



PLANNING & ZONING/CITY COUNCIL JOINT WORKSHOP
Tuesday, January 23, 2024, IMMEDIATELY FOLLOWING P & Z MEETING
MPR EVENT CENTER – 60 MORGAN’S POINT BLVD

THE CITY COUNCIL OF THE CITY OF MORGAN’S POINT RESORT, TEXAS WILL CONVENE AT THE LOCATION AND TIMES STATED ABOVE TO HOLD A WORKSHOP TO ALLOW THE CITY COUNCILMEMBERS TO COMMUNICATE AND ASSESS THE ITEMS CONTAINED IN THIS AGENDA. THE ITEMS LISTED BELOW ARE FOR DISCUSSION PURPOSES ONLY AND NO FORMAL ACTION OR VOTES WILL BE TAKEN. AS A QUORUM OF THE MEMBERS OF THE CITY COUNCIL MAY BE PRESENT, THIS AGENDA IS BEING POSTED IN COMPLIANCE WITH CHAPTER 551 TEXAS GOVERNMENT CODE AND THE TEXAS OPEN MEETING ACT.

1. Call to Order

2. Announcement and Citizen Comments

This is an opportunity for members of the public to suggest the addition of topics for the discussion, or to address topics of interest, with the presentation limited to three (3) minutes. All speakers will conduct themselves in an orderly and lawful manner. All speakers will be recognized prior to speaking and will announce their name and address to be included in the minutes. State law prohibits the Mayor and Members of the City Council from commenting on any statement or engaging in dialogue without an appropriate agenda item being posted in accordance with the Texas Open Meetings Law.

3. Regular Agenda

- a. Discuss - Roles and responsibilities of the Planning and Zoning Commission and City Council
- b. Discuss - Possible priorities for the upcoming year

4. Adjournment

All items on the agenda are for discussion and/or action. The City Council reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices,) and 551.086 (Economic Development).

I certify that a copy of the __1-23-2024__ agenda of items to be considered by the Morgan’s Point Resort was posted and could be seen on the City Hall bulletin board and Morgan’s Point Resort website on the _1-19-2024_ at 4:00PM and remained posted continuously for at least 72 hours succeeding the scheduled time of the meeting. The meeting facility is wheelchair accessible and accessible parking spaces are available. Request for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary’s office at 254-742-3206 for further information.

Camille Bowser, City Secretary

ROLE OF PLANNING COMMISSIONERS AND ELECTED OFFICIALS

James E. Bertram, AICP and Bruce Kramer

This chapter describes the role and interplay between planning commissioners and elected officials under relevant Texas law. In Texas, there are three categories of general law cities [Tex. Loc. Gov't Code 5.001, 5.002, 5.003]. General law cities have only such powers as the legislature has delegated to them. In addition, the Texas Constitution [Tex. Const. Art. 11, Sec. 5] authorizes the creation of home rule cities for municipalities, which have populations in excess of 5,000. Home rule cities possess all of the state's police powers, except those which have been specifically taken away by the state, or those which are in conflict with a general state law. The Legislature is free to impose procedural and/or substantive requirements on home rule cities, if it does so expressly.

Planning Commission and Elected Officials Defined

A planning commission or a city plan commission is a group of citizens appointed by the legislative body that performs both required and discretionary functions in land use matters [Tex. Loc. Gov't Code 211.007]. Commissions act as an advisory group to the local legislative body for proposed zone changes or they can act as final decision-makers in matters relating to subdivision approval. Elected officials constitute the legislative arm of the municipality. Texas statutes authorize several different forms of local legislatures for general law cities [Tex. Loc. Gov't Code, Ch's 22-24], while home rule cities are free to choose almost any form of local government.

In municipal government, citizen participation has always been an important element in maintaining balance, common sense, and community values in city planning. In planning for coordination and regulation of private land *use*, planning and zoning commissions are usually the most influential, and thus controversial, of any municipal advisory boards or commissions.

As citizen advisory boards, planning and zoning commissions are usually appointed by city councils to work closely with a professional planning staff in making recommendations to the city council on the development and regulation of land use in a municipality. Following the creation of the first planning commission in 1907 in Hartford, Connecticut, there has been continuing debate about the proper role of commissions and commissioners.

In the early years of city planning in the United States, too often planning was done primarily by professional planners in a vacuum with only token citizen involvement in the form of input from "influential citizens". However, three changes occurred in the 1950s and 1960s that fundamentally altered the way local government planning is implemented: [1] The emergence of functional planning; [2] Citizen participation; and, [3] Dispersion of the decision making process. Because "public interest" is pluralistic and differs *between* communities, it is essential that modern-day planning commissions be properly oriented to the legal, economic, social, and quality of life implications of their recommendations.

In a municipal context, "elected officials" are usually city councils which serve as the policy makers, the legislative body, and the body that sets the goals and vision for the community. With regard to the planning function, the primary role of elected officials is to appoint highly qualified planning and zoning commission members, to see that they are

properly oriented as to their roles and responsibilities, and to provide adequate professional planning staff and regulatory tools to carryout a modem planning program for their community.

History and Statutory Foundations of Planning

Town or urban planning has existed in the United States since the colonial period. Both Philadelphia and the District of Columbia developed in part according to early plans created by civil engineers and land surveyors. In the mid-1800's a new movement in planning emphasized the need for dealing with public health issues in the ever-growing urban areas. This sanitary reform movement affected urban growth patterns and the need to coordinate the provision of infrastructure with new housing. The city beautiful movement followed the Chicago's World Fair of 1893, which introduced technology and architecture to the concept of city planning. This led to the creation of the first municipal planning commission in Hartford, Connecticut in 1907. Chicago appointed a 328 member planning commission in 1909, which developed one of the first comprehensive plans.

United States Standard Planning Enabling Act: The major impetus to the use of citizen-appointed planning commissions came with the promulgation of the Standard Planning Enabling Act [SPEA] by the United States Department of Commerce ha 1928. The basic structure, organization and powers of planning commissions were set forth in the SPEA. In various forms the SPEA *was* adopted by nearly all of the states, although Texas was not one of them. The planning commission was given primary responsibility for developing a comprehensive or master plan for the community. The commission voted on the

comprehensive plan, and depending upon individual states, would also be approved by the local legislative body. In most states, however, even the legislative adoption of the comprehensive plan had minimum legal ramifications. [*Kozesnik v. Montgomery Township*, 24 N.J. 154, 131 A.2d 1 [1957]]. In addition, the SPEA also delegated power over subdivision plat approval to the planning commission.

