



Agenda

Planning & Zoning and Zoning Board of Adjustment

Oelwein Community Plaza, 25 West Charles, Oelwein

5:30 PM

September 22, 2020

Oelwein, Iowa

Mayor: Brett DeVore

Mayor Pro Tem: Warren Fisk

Roll Call

Old Business

New Business

1. Review and Discussion on Zoning Classifications
2. Review and Discussion on Variance Requirements

Adjournment

In compliance with the Americans with Disabilities Act, those requiring accommodation for Council meetings should notify the City Clerk's Office at least 24 hours prior to the meeting at 319-283-5440

Introduction to Planning and Zoning

Workshops for Local Officials

Prepared by:

Gary Taylor, J.D., AICP
Associate Professor & Extension Specialist
Community & Regional Planning
286 College of Design
Iowa State University
515.290.0214
gtaylor@iastate.edu

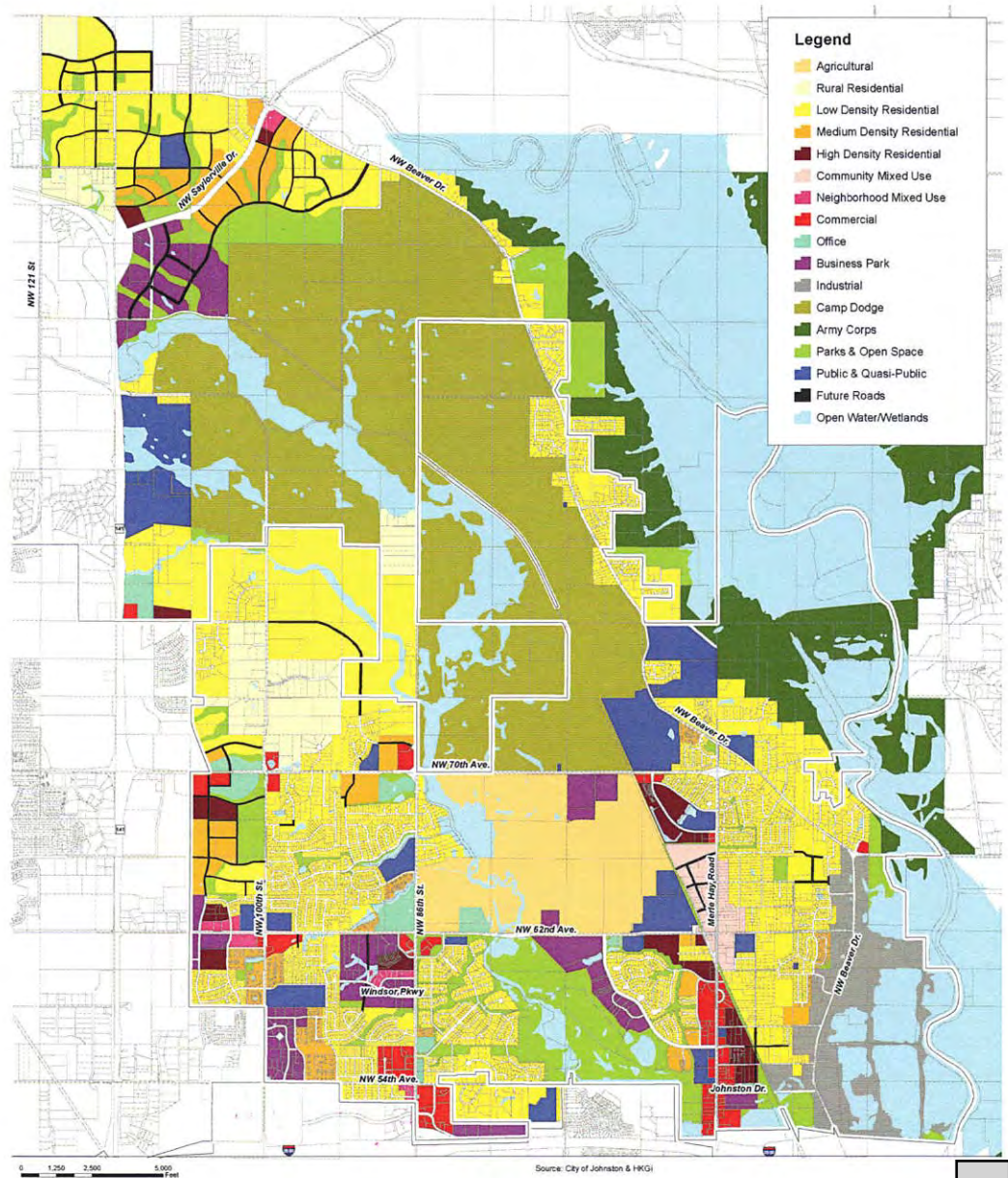


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Introduction to Planning & Zoning

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Test Yourself: Circle all that apply for each question

1. The purposes of the comprehensive plan are:
 - a. To involve residents in discussing the future of the community
 - b. To establish land use patterns that are logical, orderly, and convenient
 - c. To protect private and public investment
 - d. The Smart Planning Act of 2010 requires communities to have a plan

2. The purposes of zoning are to...
 - a. Separate conflicting land uses such as residential and industrial
 - b. Ensure new development is located according to the comprehensive plan
 - c. Promote quality development that won't harm public health, safety, or welfare
 - d. Allow local government to keep tabs on what citizens are doing

3. The United States Supreme Court affirmed the Constitutionality of zoning in the case of...
 - a. Brown v. Board of Education in Topeka, Kansas
 - b. Euclid v. Ambler Realty.
 - c. Monsters v. Aliens
 - d. It's not Constitutional! Zoning is a United Nations plot for one world government!

