Activities (statute reference)</u>	
County Board of Commissioners, after reviewing recommendations of Planning Commission/Zoning Commission and Michigan Department of Commerce	LEGISLATIVE Zoning ordinance adoption and amendments (Sections 7, 9, 10, 11, 14)	10
Zoning Administrator	ADMINISTRATIVE Zoning Permits (Sec. 24) Certificates of Occupancy (Sec. 24) Zoning Violations (Sec. 24)	12 13 15
Varies-typically Zoning Administrator and Planning Commission/Zoning Commission	Site Plan (Sec. 16e)	14
Varies-may be administrative Official, Planning Commission/Zoning Commission, County Board of Commissioners	Special Land Uses (Sec. 16b)	17
Varies-may be Administrative Official, Planning Commission/Zoning Commission, County Board of Commissioners	Planned Unit Developments (Sec. 16c) ²	19
Board of Appeals	QUASI-JUDICIAL Appeals ³ -ordinance interpretation-variances (Sections 19-23)	20
An Administrative Official, Planning Commission/Zoning Commission, County Board of Commissioners	Conducts public hearings	22

¹Planning Commission/Zoning Commission - means Planning Commission if the powers of Zoning Commission have been transferred, or if the powers have not been transferred or there is no Planning Commission, then it means Zoning Commission.

²Planned Unit Developments may also be handled as amendments requiring legislative action by the County Board of Commissioners.

³Appeals of decisions on special land uses or planned unit developments may be taken to the Board of Appeals only if so specified in the ordinance.

if public comments were adequately resolved. At its discretion, the County Board of Commissioners may hold additional public hearings and may also refer suggested ordinance changes back to the Planning Commission for a response. Thereafter, at any regular meeting or a special meeting called to consider the proposed ordinance (or amendment), the County Board of Commissioners may adopt it. A majority vote is required. Once adopted, the County Board of Commissioners may also give the ordinance immediate effect. A notice of adoption must be published in a newspaper of general circulation within 15 days after adoption.

In matters of district boundary map changes (rezoning) or amendment to the text, the statutory role played by the County Board of Commissioners is the same as in the original process for adopting the zoning ordinance.

Should a need to protect the public health, safety and general welfare of the County arise while the Planning Commission is first preparing a draft ordinance, the County Board of Commissioners may direct the Commission to prepare and submit a draft interim zoning ordinance. The Commission would conduct a hearing and then refer the interim ordinance to the state for review. Afterward, the County Board of Commissioners may adopt it. An interim zoning ordinance is only temporary, being valid for one year with renewal not to exceed two additional years. An interim ordinance may not be adopted if a permanent zoning ordinance is already in effect. See Section 15 of the Act for details.

In addition to the County Board's legislative role described above, the County Board of Commissioners is also permitted by state statute to perform an administrative role in certain activities, providing the local zoning ordinance so specifies. This administrative role may apply to all or specific special land uses and planned unit developments as defined by the state enabling act. However, the County Board of Commissioners does not have authority to hear appeals of an administrative zoning decision or action, and may not overrule a decision of the Board of Appeals. Nor for that matter, may the Board of Appeals review a decision by the County Board of Commissioners denying a rezoning or text amendment. An appeal of a decision by the County Board of Commissioners regarding an amendment to the ordinance goes directly to Circuit Court.

Administrative Bodies and Officials

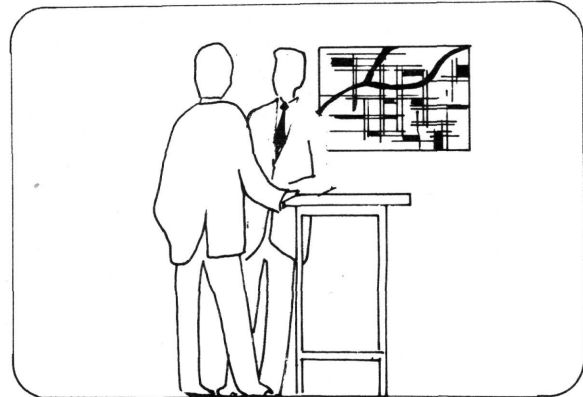
Administrative zoning responsibilities are generally shared between the Zoning Administrator and the Planning Commission (Zoning Commission if the powers have not been transferred). Each of these three official groups is described below.

ZONING ADMINISTRATOR

It is common for a Building Inspector to be delegated the responsibility for administering the zoning ordinance. Under that arrangement, the Building Inspector is more appropriately called the Zoning Administrator. Other titles are sometimes used, such as Zoning Inspector or Zoning Enforcement Officer. Building Inspectors are frequently designated zoning officers for the sake of local coordination of zoning with building approvals.

Normally, when applying for zoning approval, the Zoning Administrator is the official whom an applicant would see first. The Zoning Administrator is specifically assigned the task of reviewing applications and inspecting sites for zoning compliance. This task is generally carried out before a zoning and/or building permit is granted and the process is usually specified in the zoning ordinance.

Depending on how a particular ordinance is written, the Zoning Administrator may also carry out directives of the Board of Appeals and the Planning Commission. If there is a question regarding the meaning of the zoning



Zoning Administrator

ordinance, then the Zoning Administrator would obtain an interpretation of the ordinance from the Board of Appeals. A common example arises when a person applies for a land use not clearly provided for in the ordinance. The Zoning Administrator asks the Board of Appeals to interpret the ordinance and to determine under which related class or kinds of permitted uses the proposed use would fall in order to properly process the request. Once designated, the districts in which that use was permitted and the standards required for that use would be applied. When the Board of Appeals rules on matters under their jurisdiction, they may issue directives to be carried out by the Zoning Administrator. (See section on the Board of Appeals.)

The Zoning Administrator may also seek out the Planning Commission or Zoning Commission for advisory comments and recommendations in the processing of individual zoning applications where questions of physical planning, land use impacts and site conditions arise which may be of concern to the public health, safety and general welfare.

Responsibilities:

(are specified in the zoning ordinance)

The major responsibility of the Zoning Administrator is to administer the ordinance precisely as it is written. There is no authority to deviate from the ordinance, nor to modify its requirements. In general, the principal duties of the Zoning Administrator are described in the ordinance and may be comprised of any of the following:

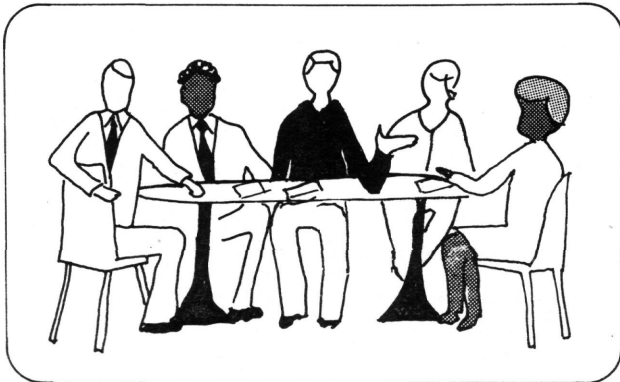
- Assists citizens in determining what zoning forms and procedures apply to proposed zoning requests and land use changes.
- Assist citizens in the completion of required permit application forms.
- Review and investigate permit applications to determine compliance with the provisions of the zoning ordinance.
- Issue the appropriate permit when all provisions of the ordinance have been complied with. If the use is not in compliance with the ordinance, the applicant is notified and assisted with an appropriate alternative procedure or appeal procedure, if the applicant so chooses.
- Perform inspection duties to insure proposed land use changes are and will remain in compliance with the ordinance.

- Identify, monitor and control nonconforming uses.
- Investigate alleged violations of the ordinance and enforce corrective measures when required.
- Defend decisions of office before the Board of Appeals.
- Keep the zoning map, text and office records up to date by recording all amendments, and retaining all official documents.
- Periodically report to the Planning Commission or Zoning Commission, and County Board of Commissioners on the status of county zoning operations.
- Propose solutions to any problems encountered in administering the zoning ordinance.
- Establish and administer rules and procedures within the office.
- Provide information on zoning to citizens and public agencies upon request.
- Perform other duties as specified by local ordinance.
- Help develop and conduct in conjunction with the Planning Commission or Zoning Commission, a continuing program of public education on zoning matters.

PLANNING COMMISSION (IN MATTERS OF ZONING)

For many counties, a Planning Commission serves as the Zoning Commission. Frequently this is because the County Planning Act authorizes the Planning Commission to prepare county plans and studies, to review and improve proposed public improvements, and to carry out responsibilities of the Zoning Commission if this power is transferred to them. By doing so, an important tool, the zoning ordinance, can be monitored to insure it continues to help guide community development consistent with county plans.

This is especially true when the zoning ordinance is prepared after a land use plan and policies have been developed. Once the ordinance is adopted by the County Board of Commissioners, the Planning Commission assists in those aspects of ordinance administration specified by the ordinance itself. This often includes review and approval when warranted, of proposed site plans, special land uses and planned unit developments.



Planning Commission

Responsibilities:

(P.A. 282 of 1945, as amended)

Where zoning powers have been transferred to the Planning Commission by the County Board of Commissioners, the statutory authority and requirements for the Planning Commission in terms of zoning administration are fairly explicit as highlighted below. (The composition of a Zoning Commission differs in some respects and are described in the following section.)

1. A minimum of four regular open meetings must be held each year.
2. The Planning Commission must prepare and adopt a basic land use plan to guide development in the county.
3. In matters of zoning, the Planning Commission may prepare and recommend to the County Board of Commissioners a zoning ordinance having a text and map showing proposed zoning district boundaries. The Commission must:
 - a) Specify who shall administer and enforce the ordinance.
 - b) Conduct at least one public hearing held on the proposed ordinance.
 - c) Send the proposed ordinance (after the hearing) to the Michigan Department of Commerce.
4. The Planning Commission must also advise and make recommendations to the County Board of Commissioners concerning future amendments, changes, additions or departures from the ordinance.
5. Periodically, a report must be presented to the County Board of Commissioners concerning the operation of the zoning ordinance with comments and recommendations for possible amendments.

Membership & Guidelines

(P.A. 282 of 1945, as amended)

The membership of the Planning Commission and its operating guidelines are identified in the County Planning Act:

1. The Planning Commission may contain between five and eleven members who are appointed by the County Board of Commissioners.
2. Where the Commission consists of five members, one member may be a member of the County Board of Commissioners elected and serving. Where the Commission consists of from six to eight members, two members may be members of the County Board of Commissioners elected and serving. Where the Commission consists of from nine to eleven members, three members may be members of the County Board of Commissioners elected and serving.
3. Terms of office are for three years, except for the initial members appointed who must serve staggered terms.
4. The Planning Commission must elect its own officers and establish its own rules of procedure.
5. The Planning Commission is authorized to prepare an annual budget and utilize outside technical and professional expertise.
6. Members of the Planning Commission may be compensated for such "reasonable and necessary expenses" as deemed necessary by the County Board of Commissioners.