United States Standard Zoning Enabling Act: Evidence of district regulation can be traced back to the 17th Century in several eastern cities, including Cambridge, Massachusetts. The New York City zoning ordinance, adopted in 1916, is regarded as the first modern comprehensive zoning regulation. It not only covered the entire city but also created use zones and height and bulk controls, within the single ordinance. These early documents form the basis for most existing zoning regulations. The zoning concept was upheld against constitutional attack in the watershed case of *Village of Euclid v. Ambler Realty Co.*, 272 -U.S. 365 [1926]. That along with the promulgation of the Standard Zoning Enabling Act [SZE] by the United States Department of Commerce in 1926, ushered in the widespread use of zoning that is prevalent today.

The SZE was widely adopted by the states after its promulgation in 1926. It provided the structure, organization and procedures that guided the zoning process for 50 years. It set forth the purposes of zoning, including lessening street congestion, protecting public health and safety; promoting general welfare, avoiding undue concentrations Of population; and facilitating the adequate provision of municipal services [SZE 3]. It also created the bifurcated system of separate zoning [and planning] commissions and boards

of adjustment which assist the local legislative body and citystaff in the implementation of the zoning system.

Texas Zoning Enabling Authority: Texas adopted the SZEa with relatively few changes in 1927. After 1987, the SZEa was codified in Sections 211.001-211.013 of the Local Government Code. Prior to the codification, the citation to the enabling act was Art. 1011a. In its introduction to the enabling act, Texas has opted merely to state that zoning must promote "the public health, safety, morals or general welfare" [Tex. Loc. Gov't Code 211.001]. In addition, historic, cultural or architectural preservation is mentioned, although such would clearly fall under the concept of "general welfare." The Texas act does reiterate the SZEa laundry list of purposes in the section that requires zoning regulations to "be adopted in accordance with a comprehensive plan...." [Tex. Gov't Code 211.004].

The Texas Act specifies the procedures which must be followed by both home rule and general law cities before they can engage in zoning regulation [Tex. Loc. Gov't Code 211.006]. The legislative body in a home rule city must appoint a "zoning commission" whose function is to recommend the boundaries of the districts as well as the text of the proposed zoning ordinance [*Id.* 211.007]. If the city has a preexisting planning commission that body may be designated as the zoning commission [*Id.*]. The commission must make a preliminary report and hold public hearings on the report. The commission must submit a final report to the legislative body [*Id.*]. The legislative body must then provide notice and hold public hearings before it acts on the recommendations of the commission [*Id.*].

With general law cities, a zoning commission may be designated, but the legislative body can opt to act as both the commission and the legislature [*Id.*]. If a general law city does appoint a zoning commission., or designates its preexisting planning commission as the zoning commission, the commission and the legislative body must follow the same procedures outlined above for home rule cities [*Id.* 211.006, 211.007]. The zoning enabling act further provides that a city council in a home-rule city may hold a single public hearing, rather than one before the zoning commission and one before the city council, and further may prescribe the notice requirements for that combined hearing by 2/3 majority vote [*Id.* 211.007[d]].

The commission must also review and make recommendations for any proposed changes to the zoning ordinance. Notice must be provided to nearby property owners of the required public hearing [*Id.* 211.007[c]]. After the public hearing, the planning commission must file its report and recommendation to the legislative body. Without that report the legislative body cannot amend the zoning ordinance; [*Bolton v. Sparks*, 326 S.W.2d 946 [Tex. 1962]]. The Texas Act does not specify whether the appointment of the commission must be by ordinance, resolution or otherwise; [*Storm Brothers v. Town of Balcones Heights*, 239 S.W. 2d 842 [Tex. App.--El Paso 1951, writ ref'd n.r.e.]]. While the creation of the commission must be by council ordinance, appointments may be by other means, although it is always safest to appoint by ordinance. A municipality may combine the functions of the zoning commission and the planning commission into a single commission. That combined commission may in turn delegate its powers to smaller groups within the commission [*Nichols v. City of Dallas*, 347 S.W.2d 326 [Tex. Civ.

App. - Dallas 1961, writ refd n.r.e.]; *Winn v. Nasher*, 360 S.W.2d 909 [Tex. Civ. App.-Waco 1962, n.w.h.]].

Other Enabling State Legislation Related to Planning Commissions: Section 211.021 authorizes cities with populations greater than 290,000 to create neighborhood zoning areas and neighborhood zoning councils. Each council must be composed of five members who reside in the area. . The council is authorized to provide the zoning commission with "information, advice and recommendations" regarding any proposed zoning changes. The commission is required to give the council a copy of all zoning amendment applications. The zoning council is also required to hold a public hearing prior to sending its report to the commission. The zoning commission cannot overrule a recommendation of the zoning council without the motion getting a 3/4 voting majority.

Texas Enabling Legislation Related to Subdivision Controls - Section 212.001 *et. seq.* sets forth the requirements for municipal regulation of subdivisions within their territorial limits and their extra-territorial jurisdiction [ED]. If a plat is required to be approved under 212.004, then the municipal planning commission, if one exists, is the reviewing body [Id. 212006[a]]. For municipalities with populations greater than 1.5 million, one-quarter of the members of the planning commission may be residents of the ETJ [Id. 212.006[N]. Any person seeking plat approval must file a copy of the plat with the planning commission [Id. 212.008]. Even if a municipality has a planning commission it may reserve to the legislative body the final approval power of plats [Id. 212.006[4. If the commission

has final approval authority it must act within 30 days of the application, otherwise the plat is deemed approved [*Id.* 212.009]4. If the legislative body has final approval authority, it must act within 30 days of receiving the recommendation of the commission, or 30 days after the plat was filed with the commission should the commission choose not to act [*Id.* 212.009[a]].

In order to be approved, the plat must conform to:

1. The general plan of the municipality and its current and future streets, alleys, parks, playgrounds, and public utility facilities;
2. The general plan for the extension of the municipality and its roads, streets and public highways within the municipality and in its extraterritorial jurisdiction, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities; and,
3. Any rules adopted under Section 212.002 [*Id.* 212.010].

Only the legislative body has authority to adopt rules governing subdivision approval [*Id.* 212.002]. The planning commission, where so designated, also approves any replatting of a prior-approved plat [*Id.* 212.014]. The commission may also amend a plat without notice and a public hearing for one of several different reasons, most relating to minor problems with the plat [*Id.* 212.016].