Notes

Planning and Zoning in Iowa

- Authorized by state law
 - Cities:
 - Chapter 414, *Iowa Code*
 - Counties:
 - Chapter 335, *Iowa Code*
 - Smart Planning (both):
 - Chapter 18B, *Iowa Code*

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Ask yourselves...

- Does your city/county have a comprehensive plan?
 - How old is it?
 - How has your community changed since then?
 - How often does it come off the shelf?
 - During zoning hearings?
 - During other policy discussions?
 - Other times?

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The Comprehensive Plan

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Notes

What is a Comprehensive Plan?

- **A statement of policy...**
 - guided by citizen input,
 - “developed” by the Planning Commission,
 - should be adopted by the Legislative Body.
- Guides physical development of the community for 10 to 20 years.
 - Consider review/update every 5 years to respond to changing conditions.

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Your comprehensive plan

Analyzes and assesses

- Land Use
- Housing
- Public infrastructure and utilities
- Transportation
- Economic development
- Agricultural and natural resources
- Community facilities
- Community character

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The comprehensive plan

- Protects/optimizes property values
 - Separates incompatible land uses (balances competing interests of private landowners).
- Provides continuity across time
 - Provides for predictability of future conditions.

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Notes

The comprehensive plan

- Protects public investments in roads, sewer, water, public facilities
 - Also helps avoid unnecessary investments.
- Protects environmental resources
- Promotes economic development

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Scenario 1

Tiny Tammy Steel and Cupcake Company has a novel business model whereby, through patented technology, it converts recycled steel into tasty little snack cakes. A representative of the company has come to your community to explore the possibility of locating its newest plant on the west edge of the city, where interstate and rail access make an available parcel an "ideal" location for a \$100 million plant that will employ 75 workers. The company is asking the city for a generous 20-year tax break.

Before you say "heck yeah," is there information in your comprehensive plan that will help you make an *informed* decision? What types of information might you expect to find in your comprehensive plan?

The comprehensive plan

- Can provide a basis for other plans
 - Urban Renewal plans (Chapter 403)
 - Urban Revitalization plans (Chapter 404)

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Urban Renewal Plans

403.5(1), Iowa Code (TIF)

- The local governing body shall not approve an urban renewal plan until a general plan for the municipality has been prepared. For this purpose and other municipal purposes, authority is vested in every municipality to prepare, adopt and revise from time to time a general plan for the physical development of the municipality as a whole, giving due regard to the environs and metropolitan surroundings.

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Urban Revitalization Plans

404.2, Iowa Code (Tax exemptions)

- A city or county may only exercise the authority conferred upon it...after the following conditions are met:
 - The city or county has prepared a proposed plan for the designated revitalization area that includes...
 - The existing zoning classifications and district boundaries, and the existing land uses....
 - Any proposals for improving or expanding services within the area, including transportation, sewage garbage collection, street maintenance, park facilities and police and fire protection.

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Zoning

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Notes

Test Yourself: Circle all that apply

1. The zoning map is part of the zoning code and is subject to the same process for updating:
 - a. True
 - b. False
 - c. What's a map?

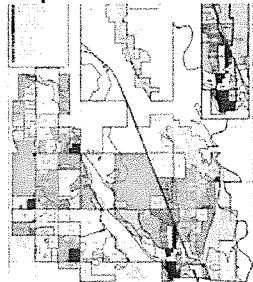
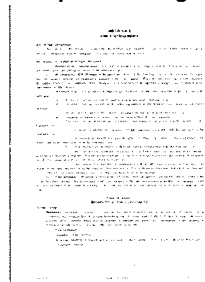
2. In the zoning context, what is a "use by right?"
 - a. A building to the right of the house as you face it from the street
 - b. "It's my property, and I have the right to do what I want to/with it."
 - c. A use that is permitted in the zoning district if all setback, lot size, height, etc. requirements are met

What is a zoning ordinance?

- **A local law**

- Divides community into zones or districts,
 - Regulates the land uses allowed within those zones,
 - Regulates the sizes of lots within those zones,
 - Regulates the bulk, height, area and setbacks of buildings in those zones,
 - Regulates parking, landscaping, accessory structures,
 - And other stuff...

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Zoning Ordinance**Two parts****Map delineates zones****Text provides regulations**

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Notes

Planning vs. Zoning

- The plan is a *policy statement*.
- The zoning ordinance is *law*.
- The plan directs *future* land use.
- The ordinance regulates land use *today*.

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The relationship of the plan to the zoning ordinance

- According to state law, the zoning ordinance and zoning decisions “shall be made in accordance with a comprehensive plan...”
 - Iowa Code § 414.3 (Cities)
 - Iowa Code § 335.5 (Counties)

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Scenario 2

Don Wantlaw owns two vacant properties along Highway 66, which runs east-west through the city of Lost Step, Iowa. Properties to the east of Don's are residential developments, while properties to the west are commercial in nature. According to the Lost Step zoning ordinance, Don's properties are both zoned residential. Don comes to the city to request both parcels be rezoned to commercial to put a gas station/Pizza Hut/KFC video store on it. The planning commission recommends approval, and the city council approves Don's request. The residential property owners to the east sue. At trial, the mayor admits that Lost Step has never adopted a comprehensive plan.