ZONING COMMISSION

If zoning powers are not transferred to the Planning Commission, the zoning ordinance is prepared by a Zoning Commission appointed by the County Board of Commissioners. After ordinance adoption, the principal function of the Zoning Commission is primarily advisory and administrative.

Responsibilities:

(P.A. 183 of 1943, as amended through 1982, Sections 4-13)

The statutory responsibilities of the Zoning Commission are outlined below:

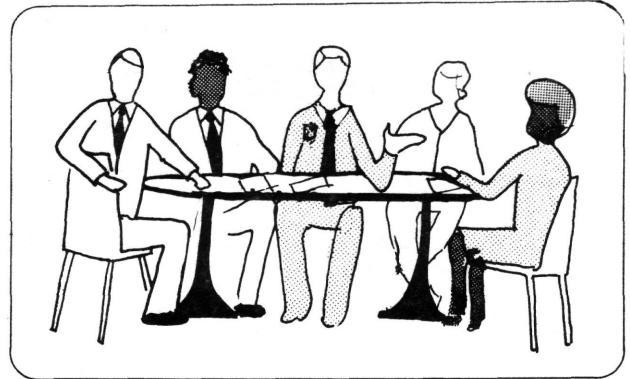
1. A minimum of two regular, open meetings are required to be held each year.
2. The Zoning Commission must prepare and recommend to the County Board of Commissioners a zoning ordinance (for the area outside the limits of cities and villages) having a text of regulations and a map showing proposed zoning district boundaries, and must:
 - a) Specify who shall administer and enforce the law.
 - b) Hold at least one public hearing.
 - c) After public hearing, refer the tentative ordinance to the Michigan Department of Commerce.
3. The Zoning Commission must also advise and make recommendations to the County Board of Commissioners concerning amendments, changes, additions to or departures from the ordinance.
4. Periodically, a report must be prepared for the County Board of Commissioners on the operation of the zoning ordinance with comments and recommendations for possible amendments.

Membership & Guidelines

(P.A. 183 of 1943, as amended through 1982, Sections 4-6)

The membership of the Zoning Commission and its operating guidelines are authorized by statute.

1. The Zoning Commission may contain between five and eleven members appointed by the County Board of Commissioners.
2. Terms of office are three years, except for the original members who serve staggered terms.
3. Vacancies are filled by the County Board of Commissioners.
4. Elected officers of the County or employees of the County Board of Commissioners shall not serve as a member or an employee of the Zoning Commission.
5. The Zoning Commission must elect its own officers at least once each two years.
6. The Zoning Commission is authorized to prepare an annual budget and utilize outside technical and professional expertise.
7. A budget may be developed and funds appropriated annually in advance by the County Board of Commissioners.



ZONING COMMISSION

8. Members can be removed by the County Board of Commissioners in accord with procedures which prove misfeasance, or nonfeasance in office.

Again, please note that where the term Planning Commission is used in this guide in the context of zoning responsibilities, it means Zoning Commission if there is no Planning Commission in the county.

Quasi—Judicial Body

BOARD OF APPEALS

The Board of Appeals is the only body at the county level to hear appeals on various zoning matters. When administrative decisions are made in connection with enforcing the ordinance, it is possible that they will be appealed. The most common reasons for appeal or requests for interpretation are:

- Compliance with the required yard and setbacks or other standards on a particular parcel produces a practical difficulty or physical constraint for the individual.
- A strict application of zoning regulations in a particular situation creates an unreasonable burden on a single property owner.
- There is a need to interpret or clarify a zoning regulation in order to apply the ordinance.
- A decision or requirement of the Zoning Administrator has been made which a property owner feels is inconsistent with the ordinance requirements.
- A use is not specifically provided for in the ordinance and ordinance interpretation is necessary to determine which use is most similar in character to the proposed use.
- If permitted by the ordinance, to review a decision made by an administrative body on a special land use request.

The County Board of Appeals, therefore, serves as the first level or step for an individual to appeal a decision, or ordinance standard as applied to him or to request an interpretation of the ordinance. When a point of controversy cannot be resolved at this step, the next step is to proceed through the state court system, beginning with Circuit Court. No local body, including the County Board of Commissioners, can override a decision of the Board of Appeals.

Responsibilities:

(P.A. 183 of 1943, as amended, Sections 18-23)

The statutory responsibilities of the Board of Appeals as cited in the enabling act appear below in summary form. The Board of Appeals:

1. Adopts rules of procedure to govern its actions as an appeals board.
2. Hears and acts upon all questions that may arise from the administration of the zoning ordinance, including ordinance interpretation, review of standards, and the zoning map.
3. Hears and acts upon appeals made from a review, order, requirement, decision or determination made by a body or official who is administering the zoning ordinance.
4. Hears and acts upon requests for variances, keeping in mind the spirit of the ordinance, public safety and justice.
5. May hear appeals with regard to special land uses and planned unit developments, only if expressly authorized in the local ordinance. Reasonable conditions may be imposed upon review.
6. Makes decisions only by majority vote.
7. Must state the basis or grounds for its decision. It must identify the facts which support the conclusions reached on the cases before it.
8. Conducts all meetings in public. Formal hearing of any appeal must be set within a reasonable time and conducted as a public hearing with due notice given to all parties affected. Specific requirements of the local ordinance must also be adhered to.
9. Has all the powers of the (administrative) officer or body from whom the appeal is taken.
10. Can rehear a case, if ordered by Circuit Court. In this case, the Court must find that the records are inadequate for proper Court review, or that there is additional pertinent evidence which was not presented to the Board of Appeals. In this instance, the Board of Appeals must review their decision and either modify or affirm its original findings and decision.

Membership & Guidelines

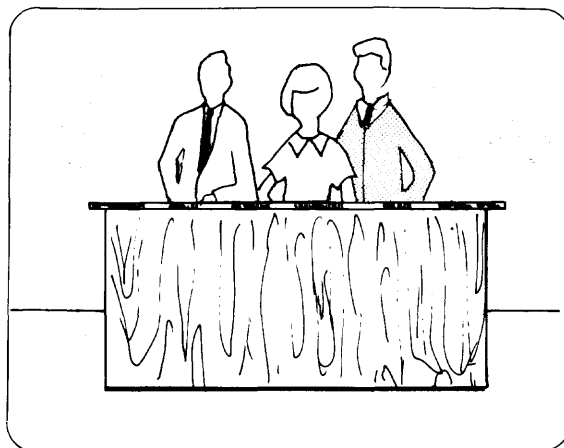
Membership on the Board of Appeals and its operating guidelines are prescribed in the enabling act.

1. Size:

The Board of Appeals shall consist of between three and seven members who are appointed by the County Board of Commissioners.

2. One member shall be a member of the Planning Commission (Zoning Commission if there is no Planning Commission). The remaining members shall be appointed by the County Board of Commissioners from among the electors of the county residing outside of any incorporated areas.

3. No elected officer of the county or employee of the County Board of Commissioners may serve on or be hired by the Board of Appeals.
4. Terms of office are three years, except for the person serving as a representative of either the Zoning or Planning Commission. For such representatives, terms are limited to the time they are members of their respective commission. Of those appointed to the original County Board of Appeals, terms may be for less than three years in order to stagger individual terms of office.
5. The Board of Appeals must operate within an annual budget prepared by the County Board of Commissioners.
6. Members may be removed for nonfeasance or misfeasance, pursuant to a procedure established by the County Board of Commissioners.
7. A majority is required in order to conduct business.



Board Of Appeals

NOTES:

CHAPTER III

GENERAL ZONING PROCEDURES

Introduction

This part of the guide describes general procedures for administering the principal zoning functions in Michigan counties. They are generally discussed in terms of the following:

- When Zoning Approval is Necessary
- People Involved
- General Procedural Steps
- Sample Checklist to Guide Decisions

Most communities use standard forms to facilitate review and approval of zoning requests. If standard forms are not in use in your county, it may be valuable to develop some. If they are in use, they should be reviewed to insure they contain the necessary information to effectively implement zoning procedures.

There are generally three broad phases through which all zoning requests must pass: application or submission; investigation-evaluation (fact-finding and analysis); and final action. Throughout each phase in the process, proper and defensible zoning administration requires (1) responsible communication, (2) diligent record keeping, and (3) consistent adherence to all specific procedural requirements and standards found in the local zoning ordinance and the County Rural Zoning Enabling Act. Once zoning compliance is achieved by an applicant, a requested zoning approval must be granted.

As a guide to insuring proper zoning decisions are made, consistent with the authority of the approval body and the purpose of the ordinance, sample checklists of review considerations are provided.

These include sample checklists to:

- Guide Decisions on Zoning Amendments
- Guide Decisions on Zoning Permit Reviews
- Guide Decisions on Site Plan Reviews
- Guide Decisions on Special Land Uses
- Guide Decisions on Planned Unit Developments
- Guide Decisions on Variances

Guidelines for conducting public hearings and maintaining hearing records are also provided.

Specific land use and facility design criteria, or industrial performance standards commonly applied to individual land uses are not discussed here; but are no less important. To some extent, such location and design criteria, as well as performance standards may be obtained from source books published by the particular trade or industry involved. These may also be available from planning, engineering and architectural professionals in private firms and public agencies. Of course local standards should also be developed as is appropriate.

Legislative Zoning Functions

ZONING AMENDMENTS

When An Amendment is Necessary

When a property owner or county officials seek a change in the provisions, rules or requirements of the zoning ordinance (TEXT CHANGE) or a change in the mapping of district boundaries (REZONING).

People Involved

Petitioner(s), Zoning Administrator, the Planning Commission, and the County Board of Commissioners.

General Procedural Steps

Amendments, as legislative actions, must follow the same route required for the adoption of the original ordinance. This means that the proposed amendment should be considered carefully alongside adopted county land use policies and plans. The review should establish the compatibility of the proposal with adopted community policies, plans and both existing and future land uses.

The general procedural steps for proposing zoning changes are as follows:

1. Applicant:

- a) Inquires from the Zoning Administrator (or other designated officer) as to how one must proceed and obtains the application form.
- b) Completes and files the application form along with any required fee (and other supporting documentation) with the Zoning Administrator. If the application originates from an official county body, the fee is usually waived.