Additional Planning Enabling Texas Statutes: As noted earlier, Texas never adopted the Standard Planning Enabling Act. Instead it merely authorized municipalities to engage in such planning functions as compiling statistics, conducting studies and formulating plans relating to future growth and development [Tex. Loc. Gov't Code 371.041]. In addition, the state authorized the creation of joint planning commissions [JPC]

for two or more adjacent municipalities [*Id.* 371.042]. The legislative bodies of each of the municipalities appoint an equal number of representatives to the joint commission. If a JPC is organized it must prepare an "organized master plan for the orderly growth of the area" [*Id.* 371.043[a]]. The municipalities have the power to delegate to the JPC any duty or power consistent with the planning function, although such delegation must be enacted through an ordinance. Meetings of the JPC must be open to the public and its records, minutes, books and accounts must be available for public inspection [*Id.* 371.044].

In addition to the JPC, Texas has authorized the creation of regional planning commissions [RPC] with substantial powers to "plan for the future development of communities, areas, and regions..." [*Id.* 391.001].

Under the Texas Community Development Act of 1975 [*Id.* 373.001 et seq.], municipalities may adopt community development programs to deal with specific problem areas within the municipality. The program may include traditional concerns regarding planning [*Id.* 373.005[16]]. The Act does not specify which body must develop the program, although the adoption of a plan incorporating public comments and public hearings is required [*Id.* 373.006]. In 1991, the legislature authorized the creation of municipal management districts within cities [*Id.* 375.001 et seq.]. These districts can only cover areas that are primarily devoted to commercial development and business activities [*Id.* 375.021]. If created, the district is to be governed by an appointed board of directors who have fairly broad powers to carry out the purposes of the district [*Id.* 375.061, 375.091, 375.092].

Separate Planning and Zoning Commissions: Although uncommon, it is legal in Texas to have a separate planning commission and zoning commission. Fort Worth continues to have separate planning and zoning commissions. While both the functions of planning proper land use and regulating land use are important, the key issue in dividing responsibilities between separate commissions is to avoid sacrificing adequate planning by getting bogged down in the details of zoning and land use regulation. On the other hand, one questions whether a zoning commission can properly regulate land use when they are divorced from the process that sets visions; goals, objectives, and strategies for obtaining the proper relationship between land uses in a complex urban environment. The system chosen is dependent upon the unique political, environmental, and social values in each urban area; however, by far the most popular system in Texas at present is the combined planning and zoning commission approach.

Responsibilities of the Planning or Planning and Zoning Commission

Orientation: Ideally, before a newly appointed planning commissioner attends his first planning and zoning commission meeting, the planning staff should arrange for an orientation and training session. At a minimum, this training should include the following three basic areas:

1. Legal issues: Texas Open Meetings Act, state and local conflict of interest rules, officer of the city status, and pertinent codes and ordinances with which the commission will work;
2. Basic elements of planning: general comprehensive planning, the theory and practice of zoning, and subdivision control; and,

3. Basic roles and responsibilities of planning commissioners: pre and post meeting conduct, meeting conduct, rules and policies, code of ethics, the relationship to staff and city council.

All of these items will be discussed in more detail in this chapter. If at all possible, the city administration and elected officials should be encouraged to provide adequate intensive training afforded by the Annual Short Course for Planning and Zoning Commissioners and Elected Official conducted at the annual conference of the Texas Chapter, American Planning Association.

Planning and Zoning Commission Activities - While the actual activities of the typical planning and zoning commission may vary somewhat depending on a city's size and level of development, the following basic activities are usually carried out in a modern planning program:

1. Develop and Update the Comprehensive Plan. The comprehensive plan should be the primary working document for guiding and implementing land use and development within the community. Increasingly, any relationship between land use and economic development is being incorporated into the comprehensive plan. While it is not the responsibility of the P&Z commission to prepare the plan, the commission should have a high level of involvement in terms of review and comment during development of the plan and should ultimately recommend adoption of the plan prior to council adoption.
2. Annual Work Program - The primary planning elements, programs, or activities to be undertaken each fiscal year can be set forth in an agreed on and adopted annual work program. This can either be a separate document or can be incorporated into the annual budget document in the form of a mission statement, goals, and specific activities to be undertaken in the upcoming year. In some cases, this could be accompanied by activity and performance measures to determine on a quarterly basis if these work program elements are being achieved.
3. Information Base Systems - Base data on population, land use, utilities, topography, environment, and economy are essential to making prudent decisions about the future direction of the city. In smaller communities,

these can be manual systems; however, ideally these should be stored in computers with G.I.S. [geographic information system] capabilities.

4. Subdivision Regulations - As stated previously, subdivision regulations concern the Physical layout of public and private land uses, including the necessary public rights-of-way, easements, and drainage systems to serve residential, commercial, industrial, and public land uses. These regulations should be in ordinance form.
5. Zoning - In addition to implementing the land use patterns identified in the comprehensive plan, zoning usually includes standards for permitted uses, density, height, setbacks, landscaping, signs, and parking.
6. Annexation - Annexation by municipalities is permitted by state enabling legislation to extend the corporate boundaries of the city. It also sets forth requirements that the city must meet in terms of providing basic services and extending utilities within a set time frame.
7. Urban Design - Urban design deals with the "visual image" of the community. Usually it is administered through a series of inter-related regulations involving landscaping, signs, screening, and architectural coordination ordinances.
8. Capital Improvement Program - Capital improvement programs are carried out periodically [three to five years] to assess demand for major municipal infrastructure and public facilities needs and to match long-term financing with these needs. Planning and zoning commissions are often responsible for setting priorities and recommending funding sources.
9. Economic Development - In the simplest terms, economic development involves the areas of business retention and expansion, small business development, and industrial attraction; all of which retain and/or expand job opportunities.
10. Community Interface - Because commission members are themselves citizen advisors, there are opportunities to interface with the public concerning community values. This is accomplished through public hearings, focus groups, neighborhood organizations, and recurring goals setting programs for the community. However, commission members should be cautious with regard to breaching ethics standards concerning influence of specific decisions on zoning or other regulations.
11. Codes Enforcement Relationships - Ideally, zoning and codes enforcement should not be too far removed from the planning function in a municipality. It is of little use to plan and establish standards for proper land use if zoning and codes enforcement are not maintained to the standards contained within the codes.

12. Use of Consultants - Occasionally, consultants are used in development or update of the comprehensive plan or other special studies requiring expertise not found in the current planning staff. •

Legal Responsibilities and Protocol: In addition to state statutes that authorize and constrain the activities of planning commissions, city charters, in home rule cities may also set forth powers or constraints. In all types of cities, ordinances that delegate responsibility to planning commissions must be reviewed for powers. Municipalities are free, within constitutional and statutory limits, to impose additional requirements or powers upon the commission or its members. The conduct of governmental bodies is further regulated by the requirements outlined in the following paragraphs.