Who wins? Is Lost Step's zoning decision “in accordance with a comprehensive plan?” Why or why not?

Notes

In accordance with...

- When a community has adopted a separate comprehensive plan, the law “contemplates the zoning ordinance will be designed to promote the goals of that individualized plan.”
 - » *Webb v. Giltner* (1991)
- Consistency with the comprehensive plan is “a primary consideration” when evaluating the legality of a city’s [or county’s] zoning action.
 - » *Norton Trust v. City of Hudson* (2009)

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Scenario 2.1

Assume, instead, that Lost Step adopted a comprehensive plan five years earlier that demonstrates the need for more commercial development in the city due to a lack of available highway-oriented retail space in town. The future land use map in the plan identifies Don’s properties as commercial.

Who wins? Is Lost Step’s zoning decision “in accordance with a comprehensive plan?” Why or why not?

Rezoning considerations

- **Consistency with plan;**
 - In harmony with surrounding land uses;
 - In harmony with future planned land uses;
 - Whether necessary for property owner to receive reasonable return.
- May impose reasonable and necessary conditions if agreed to in writing by property owner prior to public hearing of legislative body (conditional rezoning agreements).
 - *Iowa Code* § 335.7 (counties)
 - *Iowa Code* § 414.5 (cities)

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Notes

Zoning Roles

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Test Yourself Again: Circle all that apply for each question

1. The planning and zoning commission...
 - a. Is appointed by the elected body (city council or county board)
 - b. Determines whether the content of a sign that a business wants to erect is suitable
 - c. Is the final decision maker on rezoning requests
 - d. Is an advisory body to the elected body (and occasionally to the zoning board of adjustment) on planning and zoning matters

2. The elected body can place conditions on an approved rezoning request.
 - a. True
 - b. False

3. A "grandfathered use"...
 - a. Is a house built by your grandfather
 - b. Is the same as a nonconforming use
 - c. Is a use that was legal when established, but does not meet current zoning regulations
 - d. In fact does not apply to "uses" at all, only buildings

Notes

Elected body

- **Elected body** is ultimately responsible for actions that set overall land use policy for the community
 - Initiating work on comprehensive plan
 - Adopting and amending zoning ordinance
 - Text
 - Map (rezoning)
 - Approving major site development plans

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Planning Commission

- **Planning and zoning commission** is an independent advisory body to the elected body. Zoning duties are set out in zoning ordinance.
 - Recommendations to elected body on zoning ordinance adoption and amendments
 - Text
 - Map (rezoning)
 - Recommendations to zoning board of adjustment (if required by ordinance).
 - Direct preparation of comprehensive plan or special studies (on request of elected body)

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Zoning Board of Adjustment

- **ZBA** is an independent *quasi-judicial* body with duties specifically identified in state law.
 - Special/conditional uses (aka special exceptions)
 - Variances
 - Appeals of decisions of the zoning administrator

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Notes

Zoning Administrator

- **Zoning administrator** administers the zoning regulations
 - Review and approve administrative permits
 - Zoning permits
 - Minor site plans
 - Temporary use permits
 - Intake of applications for development requests (rezonings, variances, SUP, etc.)
 - Technical review, assistance to decision-makers

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Zoning Actions

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Spot zoning

- "The factor of primary importance is whether the rezoned tract has a peculiar adaptability to the new classification as compared to the surrounding property. Spot zoning for the benefit of the owner and contrary to the comprehensive plan is unreasonable."
 - Riniker v. Dubuque County (2002)

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Spot Zoning Scenario 1

R	R	R	R	R
R	R	C	R	R

E South Street

R	R	R	R	R
---	---	---	---	---

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Spot Zoning Scenario 2

	C	R	R
--	---	---	---

N West Road

E South Street

	R	R	R
--	---	---	---

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“Illegal” spot zoning

- A small zone of inconsistent use...
- that benefits an individual landowner, and ...
- cannot be supported by a comprehensive plan,
 - either is inconsistent with the plan, or
 - no plan has been adopted by the city.

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Notes

Nonconforming Uses

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Nonconforming uses

- “Uses” that were legal when established, but do not conform to regulations of the current zoning ordinance.
 - Nonconforming uses.
 - Nonconforming structures.
- Zoning ordinances must allow nonconforming uses to continue (cannot force closure, removal).

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Abandonment

- ▶ A nonconforming use may lose its protection if the use is abandoned.
 - Abandonment implies intent.
- ▶ It is permissible for zoning ordinances to dispense with subjective intent (“abandoned”). Such ordinances may effectively extinguish nonconforming uses based solely on discontinuance of that use for a specified period of time.
 - Smith v. Cedar Rapids ZBA (1990)

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Notes

Abandonment

- ▶ Never leaving well-enough alone...
- ▶ "We qualify this ...by expressing ...that even under ordinances which dispense with subjective intent there is some room to perpetuate a nonconforming use in situations where the period of discontinuance takes place under circumstances beyond the property owner's control."
 - Smith v. Cedar Rapids ZBA (1990)

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Court pronouncements

- ▶ A nonconforming use may lose its protection if the use of the property is enlarged or extended.
 - The use at the time the ordinance became effective is the standard of comparison.
- ▶ An intensification is permissible so long as the "nature and character of the use is unchanged and substantially the same facilities are used."
 - An increase in business, standing alone, does not constitute an illegal enlargement, but rather a permissible intensification.