2. Planning/Zoning Commission:

- a) Reviews amendment application and studies the appropriateness of the proposed amendment. Study is based on established planning and zoning criteria, as set forth in the zoning ordinance and community plans.
- b) A public hearing on the request is scheduled.

3. Opportunity for Public Comments:

By law, the Planning Commission must hold a public hearing before submitting its recommendation to the County Board of Commissioners. The public hearing requirements are as follows:

- a) One public hearing is mandatory (additional public hearings are optional).
- b) There must be two public notices in newspaper of general circulation in the county for each public hearing:
 - 1) First notice is given between 20 and 30 days prior to hearing date.
 - 2) Second notice is given within eight days of the hearing date.
- c) If amendment involves rezoning of an individual property or several adjacent properties, notice of rezoning must be transmitted in person or by mail at least twenty days prior to hearing to the owner(s) of the property in question.
- d) Not less than 20 days notice of the time and place of the hearing must also be given by mail to each electric, gas, pipeline, and telephone public utility company that registers

its name with the Planning Commission for the purpose of receiving notice of public hearing, and to each railroad within the zone affected.

If notice is sent by mail, an affidavit of mailing must be filed with the Planning Commission as proof of mailing.

Public input is considered and evaluated.

4. Planning Commission (upon completion of the public hearing)

Transmits application and a summary report to the County Board of Commissioners. The summary report includes:

- 1) A summary of the comments made at the public hearing.
- 2) Detailed findings concerning the application based on planning and zoning criteria and concerns raised at the hearing.
- 3) A recommendation supported by the above findings and concerns.

5. County Board of Commissioners

- a) Adopts amendment.

-or-

- b) Rejects amendment.

-or-

- c) May hold additional public hearings on the proposed amendment at its own initiative.

-or-

- d) If changes to the proposed amendment are desirable, the County Board of Commissioners may refer the proposed amendment back to the Planning Commission for its further recommendation within 30 days. Thereafter, the County Board of Commissioners may either adopt the amendment with or without changes, or reject it. If substantial changes are recommended, such as changing the area affected or the zones under consideration, the Planning Commission should advertise and conduct a new public hearing on the request.

6. Following approval by the County Board of Commissioners, the amendment is sent to the Michigan Department of Commerce for review. Approval shall be conclusively presumed if after 30 days no notice of disapproval has been received. Disapproval must be based "upon noncompliance or conflict with either state or federal law or administrative rule or regulation, or a decision of a state or federal court".



Sample Checklist to Guide Decisions on Zoning Amendments

In order to help Planning Commissions and County Board of Commissioners to objectively determine whether a proposed zoning amendment is appropriate, the following questions could be considered:

1. For amendment applications to add additional uses to a zoning district classification, it is appropriate to determine:
 - a) Is the proposed use already provided for elsewhere in the ordinance?
 - b) Is the proposed use compatible with uses already permitted in that district, including those permitted by right and by special land use permit?
 - c) Does the proposed use relate well with the County Land Use Plan? Assuming that the zoning district is in harmony with the plan, does the proposed use contribute to the character of development envisioned in the plan.
 - d) Does the proposed use relate well with the spirit and intent of the ordinance, and with the objectives of the zoning district?
 - e) Is the proposed use locationally appropriate throughout the district?
 - f) Is the proposed use most appropriate in the district if permitted by special land use permits?
 - g) Is there a need to add the proposed use at all?
2. For amendment applications to change or add additional regulations or standards, it is appropriate to determine:
 - a) Does the proposed rule, change or addition help reinforce the County Land Use Plan?
 - b) Is the proposed rule, change or addition in keeping with the spirit and intent of the ordinance, and with the objectives of the zoning district, or does it go excessively beyond the intent and objectives of valid public purposes?
 - c) What is the problem or issue which the change is intended to address? Can this be accomplished in another, more appropriate fashion? Is it a new response to new problems not addressed in the zoning ordinance?
 - d) Is the proposed text change easily enforceable?
3. For rezoning requests to change, create, extend or reduce a mapped zoning district, it is appropriate to determine:
 - a) Is the use more appropriately handled as a special land use in the district or in another district?
 - b) Are there substantial reasons why the property cannot be reasonably used as currently zoned?
 - c) Is the proposed zone change supported by the adopted County Land Use Plan?
 - d) Was there a mistake in the original zoning classification?
 - e) Would the change severely impact traffic, public facilities and the natural characteristics of the area, or significantly

change population density. Is the change consistent with the purposes for which zoning is adopted?

- f) Would the rezoning constitute a 'spot zone' granting a special privilege to one land-owner not available to others?
- g) Is the change contrary to the established land use pattern? Will it adversely affect property values?
- h) Has there been a change of conditions in the area supporting the proposed rezoning?
- i) Are there adequate sites that are properly zoned and available elsewhere to accommodate the proposed use?
- j) Is the proposed change out of scale with the needs of the community?
- k) If the change is approved, what will be the probable effect on stimulating similar zoning requests in the vicinity? Would this secondary affect negatively impact community plans and public services?
- l) Is the proposed change precedent setting?
- m) Is the proposed boundary appropriate?
- n) Whether the change is exclusionary?

As a general rule, most of these concerns are embodied in the following question when rezonings or district use changes are at issue: Is the proposed class of use appropriate in the proposed location (district)?

If these factors are carefully considered and sufficient data are available for evaluation, a sound recommendation will result. In some cases, it may be necessary for special studies and surveys to be made in order to obtain enough information to answer these questions. Where this is true, the Commission should not hesitate to investigate, making certain that professional technical assistance is used whenever possible. In the case of a major amendment, such as for a shopping mall, a good technique for ensuring that the above points are thoroughly explored is to perform an environmental impact assessment. Large scale zoning changes can have tremendous environmental, social, fiscal and public utility implications. These may greatly affect the plan itself and should be evaluated very carefully.

BEWARE OF THESE ZONING EXCUSES

"Sad but true, far too many hearings on rezoning cases resemble a horse trading affair being carried out in a comic soap opera fashion.

Some of the more ridiculous excuses offered for granting rezoning follow such lines as:

- What is proposed is better than what is there.
- The lot is only a weed patch, this will clear it up.
- You can't keep a man from using his land.
- This will bring in more revenue.
- The owner of the land can get more money for it if it is rezoned to commercial.
- There are more vehicles on the street than when he built there or bought the property.
- I promised the people if I were elected I would keep taxes down.
- I am sure he would build something good.
- They are too big an outfit, we can't deny the rezoning.
- Her husband is overseas fighting for our country, how can we deny it?
- He is just an old man trying to make a living, this won't really hurt anyone.
- Service stations provide quick urban renewal.

- We have to bring commerce and industry in today, not worry about a plan of tomorrow.
- I promised the people if I were elected I would bring commerce and industry into our city and this will be a start.
- We approved the commercial rezoning for the other fellow, how can we deny this one?
- We don't have any right to say where commercial or industrial developments should go.
- He invested a lot of money in this land and these proposals thinking the rezoning would be granted, how can we deny it?
- There is commercial zoning on the other corner, how can we deny it on this corner?
- Like his attorney said, it's probably "unconstitutional", and we don't know for sure.
- We don't want to have to go to court, after all it really doesn't look so bad."

Adapted from Northern Kentucky Area Planning Commission Newsletter, December, 1967.

Administrative Zoning Procedures

ZONING PERMITS

Consistency with the county zoning ordinance is usually assured in one of two ways: by issuance of a separate zoning permit, or as an element of the requirement for a building permit. The zoning permit is very important if the county does not handle the building permit process. Either review approach is workable, however, one should be aware of the advantages and disadvantages of both as outlined below:

Zoning Permits (as a Separate Permit)

Advantages:

- separate review process
- can handle all zoning situations dealing with uses, structures and lots
- insures proper record keeping and documentation practices

Disadvantages:

- creates one additional permit requirement for the builder/developer
- creates an administrative expense if building permits are issued by the township

Building Permit (With Zoning Compliance Checkoff)

Advantages:

- one combined permit process, less "red tape"

Disadvantages:

- difficult to enforce all zoning regulations related to changes in use when no construction is involved (and hence, no building permit is needed)
- record keeping and documentation practices necessary for zoning administration are apt to be subordinated

When Zoning Approval is Necessary

Unless a particular use of structure is specifically exempted, zoning approval, either as a separate zoning permit or as part of a building permit, is necessary:

1. Prior to construction of a new structure or addition to either a principal structure or use or to an accessory structure.

2. Prior to changing from one use of land to a different use.
3. Prior to moving a prebuilt structure onto a parcel.
4. Prior to changing certain accessory uses of land such as parking areas or signs.

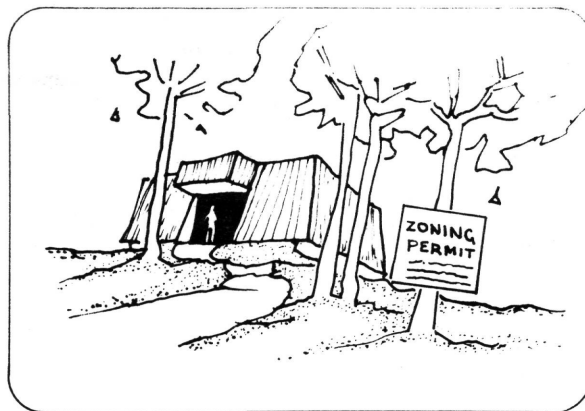
Note: A change in occupancy or ownership of a parcel or structure where the same land use is to be maintained in the same fashion and to the same extent, does not usually require a zoning or building permit.

People Involved

Applicant, Zoning Administrator and possibly the Planning Commission.

General Procedural Steps

1. Applicant:
 - a) Inquires about the ordinance requirements pertaining to his/her proposed use of land with Zoning Administrator (or perhaps County Clerk) and obtains the proper application forms.
 - b) Completes and submits application along with fee and other supporting documentation to County Zoning Administrator.
 - c) If site plan approval is required by the zoning ordinance, the site plan would also be submitted.
2. Zoning Administrator
 - a) Reviews the application:
 - 1) To make sure that it is the proper application for the zoning action requested.
 - 2) To see that all required information is submitted.
 - 3) To determine zoning compliance.
 - b) Takes one or more of the following preliminary actions:
 - 1) Requests from the applicant that any omitted or pertinent and necessary information now be submitted.
 - 2) If necessary, requests the Board of Appeals to interpret an unclear ordinance provision.
 - 3) Reviews site plan according to site plan review standards as set forth in the zoning ordinance.
 - 4) If required by the local ordinance, discusses the application and site plan with the Planning Commission for advisory comments or approval (depending upon ordinance authorization).
 - 5) Makes a site inspection to verify accuracy of the application and to gather additional information.
 - c) Takes final action:
 - 1) Approves application (and site plan) if the proposed use complies with all ordinance requirements and if no special review procedures (such as with a planned unit development) is required. A zoning permit is issued or checked off on a building permit.
 - 2) Disapproves and rejects application (and site plan) with reasons given in writing.
 - d) A decision of the Zoning Administrator may be appealed to the Board of Appeals.