Texas Open Meetings Act - The provisions of the Texas Open Meetings Act [Tex. Government Code, Chapter 551] apply to governmental bodies which are defined in part to include: "every deliberative body having rule-making or quasi-judicial power and classified as a department, agency, or political subdivision of a county or city...". The Act requires public notice for all meetings held by such bodies and access to open meetings. The Act also provides a laundry list of issues which can be discussed and acted on in closed meetings, commonly referred to as "executive sessions," most of which are not applicable to the activities of planning commissions. A written notice of any meeting must be placed on a bulletin board located within the city hall that is convenient to the public at least 72 hours preceding the scheduled time of the meeting. The notice must contain an agenda of the issues or items to be discussed at that meeting. Minutes or tape recordings must be made of all open meetings, and are public records that must be made available to the

public. Failure to comply with the requirements of the Texas Open Meeting Act can lead to invalidation of any act taken at the meeting, or personal criminal liability for individuals who knowingly call a closed meeting that should have been open.

Conflict of Interest: State statutes, home rule charters and municipal ordinances all may contain provisions defining what public officials may do in matters in which there are real or potential conflicts of interest. The state statute covers "local public official[s]" which is defined to include "a member of the governing body or another officer, whether elected, appointed, paid or unpaid, of any ... other local governmental entity who exercises responsibilities beyond those that are advisory in nature [Tex. Loc. Gov't Code Chapter 171]. As noted previously, planning commissions can exercise both advisory and decision-making functions, as determined by the state statutes and local ordinances. Where a planning commissioner is not engaging in a purely advisory manner the conflict of interest statutes prohibit certain activities. The general standard is that a person with a "substantial interest in a business entity" is prohibited from voting on matters involving that business entity [Id. 171.002, 171.003]. The state statute also retains the common law remedies that may exist for local officials who violate their duties as public officials [Id. 171.007].

Federal Civil Rights Act Liability - Under certain circumstances, individual officers, including planning commissioners, may be potentially liable under 42 U.S.C. 1983, a federal statute creating liability for those acting under color of state law who deprive citizens of their constitutional or statutory rights. In the land use arena, the typical

constitutional rights involved are the taking of property without just compensation, the denial of procedural due process rights, the denial of equal protection rights, and the denial of certain First Amendment rights. In the context of planning commissioners, there usually is no liability when the commission merely makes recommendations to the city council. Therefore, actions relating to the development of a comprehensive plan or a zoning ordinance may not cause Section 1983 liability. However, where the planning commission makes final decisions, such as in the case of subdivision plat approval or planned unit development permits, Section 1983 may apply. Individual commissioners are subject to a qualified, good faith immunity from liability [*Harlow v. Fitzgerald*, 457 U.S. 800 [1982]]. The court will look to several factors in applying the good faith immunity standard including the clear establishment of the constitutional right allegedly violated, the reliance on legal counsel and the following of normal commission procedures.

Pre and Post Meeting Conduct: Because decisions of the planning commission have tremendous financial impact on builders and developers, it is possible, and even probable, that commission members will be contacted prior to meetings in which zoning cases or subdivision plats will be considered. The objective of the planning commissioners should be to hear all evidence in a public meeting, and to make an objective recommendation. If contacted, planning commissioners should remain non-committal and request that such comments be reserved for the public meeting in which all the planning commissioners are present. Under the Texas Open Meetings Act, planning commissioners should never attempt to meet with a quorum of

the planning commission prior to the meeting to discuss or try to reach consensus on an action to come before the commission.

Meeting Conduct: The way in which planning commission meetings are conducted is usually set forth in official rules and policies adopted by the planning commission, or in the ordinance that creates the planning commission. Generally, however, for a zoning case, the proponents are allowed to present their request, followed by testimony by other proponents of the case. The planning commission members are permitted to question anyone presenting testimony. Following the proponents, the chairman of the planning commission will call for opposition followed by questions from the planning commission members. The chairman would then call for staff comments and recommendations. The commission could then allow some rebuttal by both proponents and opponents, and then close the hearing and reach a decision. During the hearing, all comments by commissioners should be made openly. Private discussions between commission members that cannot be heard by the public should be avoided. In making a recommendation for either approval or denial of the request, the commission should state specific reasons for their recommended action. If requested by the applicant of a plat request, the approval authority must certify reasons for the action taken on a plat.

Structure and Qualifications of the Commission

A planning commission should be created by action of the city council in the form of an ordinance, though sometimes this is included in a home rule charter. The ordinance should spell out the purpose, role, size, terms of planning commission members, and the

authority granted to the planning commission. It may also spell out the officers, meetings and attendance rules, voting procedures, etc.; however, these are usually adopted as rules and policies for and by the planning commission itself. Commissions vary in size depending on the size of the municipality. The terms should be staggered to avoid situations where a whole new commission takes office at one time.

Since the term "planning" envisions making important decisions that affect quality of life for citizens, there are certain qualities or qualifications that planning commissioners should reflect:

1. Vision - Planning commission members should develop a feel for the assets, problems, and potentials for the community. Through public input and consensus, a vision of what the community could become can be developed.
2. Creativity - Commission members should be open to new ways of addressing old problems. Codes and ordinances should be kept up-to-date as new trends and development opportunities come into being.
3. Community Perspective - Informal and formal [scientific surveys] ways of keeping in touch with community values should be developed. "The way we've always done it" is not always the best way to continue.
4. Impartiality and Objectivity - Commission members should keep the long-range goals and objectives of the community in mind when making day-to-day decisions. Exercise of the powers granted to municipalities requires that the decisions be made to "protect the public health, safety, morals and general welfare". Catering to special interest groups does not always improve the quality of life for the general public.
5. Dedication and Availability - Most planning commission rules and policies require attendance standards as a condition of remaining on the planning commission. For the sake of continuity and diverse points of view, planning commissioners should try to make all scheduled meetings.
6. Honesty and Courage - If planning commission members are to vote their conscience in keeping with the established goals and policies of the community, it

will require honesty and courage. It takes courage to turn down zoning cases which promise "economic development" when the long-range effect is to cause deterioration and disinvestment in adjacent residential areas. On the other hand, it will take courage to uphold zoning change requests that meet the basic guidelines and policies of the comprehensive plan, when neighborhood organizations oppose change based on emotion only.