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Destruction rule

- Every ordinance has a 50% (or so) of assessed value destruction rule.
 - Intent ("I didn't mean to burn it down") is immaterial.

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Zoning Board of Adjustment Actions

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Test Yourself One More Time: Circle all that apply for each question

1. Which body is ultimately responsible for granting a special/conditional use permit?
 - a. Elected body
 - b. Planning and zoning commission
 - c. Zoning board of adjustment
 - d. Iowa Department of Natural Resources
2. The zoning board of adjustment can overrule the elected body on a rezoning decision.
 - a. True
 - b. False
 - c. It depends
3. The elected body can overrule the zoning board of adjustment on a variance decision.
 - a. True
 - b. False
 - c. It depends
4. For the zoning board of adjustment to make any decision it takes an affirmative vote of:
 - a. A majority of members present at the meeting
 - b. A majority of the entire board

Notes

Conditional/Special uses

- Each zoning district has a list of permitted uses ("uses by right"). *Conditional uses, special uses, special exceptions* appear in the ordinance as a list of uses that must go through the ZBA for approval.
- The zoning ordinance will list criteria that the landowner must meet in order for the ZBA to grant the special exception.
 - Usually 4 or 5 criteria focused on compatibility of the proposed special exception with the neighborhood.

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Conditional/Special uses

- Purpose is to make sure slightly-out-of-character uses can be made to "fit" with surroundings.
 - Home occupations
 - Cell towers
 - Duplexes
 - Drive-thru businesses

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Variances

- A *variance* if approved by the ZBA, is an authorization to use property in a manner generally *forbidden* by the ordinance.
- A list of "acceptable variances" will not be found in a zoning ordinance.

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Notes

Types of Variances

- Dimensional variance – permits relaxation of height, bulk, setback, and related building requirements.
- Use Variance – permits use of land otherwise not allowed in the zoning district.
 - Your ordinance may (should) prohibit ZBA from granting use variances.
 - Why?

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Variances

- A *variance* can only be granted if the landowner proves that an *unnecessary hardship* will result if the zoning regulations are enforced.
- The intent of the standard is to prevent the property from being *worthless as zoned*.

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Unnecessary hardship means...

1. Land in question cannot yield reasonable return if used only for purpose allowed in that zone;
2. Plight of owner is due to unique circumstances and not to general conditions in neighborhood;
3. The hardship must not have been self-created; and
4. Use to be authorized by variance will not alter essential character of locality.

o Greenawalt v. Davenport ZBA, (1984)

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Notes

Unnecessary hardship

- The burden is on the landowner/applicant to show all four elements.
- Failure to demonstrate any one of them requires the ZBA to deny the request.
 - Greenawall v. Davenport ZBA, (1984)
- Note that the unnecessary hardship standard does *not* apply to conditional/special uses. The standards in your ordinance apply.

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Rule of thumb

A variance should prevent a hardship, not grant a special privilege not available to other landowners faced with similar situations.

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Conditions on variances and conditional/special uses

- ZBA may place conditions on variances and special exceptions, to ensure that the use is compatible with surroundings.
- If it cannot be made compatible, permit should not be granted.
 - (follow ordinance standards)
- Once imposed, conditions can be enforced the same as ordinance provisions.

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Notes

Appeals

- The party challenging the decision has the burden to show why it was wrong.
- “Fairly debatable” rule:
 - If both sides make reasonable arguments in their interpretation of the ordinance, deference is given to the initial decision

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ZBA voting

- A majority vote of *all members* of the ZBA is required to grant a variance or conditional/special use permit, or reverse a determination of the zoning administrator;
 - Not just a majority of those in attendance.

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Record of ZBA decisions

- Boards of adjustment shall make written findings of fact on all issues presented in any adjudicatory proceeding.
- The intent is “to enable a reviewing court to determine with reasonable certainty the factual basis and legal principles upon which the board acted.”
 - A-Line Iron & Metals v. Cedar Rapids ZBA (2010)

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Notes

What does all that mean?

- ▶ Minutes that only reflect vote result ("approve" or "deny") will not stand up in court if the decision is challenged.
- ▶ More detailed minutes, or minutes and a transcript of the hearing have been found to be sufficient to allow for judicial review the ZBA's decision.
 - Make sure you give explanations as to how you think the standards in the ordinance have/have not been met.
 - Record your meetings so that you can have them transcribed if needed.

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Conflicts of Interest

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Conflicts of interest

Iowa Code

- Contracts between city/county and officers or employees
 - 362.5 (Cities)
 - 331.342 (Counties)
- Bribery – soliciting or knowingly accepting a promise or anything of value or any benefit given under an arrangement that the promise or thing of value or benefit will influence the public official's act, vote, opinion, judgment or exercise of discretion.
 - 722.2 (Class C felony)

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Notes

Conflicts of interest**Common law**

- Conflicts of interest arise when a public servant is in the position deciding between public duty and private interests.
 - Wilson v. Iowa City (Iowa Supreme Court 1969)

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Common conflicts of interest

- Familial relationship with the applicant or landowner.
- Financial dealings with the applicant or landowner.
- Financial interest in the outcome.

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A conflict of interest exists...