Sample Checklist to Guide Decisions on Zoning Permit Reviews

When reviewing an application for a use or structure, the Zoning Administrator will consider a number of physical aspects about its development in relation to the zoning ordinance. However, because the review generally involves a simple check for zoning compliance and no discretion is involved, the Zoning Administrator will particularly look at certain key elements. Many administrators have developed these key elements into a standardized or systematic review format. Shown below are some of the common key considerations contained in such a format.

All proposed uses and structures to be developed within any zoning district are reviewed to insure compliance with each of the following ordinance requirements:

1. That the proposed use is permitted either by right, by special use permit, or by other review and approval procedures provided for by this ordinance in the district in which proposed use is to be located.
2. Minimum site area requirements of the district (lot size, lot width, lot coverage, required yard setbacks, setbacks from water bodies and streams, maximum building height, etc.).
3. Minimum building requirements, if any (required area).
4. Minimum dimensions of parking space and required number of parking spaces.
5. Sign requirements.
6. Required lighting, fencing, screening or buffer strips, if any.
7. All public structural or development easements where such exists.
8. All special standards and conditions applicable to the proposed uses or structures which are specifically provided for in the ordinance.
9. All general provisions of the zoning ordinance applicable to the proposed use or structure(s).

CERTIFICATES OF OCCUPANCY

The certificate of occupancy (C.O.) is a permit which is required before a new or old structure is occupied or used, and is usually granted after an inspection. The major purpose for a C.O. is to insure zoning compliance. For example, the C.O. helps to make sure that:

1. After construction, a new structure is the same as the one originally approved.
2. Before occupancy, a new use is the same as the use which was approved.
3. Both structure and use comply with all zoning requirements (and any conditions previously imposed).

It should be noted that because of the similarity to the zoning permit, the use of a certificate of occupancy is not common in rural areas where the pace of development is slow to moderate and a second separate permit is not really necessary to insure ordinance compliance. However, C.O.'s are especially useful (1) where active zoning compliance is critical to the welfare of the community, and (2) in some areas where there are no zoning permits or building permits. In this instance, the county issues building permits contingent upon conformance to township zoning ordinances.

When A Certificate of Occupancy is Necessary

This is a matter of local preference and is established in the zoning ordinance. Generally, a certificate of occupancy can be required:

1. Prior to occupying a new structure.
2. Prior to using land in a manner different from the previous use.
3. Prior to occupying an existing structure with a "new" type of use other than what previously existed.

Note: Certificates of occupancy are sometimes used to document lawfully existing nonconforming uses and nonconforming structures.

People Involved

Applicant, Zoning Administrator.

General Procedural Steps

1. Applicant
 - a) Notifies Zoning Administrator that the structure and use are ready for inspection.
2. Zoning Administrator
 - a) Contacts applicant to establish a mutually agreed upon date and time for inspection.
 - b) Researches and reviews any known records relating to site in question.
 - c) Inspects for compliance with zoning requirements and with previously imposed conditions, if any.

(If occupancy permit review is combined with building permit review, the Zoning Administrator also inspects for compliance with building code.)

3. Zoning Administrator takes final action
 - a) Grants the certificate of occupancy.

-or-

- b) Delays subject to completion or alterations necessary to achieve full compliance and follow-up inspection.

-or-

- c) Denies a C.O. in writing based on inspection findings of noncompliance with the ordinance and initiates enforcement action pursuant to ordinance requirements.

The C.O. procedure requires no discretionary decisions. It is simply an inspection by the Zoning Administrator to determine compliance with the requirements of the zoning ordinance and adherence with any conditions previously imposed by a county body or official during the course of the approval process. A C.O. permit may not be denied if there is compliance with all ordinance requirements.

SITE PLANS

Most ordinances require that a site or plot plan or at least a sketch be submitted as part of the application for a particular use. The site plan is used to insure ordinance compliance and to study general (on-site and off-site) impacts from proposed development. These impacts include ingress/egress, interior/exterior traffic flow, storm drainage, erosion, grading of land, landscaping or lighting and parking. A site plan can vary in detail depending upon the size and complexity of the project, and the administrative needs of the local governmental unit. Some site plans are highly detailed blueprints while other site plans may be nothing more than simple sketches affixed to the backsides of zoning permit forms. The details of what information is required on a site plan is specified in the zoning ordinance.

The importance to the Zoning Administrator of having a site (or sketch) plan to review cannot be overstated. The final site plan effectively documents that the applicant is knowledgeable of the regulations and is in compliance with them. Also, once a permit is granted based upon the final site plan, the approved site plan then serves as an enforcement tool.

When Zoning Approval is Necessary

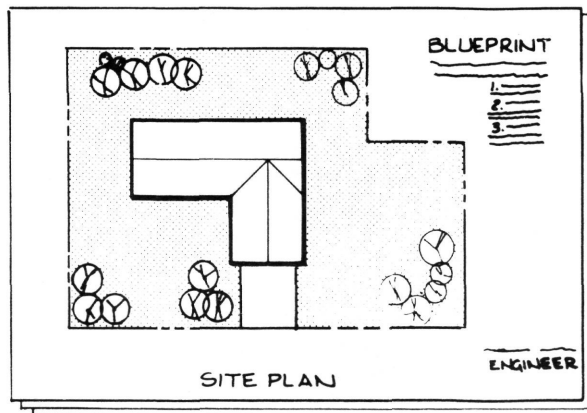
Site plan review is most often not a separate zoning procedure, but instead is a part of another review process, such as review to receive a zoning permit, to obtain a special land use permit, or in relation to a request for a variance. When a separate procedure is specified in a county zoning ordinance it must be followed. Site plan review is required by statute relative to special land uses and planned unit developments. Section 16e of the County Rural Zoning Enabling Act provides the authority and requirements for use of the site plan review technique.

People Involved

Typically, the Zoning Administrator and/or the Planning Commission are involved in site plan review. The statute requires that the zoning ordinance "specify the body, board or official charged with reviewing site plans and granting approval".

General Procedural Steps

Procedural steps vary tremendously from community to community. The statute requires, however, that the zoning ordinance specify "the procedures and requirements for the submission and approval of site plans." Decisions rejecting, approving or conditionally approving a site plan must be based upon requirements and standards stated in the ordinance. If a site plan complies with the ordinance requirements, it must be approved. Once approved, the site plan becomes a part of the record of approval and "subsequent actions relating to the activity authorized shall be consistent with the approved site plan, unless a change conforming to the zoning ordinance receives the mutual agreement of the owner of the land affected and the individual or body which initially approved the site plan."



Sample Checklist to Guide Decisions on Site Plan Reviews

In making rational, defensible decisions and in setting forth conditions for permit approval, uniform review criteria should be employed. Following is an example of typical criteria currently in use. These criteria presume that an ordinance contains standards similar to those cited, which must be complied with to gain zoning approval.

The site plan is reviewed in order to determine:

1. That the proposed use conforms to the uses permitted in that zoning district.
2. That the dimensional arrangement of building and structure conform to the required yards, setbacks and height restrictions of the ordinance.
3. That the proposed use conforms to all use and design provisions and requirements (if any) as found in the zoning ordinance for specified uses.
4. That there is a proper relationship between the existing and proposed streets and highways within the vicinity in order to assure the safety and convenience of pedestrian and vehicular traffic.
5. That the proposed on-site buildings, structures and entry ways are situated and designed to minimize adverse effects (upon owners and occupants of adjacent and surrounding properties) by providing for adequate design of ingress/egress, interior/exterior traffic flow, storm drainage, erosion, grading, lighting and parking, as specified by the zoning ordinance or any state law.
6. That natural features of the landscape are retained where they can enhance the development on the site, or where they furnish a barrier or buffer between the project and adjoining properties (used for dissimilar purposes) or where they assist in preserving the general safety, health and appearance of the neighborhood, i.e. controlling erosion or the discharge of storm waters, etc.
7. That adverse effects of the proposed development and activities upon adjoining residents or owners are minimized by appropriate screening, fencing, or landscaping (as provided or required in the zoning ordinance).
8. That all buildings and structures are accessible to emergency vehicles.
9. That the site plan as approved is consistent with the intent and purposes of the zoning ordinance which is to promote the public health, safety and general welfare, to encourage the use of lands in accordance with their character and adaptability, to avoid the overcrowding of population, to lessen congestion on the public roads and streets, to reduce hazards of life and property, and to facilitate existing county land use and development plans.

ZONING VIOLATIONS

There will come a time in every community when the zoning ordinance is violated. Whether this is intentional or unintentional is of little importance. The credibility of successful zoning lies not only in the ability to administer it reasonably and fairly, but in the ability to enforce zoning requirements. Many violations of zoning are voluntarily reported by alarmed residents, concerned citizens and public officials. Following is a discussion of ways of enforcing zoning and handling violators.

When Necessary

1. When a suspected zoning violation is reported to the County Zoning Administrator.
2. When the Zoning Administrator identifies what appears to be a violation or is in process of becoming one.

People Involved

Suspected violator, Zoning Administrator, County Board of Commissioners and County Prosecuting Attorney.

General Procedural Steps

This section discusses two alternative approaches to dealing with zoning violations. The first is an example of a general approach; while the second exemplifies a zoning summons approach which can be used by some communities where violations may be too numerous and costly to prosecute to the full extent of the law. The basic authority and procedure for either or both of these approaches should be specified in the zoning ordinance.

A. General Approach:

1. A suspected zoning violation is reported or identified.
2. Zoning Administrator:
 - a) Makes a preliminary visit to the site to identify a zoning violation. If no violation is found, the matter is documented and the case closed. (The person contacting the county of the supposed violation should later be informed about the outcome.)
 - b) If a violation is found, it is documented as are the facts supporting this conclusion. A photo showing the violation and listing the date, time, place, and signed by the observer should be made and retained.
 - c) Meets with the landowner to discuss the violation.
 - 1) The zoning violation is explained.
 - 2) Remedial measures to correct the violation are concretely identified for the landowner.
 - d) Issues a Notice of Violation (after the meeting) to the violator with one copy to be filed.