7. Consistency - Nothing undermines long-range planning more than when incremental decisions on zoning and subdivision regulations are not reached in accordance with consistent comprehensive plans and policies. As much as possible, the same rules and policies should apply to like requests. Inconsistency creates credibility gaps for the planning commission and breeds disrespect for the whole planning process.
8. Representativeness - Because cities are a complex mixture of various income groups, ethnic groups, and groups of varying social values, it is important that the make-up of the commission is representative of these groups. In some communities, it is the policy that the ethnic make-up of the planning commission generally mirrors the ethnic make-up of the community as a whole.

Planning and Zoning Commission Internal Operations

If the ordinance creating the planning and zoning commission does not spell out rules and policies of the operation of the commission, then the commission should establish one or all of these by official policy.

1. Rules and Policies: Official rules and policies of the commission should address such things as a schedule for regular meeting dates, place, and time of day. These policies can also address the way in which the planning commission meetings are to be conducted, and the rules and policies concerning the touring of zoning cases and subdivision sites prior to the meeting.
2. Responsibilities and Purpose: Responsibilities and purpose of the planning commission are usually set forth in the ordinance creating the commission.
3. Code of Ethics: The planning commission code of ethics could address such things as pre and post meeting protocol, and the discussion of the planning commission agenda items outside of the public hearing arena.

4. Officers: The officers of the planning commission are usually established in the originating ordinance or in official rules and policies adopted by the commission. The planning commission usually consists of a chairman and vice chairman, since a staff member is usually designated as the official secretary.
5. Voting Procedures - It is usually a good idea if the conduct of the meeting and voting procedures follow an established set of rules or *Robert's Rules of Order*. If *Robert's Rules of Order* are to be used, then it is a good idea to designate a parliamentarian for the commission.
6. Election of Officers - To avoid de facto "dynasties" on a planning commission, it is good to have an annual election of officers. This process offers the opportunity to rotate the chairmanship of the commission and keep fresh leadership and ideas as an objective of the planning commission.
7. Committees [Ad Hoc and Standing] - Generally, the official rules and policies of the commission establish standing committees; however, ad hoc committees can be developed to address special problems and opportunities as the planning commission decides that they are necessary.

Planning Commission Relationship to City Council

As previously stated, planning commissions are usually created by ordinances adopted by the city council and the membership of the planning commission is appointed by consensus. In some cities, it requires a unanimous vote of the council to appoint each planning commission member; however, appointment by consensus of council seems to be more workable and less divisive.

Relationship to City Council - As previously mentioned, the city council usually establishes the planning and zoning commission by ordinance. The ordinance usually sets forth the purpose, scope of authority, and powers. The city council also appoints the planning and zoning commission members to staggered terms. In many cities, appointment to an advisory board requires an application process that gives the edification, professional background, length

of residency: in the city, interests, and a statement of the citizen's area of civic interest.' In most cases, planning commission members are required to be residents of the city in which they reside.

City councils must now adopt the comprehensive plan document by ordinance [Chapter 213, Texas Local Gov't Code], and may prescribe the strength and weight to be accorded the plan. This gives the comprehensive plan an official status, without giving it the same inflexibility as the zoning ordinance. The ordinance adopting the comprehensive plan should set forth the conditions under which the plan can be amended, though this may also be contained in a home rule city charter.

An effective planning process will depend upon the council's willingness to provide adequate funding resources for professional planning staff. Numerous cities require AICP (American Institute of Certified Planners) certification for the top planning positions.

A professional planning department staff should serve as a trusted advisor to both the planning commission and the city council. The initial orientation of the planning commission by the professional city staff is an excellent time to establish rapport and professional trust. This is accomplished in some cities to the extent that the city planning staff presents the planning commission recommendations to the city council on zone changes, rather than the planning commission chairman. It is incumbent for the professional city planning staff to provide adequate background and statistical information to justify their recommendations to both the planning commission and city council. In cases where' the planning commission does not accept the recommendations of .the professional staff on various zone cases, there should be enough professional trust and

respect that the planning staff can carry the opposing view recommendations to the council, if carried out in an open and professional manner.

Relationship with or to the Zoning Board of Adjustment: While the planning and zoning commission makes recommendations based on the zoning ordinance itself, the zoning board of adjustment [ZBA] grants variances and exceptions to the standards to avoid hardships and unintentional applications of the zoning standards. While the boards generally operate independently of each other, it is good for periodic work sessions to be conducted between the two bodies, to understand the cause and effect relationships on long-range land use patterns resulting from their individual decisions. The ZBA has or may have many other significant powers regarding termination of nonconforming uses and interpretation on appeal of determinations by the building official.

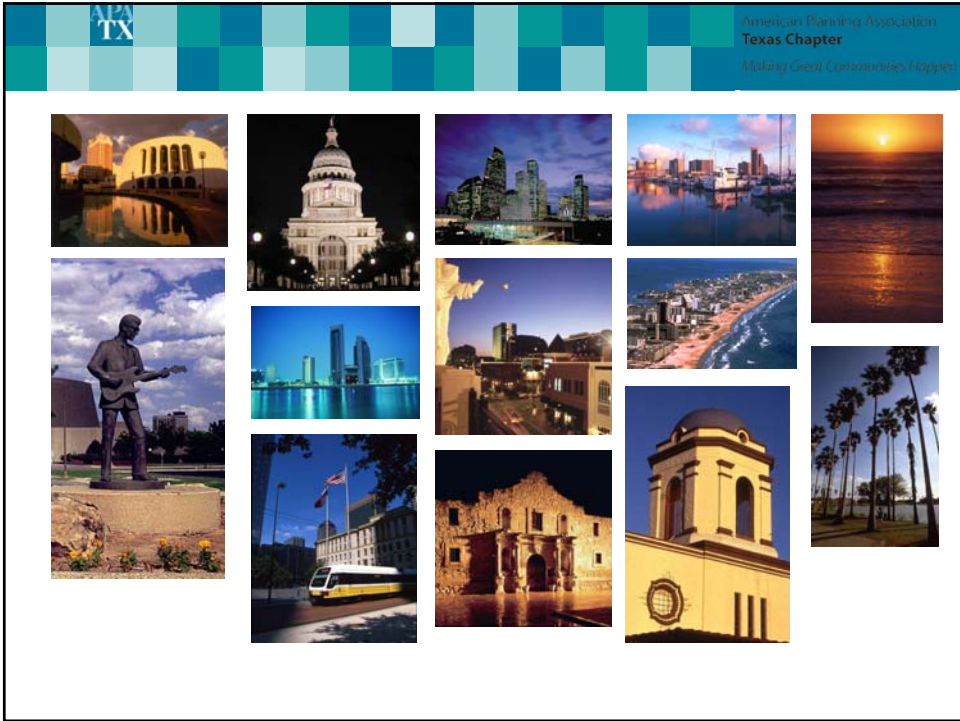
City Budget Process: The direct involvement of the planning commission in preparation of the budgets of the planning department varies from city to city. At a minimum, the planning commission should be kept abreast of how the funding request of the professional staff coincides with the programs and projects set forth by the planning commission. In the council-manager form of government, the staffing and salaries of staff members are reserved for the city manager and his designees. Very seldom would the planning commission be involved in presenting budget requests to the city council.