- The member's interest is different from that held in common with members of the public.
- The interest is "direct, definite, capable of demonstration, not remote, uncertain, contingent, unsubstantial or merely speculative."
 - Bluffs Development v. Pott. County BoA (1993)

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Notes

In case of conflict of interest...

- Must disclose circumstance and nature of conflict prior to hearing.
- Must decline to vote on matter.
- Must leave the table where board/ commission is sitting (better to leave room altogether).
 - Your board's rules of procedure may say how the issue of *conflict of interest* is handled.

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Conducting meetings

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Conducting ZBA/PC hearingOrder of proceedings

1. Zoning administrator summarizes the application, including any recommendations.
2. Applicant speaks on behalf of his application, and answers any questions the ZBA/PC may have.
3. Members of the audience are given a chance to speak in favor or opposition.

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Notes

Conducting ZBA/PC hearing

Order of proceedings

4. At the discretion of ZBA/PC, the zoning administrator and/or applicant are given opportunity for rebuttal.
5. ZBA/PC closes record.
 - ZBA/PC may request more information and hold record open. Schedule date/time to continue proceeding.
6. Motion is made/seconded to approve or deny request.
7. Once the motion is seconded the members may discuss merits of the application and vote.

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Dealing with the public

- Chair can limit length of comments before beginning (3-5 minutes each).
- Those wishing to speak must come forward (can't speak from the cheap seats).
- Speaker must direct comments/questions to chair (not applicant, staff, or other audience members).
- No applause, heckling should be tolerated.
- Limit discussion to case at hand (and ask that they be *relevant* to case at hand).

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Conduct of board members!

- Should refrain from discussing merits of case before motion is made.
 - This includes engaging in conversation with applicant or audience members.
- Chair should not make motions
 - "I will entertain a motion..."
- Person who seconds a motion may speak against it.
 - "I second" means "let's discuss it," not "I agree."

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Notes

Keep up to date

The Midwest Planning BLUZ
(The Blog on Land Use and Zoning)

www.blogs.extension.iastate.edu/planningBLUZ

Find us on Twitter at @PlanningBLUZ

Summaries of recent court cases, and legislation relevant
to planning and zoning decision-makers

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Contact us:

Gary Taylor: gtaylor@iastate.edu 515.290.0214

Lynn Adams: adamsm1@iastate.edu 712.309.2132

Shelley Oltmans: shelleyo@iastate.edu 319.520.0209

Brian Perry: bmperry@iastate.edu 501.772.8988

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Thank You

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Roles and Responsibilities – Elected Officials

The elected body (city council or county board of supervisors) is the primary policy-making entity responsible for setting the direction of the community's government. The policy dimension of planning and zoning is substantial: It addresses how land in the community is to be used in the future. Councils and boards of supervisors are the key drivers of land use policy. Several activities of the elected body have an impact on community land use. Perhaps the three most important are: (1) adopting and amending plans and ordinances; (2) approving some types of development proposals; and (3) making appointments to boards, commissions and (in some communities) staff positions.

(1) Adopting Plans and Ordinances

The primary tools for guiding land use and development are the comprehensive plan, the zoning ordinance and the subdivision ordinance. The elected body plays a critical role in the development and application of all three.

The comprehensive plan establishes long-range goals and objectives for all activities that affect growth and development in the community, including public and private land development proposals, expenditure of funds for infrastructure and public facilities, and methods to address issues of pressing concern. The plan provides the underpinnings for the zoning ordinance and other development regulations. The comprehensive plan is adopted by resolution of the elected body after the planning commission holds its own public hearings and forwards its recommendations to the elected body.

The zoning ordinance is the primary mechanism for implementing the policies of the comprehensive plan. The zoning ordinance assigns compatible land uses to defined districts throughout the community, and it controls the placement, height, bulk and coverage of buildings and other structures. The elected body adopts the zoning ordinance after the planning commission develops the ordinance and holds public hearings.

The subdivision ordinance regulates the division of land into two or more parcels, lots or sites for building. It is one of the essential tools used by cities to influence the layout of lots and streets, coordinate the construction of public infrastructure to support homes and businesses, and, generally, assure that land divisions are consistent with community goals. Counties use subdivision regulations to control congestion on county roads, protect highly productive farmland from development and reduce the need to provide urban levels of public services to rural areas. The subdivision ordinance is adopted by the elected body, generally after the planning commission develops the ordinance and holds public hearings.

(2) Approving Development Proposals

There are several circumstances under which state law or local ordinances may require the elected body to approve specific development proposals initiated by landowners. In doing so the elected body is implementing pre-established policy by applying the standards set forth in the plan and ordinance. In these cases the elected body is wearing a different hat; acting more like a judge and jury than a policy-making body.

Rezoning. A rezoning is a request by a landowner to change the district classification of his or her parcel. It is also known as a map amendment, because the request is, in effect, to change the designation of the parcel on the zoning map.

Site plans. The Iowa Code gives the elected body the authority to approve site development plans via a separate ordinance. Many communities require elected body approval of major site plans, while minor plans are handled by zoning staff.

Site plans are scale drawings that depict the general layout of a subdivision or development project, the proposed access, roads, building footprints, sewer and water infrastructure, lighting, and other features. Site plans are used to insure zoning ordinance compliance and to study both the on-site and off-site impacts of a proposed development. These impacts include traffic flow, ingress and egress, storm water drainage, grading, landscaping, lighting and parking. A site plan can vary in detail depending on the size and complexity of the project, and the administrative needs

and capacity of the local government. Some site plans are highly detailed, while others are simply sketches drawn on a zoning permit form.