The notice documents:

- 1) The zoning violation,
 - 2) The meeting,
 - 3) Measures to be taken to correct violation, and
 - 4) A uniform period of time given within which to correct the violation.
- e) Reinspects the site, upon expiration of the time period. If compliance is shown, the Zoning Administrator so signifies on the file copy and the violator's copy of the Notice of Violation. The matter is resolved.

However, if the zoning violation still exists after the expiration of the time period, the Zoning Administrator may proceed in the following manner:

- f) Schedules a hearing to be held by the County Board of Commissioners (or other designated body).
- g) Issues a Second Notice of Violation to the violator. The notice:
 - 1) Advises that a hearing before the County Board of Commissioners has been scheduled,
 - 2) Gives the date of the hearing,
 - 3) Requires that the violator or his/her agent appear in order to show cause as to why the County should not proceed in Court to prosecute the violation, and
 - 4) States that correction of the violation prior to the hearing date will automatically void the requirement of a hearing before the County Board of Commissioners.

3. County Board of Commissioners (or other designated body)

- a) Hears the violator's "show cause" response as to:
 - 1) Why compliance with zoning has not been met, and
 - 2) Why the ordinance should not be enforced against the violator.
- b) Directs the Zoning Administrator and the County Prosecuting Attorney to proceed with a formal complaint in Circuit Court if the violator or his/her agent fails to appear, does not give valid reasons for noncompliance or does not give valid reasons against enforcement of the ordinance.
Where the violation involves unlawful construction or illegal usage, either of which may be of a critical nature as specified in the ordinance, a Circuit Court injunction can be an added enforcement action.

Upon conviction, the violator usually pays the County fine and certain legal costs (optional). Many local ordinances also state "each day of conviction, and during which a violation continues shall be deemed a separate offense." Remedies are also usually cumulative. The role of the County Board of Commissioners for the "show cause" hearing could be delegated to the Planning Commission by ordinance.

B. Zoning Summons Approach

The zoning summons approach is a popular alternative used by some communities. It is a good intermediate technique which often resolves the problem, and reduces the number of times the County Prosecuting Attorney or a Court has to be relied upon. The following is a general description of how this approach is used:

- 1. A suspected zoning violation is reported or identified.
- 2. Zoning Administrator
 - a) Makes a preliminary visit to the site to identify if a zoning violation exists. If no violation is found, the matter is documented and the case closed.
 - b) If a violation is found, it is documented along with the facts supporting this conclusion. A photo showing the violation and listing the date, time and place, and signed by the observer should be made and retained.



Zoning Violation

- c) Meets with the landowner to discuss the violation.
 - 1) The zoning violation is explained.
 - 2) Remedial measures to correct violation are concretely identified for the landowner.
- d) Issues a "Warning Ticket" (after the meeting) to the violator with one copy to be filed. The ticket states:
 - 1) The zoning violation,
 - 2) The meeting,
 - 3) Measures to be taken to correct the violation, and
 - 4) A uniform period of time allowed within which to correct the violation.
- e) Reinspects the site, upon expiration of the time period. If compliance is shown, the Zoning Administrator so signifies on the file copy and the violator's copy of the warning ticket. The matter is resolved.

However, if the zoning violation still exists after the expiration of the time period, the Zoning Administrator generally proceeds in the following manner:

- f) Issues a "Zoning Summons" to the violator. The summons:
 - 1) Cites the zoning violation;
 - 2) Gives the date of first meeting and when warning ticket was first issued;
 - 3) Repeats the original measures specified in the warning ticket that were to be taken to correct violation;
 - 4) Indicates the fine as may be previously specified by ordinance or County Board of Commissioner action, payable to the District Court;

Where the violation involves unlawful construction or illegal usage, either of which may be of a critical nature

as specified in the ordinance, a Circuit Court injunction might be a better enforcement action.

and

- 5) Specifies the date by which fine is to be paid to the District Court or at which a "not guilty" plea is to be entered, usually five to seven days.

In most cases, compliance will be gained at this point. But if not, the Zoning Administrator:

- g) Issues a separate Zoning Summons for each day (or week) after the date first summons was issued.
 - h) Reports to the County Board of Commissioners about any violators who have accumulated repetitive summons for the same violation.
3. County Board of Commissioners
- a) Directs the Zoning Administrator and the County Prosecuting Attorney to proceed with a formal complaint to Circuit Court for injunctive relief.

As with zoning permits and certificates of occupancy, the enforcement process requires no discretionary decision on the part of the Zoning Administrator. The administrator simply follows adopted procedures and documents what he/she witnesses and what actions have transpired. Inspections are made according to the County Zoning Ordinance requirements.

SPECIAL LAND USES

Special land uses are typically described as those uses of land which may be appropriate and compatible with existing or permitted land uses in a particular zoning district if individualized care is taken to assure that the characteristics of the use under consideration are compatible with adjacent land uses, the natural aspects of the site, and the general character of the area, including availability of public services and facilities. Typically, a special land use permit is issued to identify compliance with the special land use requirements. The County Rural Zoning Enabling Act specifically grants authority for counties to utilize the special land use technique in Section 16b of the Act. The statute requires that uses permitted as special land uses be identified in the ordinance. The body or official responsible for reviewing and approving special land uses as well as the review procedures and standards upon which approval will be based must also be stated in the ordinance.



A Special Land Use?

When a Special Land Use Permit is Necessary

A special land use permit is typically necessary prior to development of (or conversion to) a use which is listed in the zoning ordinance as a special land use. Sometimes these uses are called special exceptions, special uses, special approval uses, or conditional uses.

People Involved

Applicant, Zoning Administrator and the body or official responsible for reviewing and approving special land uses. The review and approval body or official may be either the Zoning Commission, the Planning Commission (if the zoning powers have been transferred), an administrative official or the County Board of Commissioners. An appeal of a decision on a special land use may be taken to the Board of Appeals ONLY IF it is so specified in the ordinance; otherwise, an appeal would go to Circuit Court. THE BOARD OF APPEALS IS NOT AUTHORIZED TO BE THE BODY RESPONSIBLE FOR ORIGINAL REVIEW AND APPROVAL OF SPECIAL LAND USES; THEY HAVE AUTHORITY ONLY ON APPEAL OF A DECISION BY ANOTHER BODY OR OFFICIAL.

General Procedural Steps

1. Applicant
 - a) Inquires about requirements with the Zoning Administrator or County Clerk and obtains the proper application forms.
 - b) Completes and submits application along with fee (and other supporting documentation) to County Zoning Administrator or the official responsible for receiving special land use applications.
 - c) Submits a required site plan for approval (Act 183 of 1943, as amended, Section 16e(4)).
2. Zoning Administrator
 - a) Reviews application package:
 - 1) To make sure that it is the right application for zoning action requested;
 - 2) To see that all required information is submitted; and
 - 3) To make sure that the proposed use is permitted in a particular district by special land use permit.
 - b) Takes one or more of the following actions:
 - 1) Requests from the applicant that any omitted or necessary information now be submitted;
 - 2) If necessary, seeks ordinance interpretation from the Board of Appeals; and/or
 - 3) Forwards the complete application to the body or official designated to review and approve special land uses.
3. Special Land Use Review Body (or official)
 - a) Reviews site plan according to site plan review standards, as set forth in the zoning ordinance.
 - b) Reviews the proposed special land use according to standards for special land use permits, as set forth in the ordinance.
4. Opportunity for public comments.

If the standards for special land use permits are such that a discretionary decision is to be made, the reviewing body or official must EITHER:

- a) Give a public notice in a newspaper of general circulation, of the official receipt of an application for a special land use permit which:

- 1) Describes the nature of the special land use request;
- 2) Indicates the property in question;
- 3) States the time and place where the special land use request will be considered;
- 4) Indicates when and where written comments will be received concerning the request; and
- 5) Indicates that a public hearing on the proposed special land use may be requested by any property owner or the occupant of any structure located within 300 feet of the boundary of the property being considered for a special land use permit.

This notice is also mailed or delivered to property owners and occupants within 300 feet of the property in question. These notices must be made between 5 and 15 days before the date on which the application is to be considered.

-or-

- b) Give public newspaper notice of a scheduled public hearing. This hearing notice includes items 1) through 4) above. It is also mailed or delivered to property owners and occupants within 300 feet of the property in question. These public hearing notices must be made between 5 and 15 days before the public hearing date.

All public input is considered and evaluated. A summary of the public comments should be retained in the record of the meeting.

5. Special Land Use Review Body (or official) takes final action.

- a) Approves special land use permit application and final site plan. Zoning Administrator is directed to issue permit.

-or-

- b) Approves Special Use Permit application and final site plan subject to conditions which are imposed in order to insure the special land use complies with standards stated in the ordinance. The Zoning Administrator is directed to issue permit.

-or-

- c) Disapproves application and final site plan.

Note: All decisions must be accompanied with a concluding statement citing the reasons for the decision and any conditions which may be imposed. The facts presented in the application, staff report (if any) and from public comments should be specifically related to the standards required for approval. If the facts show that the standards are not met, the application must be denied. If all ordinance standards are met, the application must be approved.

Sample Checklist to Guide Decisions on Special Land Uses

A site plan is required for submission and approval of all special land use permit applications. Frequently, the review and approval of the proposed site plan is handled as a part of the special land use process and not as a separate procedure.

An important concern in reviewing special land use requests is whether or not the proposed site is appropriate for the use in question. A special land use is usually unique and may have particular intrinsic or design characteristics that could possibly create problems for other nearby uses. For this reason, a special land use may be appropriate in one place, but not in all locations throughout the particular zoning district. A classic situation is a proposal to build an all-night gasoline service station or car wash near a predominantly residential intersection, even though the subject property is zoned for commercial uses. Rational judgement and conditions need to be made to protect adjacent lands and the overall character of the area from adverse changes and impacts. The following checklist is suggested for considering the appropriateness of a special land use in a particular area:

1. Relationship to the general safety, health, and welfare of the community-at-large. This includes:
 - accessibility of the property in question to fire and police protection,
 - traffic conditions, creating or adding to a hazardous situation,
 - transportation design requirements, if any, which will be needed to accommodate any traffic impact from the use intended, and
 - appropriateness of the location, nature and height of the proposed use to the size, type, and kind of buildings, uses and structures in the vicinity and adjacent properties, including the safety and convenience of people therefrom.
2. Any potential decrease in the market value of adjacent buildings, uses, and structures which are permitted by right under current zoning, if the proposed special land use is approved.
3. Harmony with the county land use plan and any township plans. This considers whether the location and size of the proposed use, the nature and intensity of the activities involved, the size of the site with respect to existing and future streets (giving access to it), parks and drainage systems will be in harmony with the land use plans, and the character of land use which is intended by said plans for the area or district in question.
4. Impact from the applicant's proposed use, its location and intensity and the height of its buildings, walls, fences and other structures upon the appropriate character of development existing or planned for the area.
5. Any hazards arising from storage and use of flammable fluids.
6. That the operations in connection with any special use shall not be environmentally objectionable to nearby properties by reason of noise, fumes, pollution, vibration, or light to an extent which is more than would be expected of any use permitted by right for the district in which the special land use is proposed.