Annual Report - The comprehensive planning process, in order to be effective, requires periodic feedback and monitoring to determine if the necessary implementation tools are in effect to carry out the planning program. An annual report is an excellent way for measuring performance and the quality of the planning program. Knowing that there is an annual

accounting of the resources allocated to the planning program, requires a keener sense of commitment and efficient use of public funds. If a city does not have a formal and separate annual report, this process can be accomplished as a part of the annual budgeting process and reviewed by the city council.

References:

- American Planning Association. Texas Chapter.. Educational Foundation, Inc. A Guide to Urban Planning in Texas Communities. n.p.: n.p., 1986.
- City of Lubbock, Texas. "Planning and Zoning Commission Orientation Notebook, 1990."
- McClendon, Bruce W. and Ray Quay. Mastering Change: Winning Strategies for Effective City Planning. Washington, D.C.: Planners Press, 1988.
- Sanders, Welford and Judith Getzels. The Planning Commission: Its Composition and Function. 1987. Planning Advisory Service Report Number 400. Chicago: American Planning Association, 1987.
- Slater, David C. Management of Local Planning. Washington, DD.: International City Management Association, 1984.
- U.S. Department of Housing and Urban Development. Office of Policy Development and Research. Streamlining Land Use Regulation: A Guidebook for Local Government, by John Vranicar, Welford Sanders and David Mosen. Washington, D.C.: Government Printing Office, 1980.
- Wegner, Robert L., "Introduction to Planning." Paper prepared for TxAPA Educational Short Course for Planning Commissioners, 1990.



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The Job of the Planning Commissioner

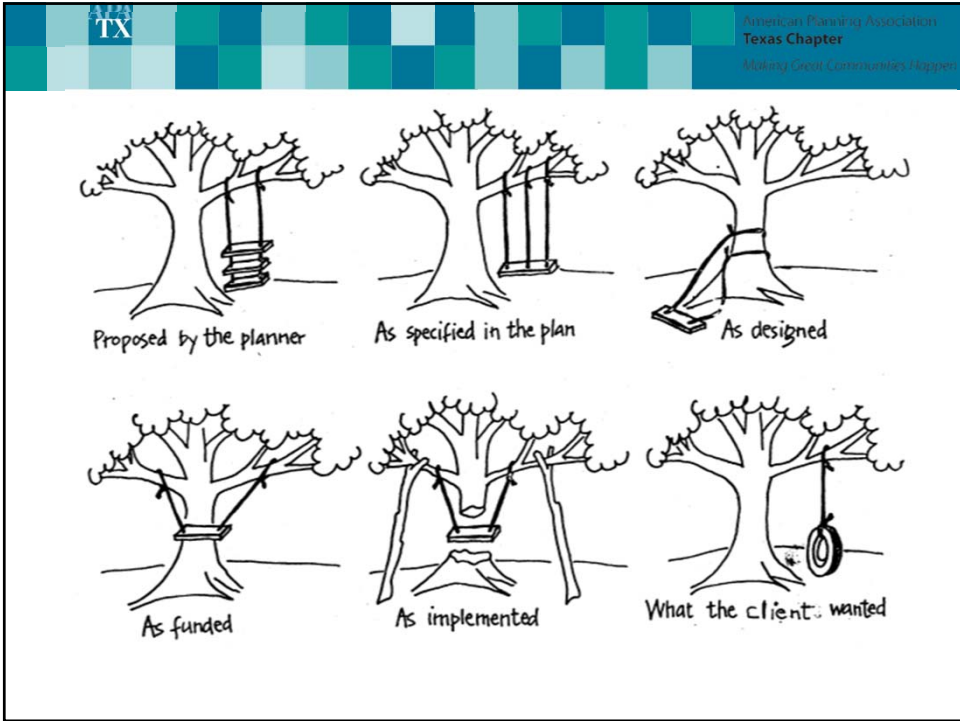
What you need to know about the role and responsibilities of the Commissioner

2015 Central Texas Elected & Appointed Officials Planning Workshop

Sponsored By
Texas Chapter of American Planning Association

Speaker:
Dave Gattis, FAICP
Benbrook Deputy City Manager
dgattis@cityofbenbrook.com

Based on *A Guide to Urban Planning in Texas Communities* of the Texas Chapter of American Planning Association.



Before We Begin...

Please place cell phones and pagers on silent mode ...

Fasten your seat belts, put your trays up, and your seats in their full upright position ...

Feel free to ask questions

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So You've Been Appointed to the Planning & Zoning Commission...

Now What?



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Planning Commission

In Texas, a *Planning Commission* is:

- a group of citizens appointed by the legislative body that performs both required and discretionary functions in land use matters.*
- May also include zoning matters and be called ***Planning and Zoning Commission***.



(*Texas Local Government Code 211.007)



Understanding the Job of P&Z Commissioner

Become familiar with your responsibilities/expectations both on and off the Commission

Orientation -- begin to grasp:

- Legal issues (incl. Open Meetings Act)
- Basic elements of planning
- Comprehensive Planning
- Zoning Ordinance
- Subdivision Regulations
- Enabling statutes in state law for planning/zoning



Why have Training Sessions?


Introduction to New Members

Refresher course for existing members

Insurance benefits

State-mandated training

- **(once within 90 days of appointment)**
- Open Meetings Act
 - http://www.oag.state.tx.us/opinopen/og_training.shtml
- Open Records Act
 - **May not be required, staff responsibility**



Types and Jurisdiction of Cities


Home Rule vs. General Law

- Dillon's Rule

Corporate limits

Extraterritorial Jurisdiction (ETJ)

Population	ETJ
< 5,000	1/2 mile
5,000 – 24,999	1 mile
25,000 – 49,999	2 miles
50,000 – 99,999	3 ½ miles
100,000 or more	5 miles



General Powers of Cities

Administrative oversight


- Financial and personnel

Police power (to protect the general welfare)

- Police, fire, code enforcement, etc.
- Construct & manage public facilities
- Streets, utilities, drainage, buildings, parks


Planning & development

- Land use, infrastructure, building standards



Source of Authority of Cities

- U.S. Constitution
 - Federal laws
- Texas Constitution
 - Local Government Code
 - Other Texas statutes
- City Charter
 - City Ordinances



Types of Planning & Development Regulation

- Types of Planning (vision)**
 - Comprehensive Planning
 - Strategic Planning
 - Special Area Planning
- Types of Development Regulation (tools)**
 - Proactive approaches
 - **Capital Improvements**
 - **Public-Private partnerships**
 - Reactive approaches
 - **Zoning**
 - **Subdivision Approval**
 - **Other regulations**

Conformity between plans and development regulations




Why and How Do We Regulate Development?