Subdivision plats. If a local government has adopted subdivision regulations, Iowa Code § 354.8 requires the elected body to review and approve subdivision plats prior to recording. A "plat" is simply a graphical representation of the subdivision of land. The elected body should consider "the possible burden on public improvements" and balance the "interests between the proprietor, future purchasers, and the public interest. The elected body must apply "reasonable standards and conditions" when reviewing subdivisions and must require compliance with all applicable state laws. The elected body approves the subdivision plat via a resolution that is certified and recorded, along with the plat, with the county recorder, auditor and assessor. Most communities require that the planning commission review subdivision plats before they are taken up by the elected body.

(3) Appointing Land Use Decision Makers

The experiences and beliefs of the individuals appointed to these positions affect the way land use policies are developed and implemented. For planning commissions this means that policy recommendations coming from the commission to the elected body are reflective of the members' opinions about growth and development, property rights, and the future. The board of adjustment interprets the ordinance and applies strict criteria in deciding appeals, special exceptions and variances. Therefore its members must recognize the limited scope of the board's authority.

Appointing planning commissioners. The Iowa Code mandates the appointment of a planning commission if the local government chooses to undertake zoning. The Iowa Code gives city and county elected officials wide latitude on the appointment of planning commissioners, with two exceptions. For counties, the Iowa Code requires the county board of supervisors to make appointments such that "a majority of [county planning commission] members shall reside within the county but outside the corporate limits of any city." For cities exercising extraterritorial zoning controls, the city planning commission must include two representatives appointed by the county board of supervisors. In all cases the size of the planning commission is left to the discretion of the elected body.

Appointing board of adjustment members. The Iowa Code requires a county's board of adjustment to be five members, a majority of whom must live in the county but outside the corporate limits of any city. A city board of adjustment may be five, seven or nine members, but a majority of the board must not be involved in the business of purchasing or selling real estate. In both cases the Iowa Code specifies how the terms are to be staggered, and requires a majority of the board's membership to be present to conduct official business.

Roles and Responsibilities – Planning Commission

The planning commission primarily acts in an advisory capacity to the elected body. The commission studies issues, oversees the preparation of plans and ordinances, and reviews and advises on development proposals. The planning commission can become an effective force in shaping the future of a community when its work leads to solving practical problems in an informed, impartial manner.

The Iowa Code spells out two specific responsibilities for the planning commission related to the development and maintenance of the zoning ordinance.

Prepare the Zoning Ordinance

While the elected body has the power to adopt the zoning ordinance, the responsibility for overseeing the preparation of the ordinance falls to the planning commission. Iowa Code §§ 414.6 (cities) and 335.8 (counties) specifically require the planning commission “to recommend the boundaries of the various original [zoning] districts, and appropriate regulations and restrictions to be enforced therein. Such commission shall, with due diligence, prepare a preliminary report and hold public hearings thereon before submitting its final report; and the [elected body] shall not hold its public hearings or take action until it has received the final report of such commission.” Usually the planning commission works with a consultant, council of governments, or the city or county’s own staff, who handle the technical details of ordinance drafting.

Review and Recommend Zoning Amendments and Updates

Iowa Code §§ 414.6 (cities) and 335.8 (counties) provide that after the initial adoption of the zoning ordinance “the zoning commission may, from time to time, recommend to the [elected body] amendments, supplements, changes or modifications.” This includes any change proposed by a landowner to the map (for example, requesting a property be rezoned from one district classification to another) or the text of the ordinance. The commission should study the proposed change, hold a public hearing and forward its recommendations to the elected body. Likewise, the responsibilities of the planning commission include keeping the zoning ordinance current by recommending amendments that affect a broader area or the community as a whole when the commission’s study and experience indicates a change is necessary. Such recommendations for updates should be forwarded to the elected body.

Other Zoning-related Responsibilities

The planning commission also applies the policies set out in the comprehensive plan and zoning ordinances by reviewing and providing recommendations on specific project applications. The commission’s responsibilities vary considerably from community to community, and they are spelled out in the zoning ordinance. The commission is commonly called on to review subdivision plats, planned unit developments and major site development plans, and to provide recommendations about them to the elected body. Some ordinances give the planning commission responsibility for providing recommendations to the board of adjustment on special exceptions and, occasionally, variances.

Other Responsibilities

The planning commission plays a vital role in developing land use policy that goes well beyond the duties outlined in the Iowa Code. While the policy-development responsibilities of the planning commission vary considerably from community to community, some of the most common tasks include:

- Assisting in the preparation of the comprehensive plan; functional plans such as for bike trails, transportation or sanitary sewer expansion; and plans for geographic subareas like downtowns, neighborhoods or recently annexed areas.
- Assisting in the preparation of the subdivision ordinance.
- Assisting in the preparation of a community capital improvement plan (CIP). The CIP is a management and fiscal planning tool communities use for scheduling, financing and

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constructing needed public improvements. The planning commission's participation in CIP development is crucial, because the CIP should be directly linked to the goals and objectives of the comprehensive plan.

- Undertaking other special studies related to the physical development of the community, as requested by the elected body. These studies could address such varied topics as the need for more affordable housing, responses to new state or federal directives, or the demand for increased parkland.
- Informing and educating citizens about ongoing planning projects and community development issues.