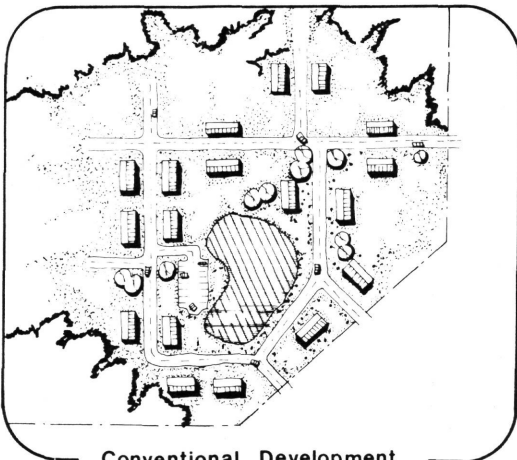
PLANNED UNIT DEVELOPMENTS (PUD's)

The Planned Unit Development, or PUD as it is frequently known, is a modern flexible application of zoning. The PUD zoning concept is employed by some communities to encourage innovative and imaginative project design. Sometimes it is called cluster zoning, community unit plan, or planned residential development. Its use has become very popular all over the country. In Michigan, as of Spring, 1979, county use of the PUD has been given statutory recognition in the County Rural Zoning Enabling Act, see Section 16c.

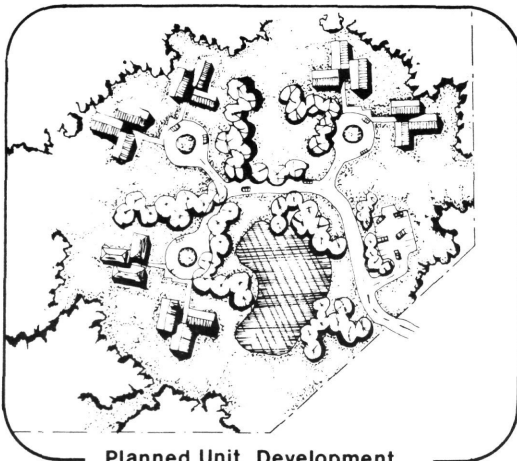
What is a Planned Unit Development?

"Planned Unit Development (PUD) is a devise which allows a development to be planned and built as a unit and which . . . permits variations in many of the traditional controls related to density, elements, and the timing and sequencing of the development. PUD, therefore, is both a type of development and a regulatory process. As a development type, PUD permits flexibility in site design that allows buildings to be clustered; mixtures of housing types such as detached houses, townhouses, or garden apartments, combining housing with such other ancillary uses as neighborhood shopping centers; better design and arrangement of open space; and retention of such natural features as flood plains or steep slopes. It offers greater opportunities for providing lower-cost housing along with conventional housing."

— Michael J. Meshenberg, Administration of Flexible Zoning Techniques, Planning Advisory Service Report No. 318 (Chicago: ASPO, June 1976), p. 19.



Conventional Development



Planned Unit Development

Comparative Site Layout

Often communities define PUD's as large sites developed as a single unit combining a variety of structures and perhaps uses, in which ownership is retained by a single individual, partnership, corporation or association. However, a site does not have to be large to be considered for PUD development unless the county ordinance says so. Because of the trend to conserve and protect open space, sensitive land resources and the natural environment, a PUD may be the only feasible type of development where particular site conditions (e.g. . . . flood plain, steep slopes, wetland, and poor soils) demand clustering or grouping of structures on only part of the site.

Ways to Provide for a PUD in a County Zoning Ordinance

Development of land based on a PUD concept is permitted only if the zoning ordinance expressly permits and provides for such development. In developing PUD provisions, the Planning Commission and the County Board of Commissioners:

1. Defines the term "Planned Unit Development" for zoning purposes;
2. Specifies who shall be the designated review and approval body or official;
3. Determines site eligibility criteria;
4. Establishes standards for approval;
5. Develops public hearing procedures; and
6. Sets forth the PUD review and approval process (which must include site plan review).

With respect to provision 6 above, one of two basic ways to provide for PUD's in the county zoning ordinance are: (1) as a special land use, and (2) as a separate zoning district. The special land use procedure is the simplest of these methods if special land uses are already provided for in the county zoning ordinance since a process of review and approval already exists. The only extra requirements prescribed by state statute for PUD's are that a public hearing is required for PUD's in contrast to the public notice option provided for single-purpose special uses; and that special standards and eligibility criteria must also be provided specifically for review of PUD's. Under this alternative, the body or official charged with review and approval of special land uses becomes the approving body.

A separate PUD zone or district is an approach wherein the mandatory criteria, standards and requirements are contained in a separate PUD district, just as for any district. The local ordinance would have to include provisions which satisfy the above mentioned six features. Of course, in this instance, the ordinance would actually have to be amended to permit a PUD if the land was not already zoned as such and the County Board of Commissioners thus becomes the approval body.

When PUD Approval is Necessary

When an applicant desires to establish a PUD in a district in which PUD's are permitted after special review.

People Involved

Applicant, Zoning Administrator, and the PUD review body or official. The PUD review body or official must be specified in the zoning ordinance as having the power to approve PUD's. The review and approval body or official may be either the Planning Zoning Commission, an administrative official or the County Board of Commissioners.



A Public Hearing Must Be Held On Proposed P.U.D.'s

General Procedural Steps

If the PUD is permitted as a special land use, then the procedures for processing special land uses are followed; EXCEPT THAT A public hearing must be conducted. It is also permissible, if the ordinance so provides, for PREAPPLICATION CONFERENCES to be held between the applicant and county officials before submission of PRELIMINARY site plans before the public hearing.

If the PUD is permitted as a separate zoning district, the ordinance amendment process is integrated with the PUD review and approval process.

When a PUD application is found to satisfy all the criteria, standards, requirements and conditions for approval stated in the ordinance, the application must be approved. An appeal of a PUD decision may be taken to the Board of Appeals only if so specified in the zoning ordinance and only if it is handled as a special land use.

Sample Checklist to Guide Decisions on PUD's

The process of reviewing the PUD application requires site plan review along with considerations similar to that of special uses. Thus, in addition to the site plan review and/or special land use decisions guides, the following sample list of standards is suggested specifically for consideration in making PUD reviews:

1. Is the minimum PUD area requirement of the ordinance met? Are the densities appropriate for the area?
2. Is the location of the proposed PUD appropriate?
3. Are the land uses of the proposed PUD permitted in the zoning district in which the PUD is to be located?
4. Is the PUD to be developed in multiple stages? If so, which parts are to be developed when?
5. Are all community water and sewer service requirements of all state and county local agencies complied with?
6. Is all common property proposed in the PUD clearly provided for? Common property is a parcel or parcels of land, a privately-owned road or roads, together with the improvements thereon, the use and enjoyment of which are shared by the owners and

occupants of the individual building sites. When common property exists, the ownership of such common property may be either public or private but should be specified in writing and approved separately. When privately owned, arrangements must be made for the improvement, operation and maintenance of such common property and facilities, including private streets, drives, service parking and recreational areas.

7. Are necessary public easements on common property which is privately owned adequately granted? When common property exists in private ownership, the owners should be required to grant easements, over, under, and through such property, to the county as are required for public purposes, prior to final approval.
8. Are all site design standards complied with? These standards typically include:
 - Lot area and yard requirements
 - Height limitations
 - Access
 - Building areas (to be in harmony with PUD objectives)
 - Boundary setbacks and buffer areas
 - Off-street parking and loading
 - Residential dwelling unit density (gross density)
 - Landscaping
 - Other local design limitations
9. Have any necessary performance guarantees been required to insure necessary public improvements are installed?
10. Have all conditions required for approval been documented and incorporated into the PUD permit approval?
11. Have a statement of findings and conclusions relative to the PUD proposal been specifically listed and retained as a part of the record?

Note: Final approvals may be granted on each phase of a multi-phased PUD if each phase contains the necessary components to insure protection of natural resources and the health, safety and welfare of the users of the PUD and the residents of the surrounding area. In establishing PUD requirements, the County may also incorporate by reference, other ordinances or statutes which regulate land development.

Quasi—Judicial Zoning Procedures

APPEALS — ORDINANCE INTERPRETATION — VARIANCES

When Action by Board of Appeals is Necessary

1. When an interpretation of the zoning ordinance or map is requested by a citizen or public official;
2. When a citizen appeals a decision made by the Zoning Administrator or by an administrative review body or official from which an appeal to the Board of Appeals is authorized by ordinance; or
3. When a variance from specific ordinance requirements is formally requested.

DECISIONS ON SPECIAL LAND USES AND PLANNED UNIT DEVELOPMENTS ARE NOT SUBJECT TO AN APPEAL TO THE BOARD OF APPEALS UNLESS SPECIFICALLY STATED IN THE LOCAL ZONING ORDINANCE.

DECISIONS BY THE COUNTY BOARD OF COMMISSIONERS ON AMENDMENTS ARE NOT APPEALABLE TO THE BOARD OF APPEALS.

People Involved

- Any aggrieved citizen, or any officer, department, board or bureau of the county or state.
- Zoning Administrator or an administrative review body (or official)
- Zoning Board of Appeals (and its staff)

General Procedural Steps

1. The person (or public agency or official) who makes the appeal:

- a) Inquires to the local Zoning Administrator (or other designated officer) as to how one must proceed and obtains the appeal form.
- b) Completes and files the necessary form with any required fee to the Board of Appeals or official responsible for receiving such applications. On some matters this might be done within a specified time, as prescribed by ordinance or the rules of the Board of Appeals. County bodies and officials are usually exempt from paying a fee if they initiate the appeal.
- c) A copy of the appeal is transmitted to the official or body from whom the appeal is taken. Likewise, this official or body must then transmit to the Board of Appeals all documentation and records upon which the appeal was based.