Why? Goals

- Implement comprehensive plan
- Reduce land use conflicts
- Assure adequate public facilities
- Promote quality of life/community image

How

- Ordinances
 - Zoning, Subdivision, Unified Development Codes
- Developer Agreements



Legal Basis and Authority for Development Regulations

Most authority provided by general police powers (protect health, safety and welfare) plus specific statutory authority.

Zoning authority provided in Chapter 211, Texas Local Government Code

Subdivision authority provided in Chapter 212. LGC

Comprehensive planning authority in Chapter 213, LGC

Differences between home rule cities and general law cities (Dillon's Rule)

Authority within city limits versus authority within extraterritorial jurisdiction

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Limits on Authority to regulate Development


- Legislative (zoning) versus Ministerial (planning) acts
- Arbitrary and capricious decisions
- Ultra vires – regulating beyond your authority
- Takings – results from overregulation that denies all use of property
- Procedural due process (error in notice, denial of hearing, Open Meetings Act violations, conflict of interest)
- Vested Rights – Chapter 245 LGC – rules are vested at time of initial application for project
- Manufactured Housing
- Religious Institutions (RLUIPA of 2000)

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Types of Decisions

- Advisory Recommendations
- Legislative Acts
 - Zoning, Planning
- Ministerial Acts
 - Subdivision approval
- Quasi-judicial Acts
 - ZBA variances





Responsibilities and Activities of the Planning Commission

- Develop and update the comprehensive plan
- Implement land use patterns
- Monitor current zoning ordinance
- Make recommendations on zoning changes
- Approve (or recommend approval of) subdivisions
- Make recommendations for annexation
- Interface with public on community values through public meetings, focus groups, and neighborhood organizations



Responsibilities and Activities of the Planning Commission
continued

- Recommend a Capital Improvements Program
- Coordinate with economic development activities
- Encourage and monitor the “visual image” through urban design
- Adopt an annual work program and prepare an annual report
- Use base data on population, land use, utilities, and topography in decision making

Typical Applications Reviewed by P&Z

Comprehensive Plan amendments

- Land use plan
- Thoroughfare plan

Zoning Changes

- Map amendments
- Text changes
- Specific Use Permits

Subdivision Plats

Site Plan Approvals

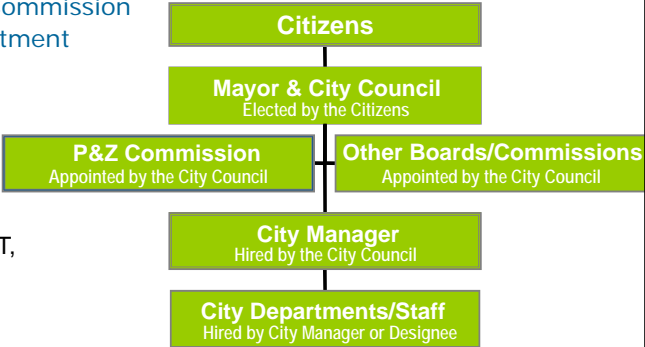



Roles in Development Regulation

City Council
 Planning and Zoning Commission
 Zoning Board of Adjustment

Staff

Administrative
 Planning issues
 Engineering issues
 Other staff (police, fire, etc.)
 Other entities (TxDOT, franchised utilities)






Conducting a P&Z Meeting

Role of the Chair

Rules of procedure


- Robert's Rules of Order
- Rosenberg's Rules of Order?
- Chair should inform audience of rules

Texas Open Meetings Act




Normal Conduct of Hearing

- Applicant allowed to present case
- P&Z and staff may ask questions
 - Don't be argumentative
 - Be mindful of evidence rather than opinion
 - Don't indicate leanings until after hearing
- Staff then makes their presentation



Conduct of Hearing continued

- Public Invited to speak
 - Allow everyone an opportunity to speak
 - May establish time limits if necessary
 - Establish relationship of speaker to applicant (neighbor etc.)
 - Determine what evidence is being presented and what weight to give it
 - Board may ask questions for clarification, but should not cross-examine public speakers
 - Applicant and staff not compelled to be cross-examined by public (address comments to Chair.
- Applicant given opportunity for rebuttal
- Once hearing is closed, applicant and public must be quiet




Conduct of Hearing

P&Z's motions should cite findings and reason for decision

- Failure to make findings may render decision void
- Needed to create record for review
- Example motions

Quorum, Majority, Super-majority



Robert's Rules of Order


American Parliamentary Law

- **Gen. Henry M. Robert, 1876**
- **Robert's Rules, Newly revised, 10th Ed. (RONR)**

Provides orderly process for meeting

Role of the Chair


- **Opens and closes meeting**
- **Keeps order during meeting**
- **Introduces each agenda item**
- **Recognizes speakers and accepts motions**
- **Rules on matters of procedure**
 - **May consult with staff on parliamentary procedure**
 - **Appeals to ruling of Chair**



Motions

Main Motions

- Approval or denial of item before Board
- State any conditions to be imposed
- Rationale for making motion, findings
 - E.g. conforms to Comprehensive Plan, and
 - Adjacent property is protected.
- Second required before discussion
- Discussion on motion plus any subsidiary motions
- Vote
 - Vote on subsidiary motions first




Sample Motion

I move to approve the subdivision because it meets the requirements of the Subdivision Ordinance and conforms to the Comprehensive Plan

Motion must have a second before any other discussion is held with two exceptions:

- Point of Information
- Point of Order



Debate


Must be recognized by Chair

Does your city have a specific debate procedure?

- Some have established specific rules
 - Total time allowed for debate
 - Order of debate
 - Typically motion maker goes first
 - Each other member has opportunity to speak before getting second chance
 - Motion maker has final rebuttal before vote
 - Motions to extend or limit debate (2/3rds required)

Who may speak from floor during public hearing?

- Anyone may speak, but time may be limited
- Better to give someone opportunity to speak rather than deny it
- No one is entitled to speak after hearing is closed



Amendments

Friendly amendments?

- Not allowed under RONR
- Chair may ask if there is “any objection” to amendment, and the approve by consent, otherwise must vote

Motion to Amend (or to amend the amendment)


- Amends main motion
- Requires second before debate
- Example, “I move that we amend the motion to require that the new structure be screened with a six-foot fence.”