Being an Effective Planning Commission

Because of its status as an advisory body, the role of the planning commission is often not well understood by citizens, others in local government or even the commissioners themselves. This frequently leads to isolation or marginalization of the commission. The dangers of this were discussed in the previous section, as was the important role of the elected body in carving out a place for the commission in the decision-making process. What can the commission do for itself to ensure relevance and effectiveness? Several good tips come from Solnit's *The Job of the Planning Commissioner*¹ and *The Citizen's Guide to Planning*² by Herbert Smith:

- Take time to orient new commissioners to the job.
- Be an effective body. Annually reexamine the work you are doing and the way you are doing it. Make sure your procedures are efficient and you function effectively as a group.
- Work with the elected body to develop an annual work program for active planning (such as policy development responsibilities). Provide justifications, from your experiences, for the items on the work program.
- Don't mistake development review (reactive planning) for active planning.
- Work with the citizens. Consider holding a public forum annually. Ask citizens how things are going and what, if anything, they would like to see done.
- Attend educational programs to learn about best practices in planning and keep up to date on land use law.
- Don't allow the commission to become a rubber stamp for actions requested by the elected body. The role of the commission should be to study, question, recommend and even criticize when necessary.
- Dispel the notion that the commission is merely providing laymen's opinions. "Planning" that is nothing more than collective thinking will be disregarded. Commit the time and effort necessary to study issues, ask questions and find answers; in short, be prepared for the task at hand.

¹Solnit, Albert. 1987. *The Job of the Planning Commissioner*. Chicago: American Planning Association.

²Smith, Herbert H. 1993. *The Citizens Guide to Planning*. Chicago: American Planning Association.

Roles and Responsibilities – The Zoning Board of Adjustment

Iowa Code §§ 335.15 (counties) and 414.12 (cities) provide identical mandates for zoning boards of adjustment. These statutes are very specific in limiting the functions of the board of adjustment to (1) hearing appeals of decisions made by the zoning administrator, (2) granting or denying special exceptions (also referred to as “special uses” or “conditional uses”), and (3) granting or denying variances.

Appeals

Zoning administrators are given the authority to make many decisions relating to the interpretation and implementation of the zoning ordinance. If a landowner is dissatisfied with a zoning administrator’s decision, the landowner has a right to appeal the decision to the board of adjustment. The board’s role is to review the zoning administrator’s interpretation of the ordinance and the given facts, based on the purpose and intent of the regulations, and render a decision affirming or overturning the administrator’s determination. If the zoning administrator’s decision is reasonable, it should be given the benefit of the doubt.

Special Exceptions, aka Special Uses or Conditional Uses

In each zoning district two broad classes of land uses are explicitly identified: (1) permitted uses, which are those listed by the ordinance as being allowed by right in any location, and (2) special exceptions, which are listed by the ordinance as being permissible only at the discretion of the zoning board of adjustment. Special exceptions are generally unique uses that are slightly out of character with permitted uses. In order to be granted a special exception by the board of adjustment, the applicant must be able to show that the requested use can be made to fit into its surroundings.

Variances

A variance is a minor exception to the existing zoning rules to allow a landowner to do what is generally forbidden by the ordinance. In order to be granted a variance, the applicant carries the burden of proving to the board that strict enforcement of the terms of the ordinance will inflict an unnecessary hardship on the landowner.

Administratively, the board of adjustment is a forum of last resort. The only appeal from the decision of the board of adjustment is to the court system. In too many communities, however, this arrangement has led to the mistaken assumption that the board of adjustment is the final authority on almost all zoning matters. Individuals will go to the board any time they feel the ordinance is “too strict,” and some boards will grant almost any relief requested by landowners. In these communities boards of adjustment are treating their zoning regulations as suggestions, not as law. In reality, the board of adjustment is bound by relatively strict criteria found in the zoning ordinance that define the limits of its discretion to grant variances or special exceptions and to overturn decisions of the zoning administrator.

Roles and Responsibilities – The Zoning Administrator

The availability of staff to assist in performing planning and zoning functions varies widely from community to community. At a minimum, every community that has adopted a zoning ordinance must have an official charged with administration of the ordinance. The zoning administrator's responsibilities with regard to the day-to-day interpretation and administration of the ordinance are defined in the ordinance. The zoning ordinance establishes the procedures that citizens must follow any time they wish to build or alter any structure in the community. The zoning administrator is typically the first contact for citizens applying for any type of permit required by the zoning ordinance. In general, the principal duties of the administrator include:

- Assisting citizens in determining what zoning forms apply to their requested action, and answering questions about how to complete them.
- Reviewing applications and supporting documentation to determine compliance with the ordinance.
- Issuing permits when all ordinance requirements are met and involvement of the planning commission or board of adjustment is not required. These typically include zoning permits, temporary use permits, certificates of occupancy and others as specified by the ordinance.
- Advising citizens on alternatives if a proposal is not in compliance. This may mean suggesting alternative procedures (such as a variance or special exception) or advising on the appeal process should the applicant disagree with the administrator's decision.
- Performing inspections during the building process to ensure that the development complies with site plan representations and the zoning regulations.
- Investigating alleged violations of the ordinance.
- Initiating enforcement proceedings when necessary to correct a violation.
- Monitoring nonconforming uses.
- Keeping zoning records up to date by recording all amendments.
- Staffing the planning commission and board of adjustment. Writing reports and recommendations when requested or when required by ordinance.