2. Board of Appeals

- a) Reviews the appeal form:
 - 1) To make sure that it is the proper form for the requested action, and
 - 2) To see that all required information is submitted.
- b) Schedules a hearing within a reasonable period and gives notice thereof to the parties affected in accord with ordinance procedures and any adopted rules.
- c) Formulates decision. The Board of Appeals considers the merits for the individual appeal based on standards and considerations established in the statute and as may be embodied in the ordinance.

3. Board of Appeals takes final action:

The Board of Appeals has all the powers of the officer or body from whom the appeal was taken and may issue or direct the issuance of a permit. The Board of Appeals either:

- a) grants the appeal wholly or partly,
-or-
- b) grants the appeal wholly or partly with conditions attached,
-or-
- c) denies the appeal,
-or-
- d) when a variance is requested and there is just cause to grant such request due to practical

difficulties or unnecessary hardship, the Board of Appeals may reasonably vary or modify specific local zoning requirements so that the spirit of the law is observed, public safety secured and substantial justice done.

The Board of Appeals must state the reasons and facts supporting their reasons for any decision made. These must be written in the record. A concurring vote of a majority of the members of the Board of Appeals is necessary in order to take an action on a matter properly before the Board of Appeals.

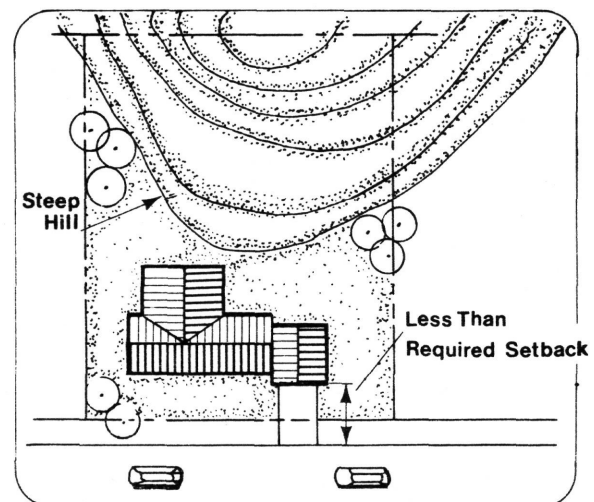
4. Further Appeals in Circuit Court (P.A. 183 of 1943, as amended through 1982, Section 23(2))

Should an appeal be taken one step further to the Circuit Court, the County Rural Zoning Enabling Act prescribes guidelines for court review of the record and decision of the Board of Appeals. The Court reviews the decision to insure that it:

- a) Complies with the state constitution of 1963 and the laws of this state.
- b) Is based on proper procedure.
- c) Is supported by competent, material, and substantial evidence on the record.
- d) Represents the reasonable exercise of discretion granted by law to the County Board of Zoning Appeals.

Should the Court find that the record of the Board of Appeals is inadequate to make the above review, or that additional evidence exists which was not presented to the Board of Appeals, the Court can order the Board of Appeals to conduct further proceedings. The Board of Appeals may then change or stand by its original decision. The supplemental records and decisions must be filed with the Court.

As a result of Court review, the Court may affirm, modify or reverse a decision of the Board of Appeals.



A Typical Variance Situation

Sample Checklist to Guide Decisions on Variances

The most common appeals deal with requests for a variance from specific ordinance standards such as dimensional requirements of the ordinance including: yard requirements, setback lines, lot coverage, frontage requirements and density regulations.

When a Board of Appeals considers a variance request, it is important that they keep in mind that the variance authority is designed to provide relief to a property owner from an ordinance requirement that is uniquely affecting him/her. It is not designed as a technique to grant special favors to some persons. Almost always people will claim that a variance will allow them to make more money from the property. However, this is not a legitimate argument, since zoning is not designed to permit the most profitable use of land, although reasonable use of property must be permitted. Where a number of property owners are facing the same problem and seek a variance to relieve their practical difficulty or unnecessary hardship, the appropriate remedy is amendment of the ordinance by the County Board of Commissioners and not a slew of variances by the Board of Appeals.

Where there are practical difficulties or an unnecessary hardship preventing a property owner from conforming with the strict letter of the ordinance, the Board of Appeals has the power in passing on appeals, to vary or modify any of its rules, regulations, or ordinance provisions by granting variances. Typically, the following conditions must exist:

1. Dimensional zoning requirements cannot be physically met by an existing lot due to narrowness, shallowness or irregular shape, or the topography or natural characteristics of the site inhibit the lawful location of a structure or its accessories (such as septic system, garage, shed).
2. The physical hardship is unique and is not shared by neighboring properties in the same zone. If Board of Appeals finds that the hardship is not unique, but common, amending the ordinance or a rezoning should be pursued.
3. The hardship or practical difficulty was not created by an action of the applicant and either existed at the time of adoption of the requirement from which the variance is requested or is necessary as the result of governmental action such as a road widening.
4. The appellant typically must show that a variance:
 - a) Will not be contrary with the intent and purpose of the zoning ordinance;
 - b) Will not cause a substantially adverse affect upon adjacent properties;
 - c) Will relate only to the property under control of the appellant;
 - d) Will not jeopardize the preservation of a substantial property right, and will insure the spirit of the ordinance shall be observed, public safety secured and substantial justice done;
 - e) Will not essentially alter the character of the surrounding area;
 - f) Will not increase the hazard from fire, flood or similar dangers;
 - g) Will not increase traffic congestion;
 - h) Will not produce nuisance conditions to

occupants, or nearby premises, whether by reason of dust, noise, fumes, odor, vibrations, smoke or lights; and

- 1) Will not otherwise impair public health, safety, comfort, or general welfare of the residents of the County.
5. The variance is the minimum necessary to permit reasonable use of the land and buildings.

The burden of showing a variance is warranted falls on the applicant. If the Board of Appeals finds the ordinance requirements can be met or that the criteria for getting a variance have not been met, then a variance is not warranted.

When reviewing an appeal from an action of the Zoning Administrator, the Board of Appeals reviews the facts and ordinance requirements and comes to its own conclusion as to the correct action. Similarly, if the County ordinance permits appeal to the Board of Appeals of actions on special land uses or PUD requests, the Board of Appeals is limited to reviewing the facts as presented to the reviewing body or official and then determining if all ordinance standards and requirements have been met. If the standards were properly applied, the previous decision would be upheld, otherwise it would be overturned.

PUBLIC HEARINGS

One of the most important steps in amendment, special land use, PUD, and variance procedures is the public hearing. Public hearings provide specific opportunity for citizens to be heard on zoning matters that may affect their interests. It is absolutely essential that required notices of public hearings be published/distributed as specified in the zoning ordinance and/or County Rural Zoning Enabling Act. At public hearings, it is very important that every interested person be given the opportunity to be heard. But this does not mean the process is spontaneous, a hearing should be conducted in a consistent and orderly fashion. The hearing body should not have their decision governed by the public applause meter. The hearing body should not be interested in whether neighbors are in favor or opposed to a given proposal, but rather in why they feel that way; what relevant information do they offer within the context of ordinance requirements to assist in making a decision? The primary purpose of the hearing is, of course, to gather facts and information. Thus, a hearing process must be established to insure an open, objective atmosphere exists for orderly presentations. It need not be one of paralyzing formality, it is not a court proceeding.

The need for public confidence in the honesty and integrity of the hearing body, dictates that if any member of the body has even a remote interest in the outcome of a proceeding, he or she should disqualify himself from participation in the hearing. Obvious conflicts of interest would include a financial interest in the outcome or a close business or family relationship with the applicant, his/her attorney or any expert witness. The member with a conflict of interest should disqualify him/herself at the outset of the hearing or sooner if the conflict is identified. It is not sufficient to participate in the hearing and merely refrain from voting. The rule to follow if there is a doubt about a conflict of interest is: When in doubt — step down.

General Hearing Procedure

The following general hearing procedure is suggested as a guide to developing a specific hearing procedure in your county. Whatever procedure is developed, the procedure should be made clear to all in attendance and consistently adhered to. A simple handout sheet or large board visibly displayed with the hearing

procedure will serve this purpose well. Hearings should begin precisely at the time advertised in the notice. Typically the hearing procedure is as follows:

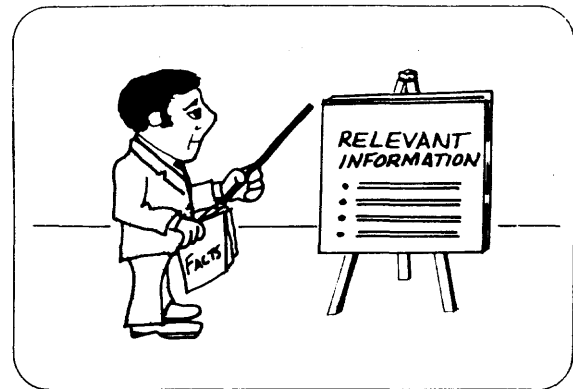
1. The Chairperson shall announce the subject of the public hearing, as advertised.
2. The public hearing procedures are summarized for all present by the Chairperson. A suggested opening statement might be:

This public hearing to receive public input on the following matter _____ in accordance with the official notice, is now open. The (name of hearing body) would like to make it clear that it is bound by rules and laws and that these are the determinates when weighing the case. In order to conduct the hearing within a reasonable time and to keep to the subject at hand, you are asked to observe the following rules:

- After the staff presentation, the applicant will state his case fully and furnish the (name of hearing body) with pertinent information concerning the property.
- Those who favor the proposed change will be heard first, and those opposed will be heard last.
- Each person making a statement will be asked to state their name and address.
- Please refrain from repeating what has been said before you, and please do not involve personalities.
- Be as factual as possible.
- The (name of hearing body) reserves the right to question any speaker.
- All statements or questions must be directed to the Chairperson.

The (name of hearing body) will (or will not) make a decision on this matter at today's meeting.

3. The staff is then asked to present the substance of the application and any staff reports and to answer technical questions of the hearing body.
4. Individuals wishing to speak in support of the subject of the hearing shall be recognized by the Chairperson beginning with the applicant(s) or their representative.
5. Individuals wishing to speak in opposition of the subject of the hearing are recognized by the Chairperson. (If there are numerous people in the audience who would like to participate on the issue, and it is known that all represent the same opinion, it is advised that a spokesman be selected to speak for the entire group. A spokesman will thus have the opportunity of speaking for a reasonable length of time, and of presenting a complete case. If this arrangement cannot be made, it may be necessary for the Chairperson to restrict each speaker to a limited time in order that all may be heard. The hearing body must permit comments from all interested or affected individuals and organizations, and it should be stressed that consideration will be given to all comments or suggestions made. Irrelevant and off-the-subject matters should be ruled out of order.)
6. The Chairperson may, within reasonable limits, and upon request, allow cross-examination or rebuttal. All comments should be addressed to the subject of the hearing through the Chairperson and not directed to any other individuals. The hearing body should re-



"Stating The Facts"

frain from debating or arguing with persons commenting. The function of the hearing is to gather facts — not to carry on an adversary relationship.