Motion to Substitute

- Replaces main motion
- Requires second before debate
- Example, “I move the we deny the variance request,” after a motion to approve has been placed on the floor.

Motion to Amend or Motion to Substitute acted on first

- Question is whether to amend or substitute
- If approved, revised Main Motion is acted upon



Other Motions

Point of Order and Point of Information

- Member raises “point of order”
- Upon being recognized by Chair, member states question or objection
- Chair rules whether point is sustained or denied
- Any member may appeal, with majority vote by Council

Motion to Continue (Postpone) vs. Motion to Table


- Motion to Continue is appropriate for consideration of item at a future meeting
- Motion to Table is rarely appropriate
 - Mainly for considering an item later in same meeting

Motion to Commit (refer to committee or staff)

Calling the Question (“move the previous question”)

- Not automatic, must be recognized by Chair
- Must have second, not debated, but must receive 2/3rd vote to close debate

Motion to Adjourn is not required if you’ve reached the end of the agenda



Other Motions, cont.

Motion to Reconsider


- Must be made by member on prevailing side during same meeting
 - First vote is whether to reconsider
 - Second vote is on main motion again
 - Only reconsider vote once

Motion to Rescind

- Requires 2/3rds vote to change results of a vote held earlier in meeting
- Reconsideration on a later agenda up to Council policy

Motion to Suspend Rules

- 2/3rds vote required under RONR




Public Hearings

Except for Public Hearings required by State Law, no one has right to speak during meeting

Public Hearings

- Generally allow everyone to speak
- Impose and enforce time limits
- Avoid discussion, except questions from Board for clarification
- Typical Order of Presentation
 - Applicant
 - Staff
 - Audience
 - Applicant Rebuttal
- Once Hearing is Closed, no one speaks except Board and staff



Issues in Hearings

What happens if applicant doesn't show up?


- Burden of proof is on applicant

Continuation of hearings

- Should be continued to a date certain
- Inaction causes due process problems

Minutes

Appeal of decisions




Public Comment Periods

Covered by Rules of Procedure?

- 3 minute time limit typical

Not covered by RONR



Responsibilities of Board Member

Be prepared

- Read and study packet
- Visit site, if possible
 - Avoid receiving information from public outside of public hearing
- Ask questions of staff

Be fair
Be honest
Be ethical
Be objective



Traits for Successful Planning Commissioners

Visionary

- Has a feel for the assets and problem and potentials of the city
- Can see the big picture without missing the details

No conflicts of interest
Impartial and objective

- Works toward the common good
- Places community interest first

Comes to meetings prepared
Appreciates dialogue and enjoys collaboration
Practical, yet creative
Consistent

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Final Thoughts – Importance of Public Participation

Planning is a political process.

Opportunity for consensus building.

Common techniques:

- Surveys
- Public meetings
- Citizens advisory committees
- Charrette



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Potential Liability (How Can You Be Sued?)

Procedural errors

- Was decision unbiased?
- Was there adequate notice of hearing?
- Was there opportunity to introduce evidence?
- Was decision based on record of reasons and findings of fact?
- § 1983 Civil Rights Act (KKK clause)

Substantive due process

- Fifth and 14th Amendment takings



Potential Liability, cont.

- Ex parte contact
- Open Meetings Act
 - State-Mandated training (https://www.oag.state.tx.us/open/og_training.shtml)
 - Notice of meetings
 - Deliberation of quorum
 - Executive sessions
- Open Records issues



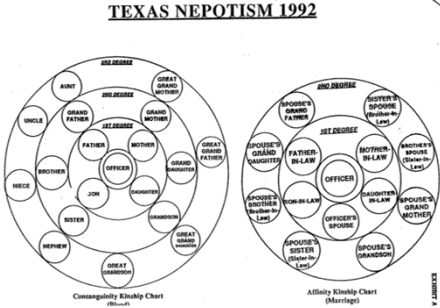
Potential Liability, cont.

- No plan or bad plan (arbitrary and capricious decisions)
- Ultra vires (no authority)
- Equal protection attacks
- First Amendment (speech, religion)
- § 1983 Civil Rights Act
- Fair Housing Act
- Gifts to Public Servants

Potential Liability, cont.

Conflict of Interest

- Chapter 171 of Local Government Code
 - Substantial interest test
 - 10% of stock, equity (\$15,000), or income
 - \$2,500 interest in real property
 - Relationship test
 - First degree of consanguinity or affinity
 - Affidavit and recusal
 - Smell test



Balancing Demands

- Developer's Wants
- Highest and Best Use
 - Maximize short term gain
 - Market Demands
 - Past Experience
 - Profitable Development
 - Low cost-high return



- City's Wants
- Quality Development
 - Long-term Benefits
 - Compatible Land Uses
 - Adequate Infrastructure
 - Fiscal impacts



Other sources of information

Training and Resources for Planning Commissioners:

- City orientation and training for new Commissioners
- APA Texas Chapter
 - Regional Workshops for Planning Officials
 - Annual Short Course for Planning Commissioners
 - State Planning Conference
 - www.txplanning.org
- American Planning Association – publications and conferences
 - *Planning Magazine*
 - National Planning Conference
 - *The Commissioner* quarterly newsletter
 - www.planning.org
 - CD-ROM training packages
 - www.planningbooks.com
- Planning Commissioner's Journal
- Texas Municipal League
- Planning staff



Questions?

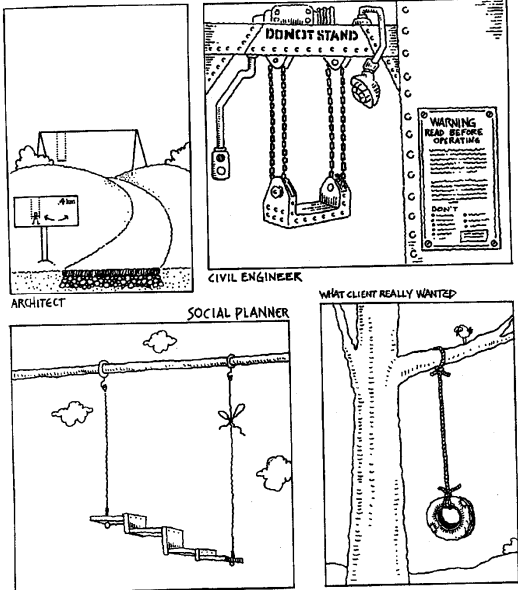


Figure 1-2 Variations on the design of a swing.