7. The Chairperson should upon his/her motion or the motion of any member, announce the close of the public portion of the hearing or announce the continuation of the public hearing to another specified time and date if the hour is late or additional pertinent information must be obtained.
8. The Commission then deliberates on the matter. All deliberations must be conducted in an open public meeting.

Hearing Records

The point that a hearing record is necessary is indisputable; the question which arises is how such a record should be made. Obviously, the most complete record can be obtained by using a court stenographer; however, this is very costly. Many communities have adopted the practice of tape recording each meeting. This low cost method is usually satisfactory when accompanied with a brief written summary of the public hearing comments. It is essential that speakers identify themselves in order to determine at a later time who said what. Of lesser value are the extensive notes taken by a secretary or clerk to the hearing body. Such notes should be made a formal part of the record, after their review and correction if necessary, by a vote of the hearing body.

A complete record of the hearing will typically contain the following:

1. The applicants request on a properly completed form.
2. The records of any action of this request by an administrative official or body including all past records regarding the property such as an earlier request for variance, special land use approval, or a record of nonconforming status.
3. Records that verify due notice to the appropriate parties and to neighboring property owners has been given. Any newspaper notice and the affidavit of publishing thereof must also be retained.
4. Any relevant maps, drawings, or photographs presented as evidence, or as part of the

application and copies of any correspondence received or sent out with regard to this request.

5. A complete record of all public input made at the hearing.
6. A record of what the hearing body saw on any visit it made to the property in question and a summary of any conversations between the hearing body and parties with an interest in the application.
7. A copy of a reference to relevant ordinance requirements.
8. The findings of fact, the conclusions reached and the recommendation or decision made on the request by the hearing body.
9. A copy of any other correspondence to or from the petitioner regarding the decision.

The crucial element of this record is, of course, the findings, conclusions and decision (or recommendation) of the hearing body. The decision must be in writing and include all conditions that may be associated with the decision. The decision or recommendation should not be a mere conclusion or a statement. Each decision should be accompanied by specific findings of fact. These findings should be related to the specific standards stated in the ordinance which the applicant must satisfy. It is not sufficient, for example, for a Board of Appeals to merely parrot the general statutory requirements that a "practical difficulty or unnecessary hardship exists" — this is not a finding, it is a conclusion. The facts which led the Board to reach this conclusion consistent with ordinance and statutory standards must be identified to support the conclusions reached. These decisions run the chance of having to stand up in a regular court of law, where detailed findings of fact must be presented, and the conclusions of law based upon those facts must follow. It is important that careful consideration be given to all matters. Clear and uniform hearing procedures assist a hearing body in properly carrying out their responsibilities. On occasion, however, the assistance of the County Prosecuting Attorney is needed. It should be sought when needed. Likewise, before adopting any rules of procedure or public hearing rules, the advice of the County Prosecuting Attorney should be sought.

TEN COMMON ZONING PROBLEMS

Among typical kinds of problems growing out of lax zoning administration, improper granting of variance and inappropriate amendments are the following:

1. There are many spot zones, comprising only one or two lots, whose location is not in accordance with a land use plan and inconsistent with adjacent land uses.
2. The Board of Appeals grants too many variances without adequate scrutiny.
3. The Zoning Administrator has issued permits for uses that do not meet ordinance requirements, or has failed to make use of occupancy permits to regulate changes in use, or has failed to carry out an active program to detect and prosecute zoning violations.
4. The Zoning Administrator and Board of Appeals tend to rely on complaints or the consent of neighboring property owners as the principal basis for action.

5. A community haphazardly copies another community's ordinance.
6. A community prepares or adopts the ordinance or amendments without obtaining or consulting the "public pulse" (the prevailing values and attitudes of the public).
7. The community fails to utilize available technical assistance in making rational decisions in the development of zoning regulations and districts.
8. The Zoning Administrator, Planning/Zoning Commission, County Board of Commissioners and Board of Appeals fail to make uniform and consistent decisions on similar matters.
9. The Zoning Map is made to look just like a 20 year master plan, rather than reflecting a land use pattern appropriate to just the next 3-5 years of expected development in a manner consistent with the plan.
10. The zoning decision bodies fail to adequately state the facts which substantiate the conclusions they have reached in the record on the matter.

These points were adapted from an article by Robert M. Leary, entitled, "Common Deficiencies", which was printed in Principles and Practice of Urban Planning by William I. Goodwin and Eric C. Freund, (Washington, D.C.: International City Managers' Association, 196), pgs. 419-420.

BEFORE MAKING ZONING DECISIONS

Before any action is taken by an official or body responsible for carrying out a specific zoning function, the following guidelines should be kept clearly in mind:

1. Is the application or request before the right body or official at this time?
2. Are other alternatives available to the applicant that may more appropriately serve his/her needs as well as the public interest?
3. Have you checked relevant provisions of the ordinance, the statute and applicable local and county plans for their guidance on the matter before you?
4. If you have doubts on how to proceed, have you investigated them instead of "muddling" through in order just to clear the agenda?

DECISION MAKING REMINDERS

General reminders to aid decision making:

1. When in doubt — check it out! But,
2. Don't delay when the decision can be made.
3. Remember that permits, approvals and zones run with the property and not the owner.
4. When all standards stated in the ordinance have been met, the permit must be issued.
5. Consistency is very important, but mistakes should not be perpetuated.

NOTES:

6. Permits are of little value if there is no monitoring to insure continued ordinance compliance.
7. At least one member of the body on which you serve should be an expert on the ordinance requirements and on past decisions made.
8. The body on which you serve should adopt and keep current rules of procedure to guide their actions.
9. A simple public hearing procedure should be adopted, clearly pointed out to citizens at each public hearing, and consistently adhered to.
10. Good records of all meetings of the body on which you serve should be maintained.
11. All decisions must be documented. The facts uncovered in the process of reviewing the application, making the analysis and presented at the public hearing should be explicitly related to ordinance standards and documented along with the conclusions reached on the matter.
12. If a procedural requirement such as newspaper or individual notice to appropriate persons is missed, stop the process and begin again.
13. No decision should be made by vote of less than a majority of the total membership of the body, not just a majority of those present.
14. When technical assistance of the County Planner, County Prosecuting Attorney or other professionals is needed, get it.
15. Remember your job is to protect the public interest as embodied in the zoning ordinance. Required procedures and standards must be adhered to.

CHAPTER IV

THE END (OR IS IT THE BEGINNING?)

In Chapter I of this guide, basic zoning procedures were described as resembling a "maze" to the citizen or official with previous limited zoning contact. Chapters II and III attempt to lead one thru the maze by identifying "who does what" in county zoning and generally "how they go about their business". This descriptive method is intended to illustrate that zoning, while a technical and legal community power, is really composed of a relatively few sets of functions. Each zoning function or activity has its own statutory and ordinance procedures which are followed to insure that the rights of citizens are protected as the community regulates the use of land. Most of these procedures have very similar characteristics, but the details and the differences are very important. Equally important is the basic issue of which body or official is responsible for acting on certain zoning functions and what standards or guides do, or should, they use in making decisions.

Chapter I suggested that the key to understanding zoning was related to the old adage that:

There is a place for everything and everything must be in its place.

A zoning ordinance clearly identifies which uses of land are permitted in which zoning districts. In so doing, it should reflect the whole host of land uses reasonably expected and needed within the county and should adequately provide for them. Attempts to exclude needed land uses from the community may be fraught with legal consequences and may unnecessarily place a costly burden on a community which could be avoided by foresightful action prior to the controversy.

But the adage has meaning beyond the obvious land use — location analogy. As a technique to help a community manage its growth and development, the use of flexible zoning techniques such as PUD and special land uses is very important indeed. These techniques and the traditional zoning functions of amendment, appeals, and variances together provide a tool, which when properly used, can achieve many public objectives while enhancing the use and enjoyment of private property. With appropriate use of these techniques in conjunction with a planning program, a community should be truly able to find "a (proper) place for everything". The process for reviewing and approving changes in the use of land is thus every bit as important as the actual change itself.

Zoning is a job worth doing, as the benefits can be great, and thus, is worth doing well. Consequently, not only is it important for all involved in zoning decisions to be knowledgeable of their responsibilities and zoning procedures, but definite efforts to keep the zoning ordinance and community plans current is also very important. Efforts should also be made to orient each new zoning official and County Board of Commissioners member as to how zoning works and what their role in zoning procedures is. When technical planning and/or legal assistance is necessary, it should be sought. There is no reason to perpetuate zoning mistakes from the past, instead proper planning and zoning can be used to help build a future county residents can look forward to.

THE NEED FOR PERIODIC ASSESSMENT

A land use plan and zoning ordinance begin to grow old and dated from the time of adoption. In rapid growth communities, they often become outdated sooner than expected.

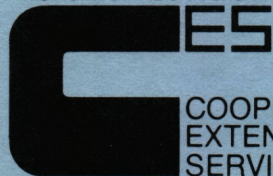
How does a community keep the land use plan and zoning ordinance from becoming obsolete? The best way is through periodic assessment every three to five years by the Planning Commission. At that time, the following questions would be asked:

1. To what extent is the land use plan being actively implemented . . .
 - through zoning?
 - through public improvements?
 - through other efforts?
2. Is implementation taking place as scheduled? If not, why not?
3. Does the settlement pattern of recent development actively coincide with the land use plan map and the recommended land use intensities? If not, why not? What should be done — change map or increase enforcement of the law?
4. Do the goals and policies still reflect the county's major concerns? If not, what should be changed? Is change realistic?
5. Are items identified in the land use plan as desirable, adequately being protected by zoning?
6. Are unexpected land use conflicts being created by the zoning ordinance which are not addressed by the land use policies?

Based on the answers to the above questions, the Planning Commission must decide if there is a need to revise the land use plan. If the plan needs to be revised, then after the revision is made, the zoning ordinance and/or map should also be reviewed and amended as needed. However, many land use plans and zoning ordinances are updated and amended on a "stop-gap" basis when faced with what appears to be a "crisis". Periodic reassessment will reduce the need to react in this manner and provide a mechanism whereby a community can maintain control of its future.

NOTES:

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