The most important principle for any zoning administrator to follow is to implement the ordinance as it is written. In working with the regulations the administrator has no authority to ignore a particular clause, modify procedural requirements, or apply an interpretation that is contrary to its clear, literal meaning. If an applicant disagrees with the administrator's application of the procedures or interpretation of provisions, the applicant should be advised that the appropriate recourse is to file an appeal with the board of adjustment.

As the most visible representative of the community on land use matters, the administrator must always be courteous and professional. However, a good zoning administrator cannot afford to always be agreeable. There will constantly be some citizens seeking a break, looking for a shortcut around the procedures or asking the administrator to ignore violations. An administrator that always goes along to get along is not discharging the administrator's duties properly and is creating legal problems for the community.

The Purpose of the Comprehensive Plan

The comprehensive plan, also known as a general plan, master plan or land use plan, is a document designed to guide the future actions of a city or county. The Iowa Supreme Court has stated that the legal purpose of the comprehensive plan is to “direct use and development of property by dividing it into districts according to present and potential uses.” The comprehensive plan also presents a vision for the future with long-range goals and objectives for all activities that affect the local government. This includes guidance on how to make decisions on public and private land development proposals, the expenditure of public funds, and issues of pressing concern (such as farmland preservation for counties, or the rehabilitation of older neighborhoods in cities). Most plans are written to provide direction for ten to twenty years after their adoption. Plans should receive a considered review and possible update every five years.

A city or county comprehensive plan serves the following functions:

- The plan provides continuity. The plan provides continuity across time, and gives successive public bodies a common framework for addressing land use issues.
- It is the means by which a community can balance competing private interests. John Public may want to store oil drums on his property. Jane Citizen, his neighbor, would like to open a restaurant on her property. Planning seeks to strike a balance among the many competing demands on land by creating development patterns that are orderly and rational, and provide the greatest benefits for individuals and the community as a whole.
- It is the means by which a community can protect public investments. Planning is the means by which a community avoids digging up last year's new road to lay this year's new sewer pipe. It is also less expensive for a community to provide public services to well planned, orderly and phased development patterns than to low-density, scattered development.
- It allows communities to plan development in a way that protects its valued resources. Planning can identify environmental features like wetlands, agricultural lands, woods and steep slopes, and suggest strategies for preserving those resources from destruction or degradation by development.
- It provides guidance for shaping the appearance of the community. A plan can set forth policies that foster a distinctive sense of place.
- It promotes economic development. The plan contains valuable information that aids firms in determining where to locate.
- It provides justification for decisions. Plans provide a factual and objective basis to support zoning decisions, and they can be used by communities to defend their decisions if challenged in court.
- Through public dialogue, citizens express a collective vision for the future. Last, but certainly not least, the planning process provides citizens an opportunity to brainstorm, debate and discuss the future of their community. A plan developed through a robust public input process will enjoy strong community support. Subsequent decisions that are consistent with the plan's policies are less likely to become embroiled in public controversy.

Iowa Smart Planning Principles — Iowa Code 18B.1

State agencies, local governments, and other public entities shall consider and may apply the following principles during deliberation of all appropriate planning, zoning, development and resource management decisions, except that nothing in this section shall be construed to expand the eminent domain authority of a state agency, local government, or other public entity beyond that which is authorized under chapter 6A or 6B [of the Iowa Code]:

1. Collaboration.

Governmental, community, and individual stakeholders, including those outside the jurisdiction of the entity, are encouraged to be involved and provide comment during deliberation of planning, zoning, development, and resource management decisions and during implementation of such decisions. The state agency, local government, or other public entity is encouraged to develop and implement a strategy to facilitate such participation.

2. Efficiency, Transparency, and Consistency.

Planning, zoning, development, and resource management should be undertaken to provide efficient, transparent, and consistent outcomes. Individuals, communities, regions, and governmental entities should share in the responsibility to promote the equitable distribution of development benefits and costs.

3. Clean, Renewable, and Efficient Energy.

Planning, zoning, development, and resource management should be undertaken to promote clean and renewable energy use and increased energy efficiency.

4. Occupational Diversity.

Planning, zoning, development, and resource management should promote increased diversity of employment and business opportunities, promote access to education and training, expand entrepreneurial opportunities, and promote the establishment of businesses in locations near existing housing, infrastructure, and transportation.

5. Revitalization.

Planning, zoning, development, and resource management should facilitate the revitalization of established town centers and neighborhoods by promoting development that conserves land, protects historic resources, promotes pedestrian accessibility, and integrates different uses of property. Remediation and reuse of existing sites, structures, and infrastructure is preferred over new construction in undeveloped areas.

6. Housing Diversity.

Planning, zoning, development, and resource management should encourage diversity in the types of available housing, support the rehabilitation of existing housing, and promote the location of housing near public transportation and employment centers.

7. Community Character.

Planning, zoning, development, and resource management should promote activities and development that are consistent with the character and architectural style of the community and should respond to local values regarding the physical character of the community.

8. Natural Resources and Agricultural Protection.

Planning, zoning, development, and resource management should emphasize protection, preservation, and restoration of natural resources, agricultural land, and cultural and historic landscapes, and should increase the availability of open spaces and recreational facilities.

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9. Sustainable Design.

Planning, zoning, development, and resource management should promote developments, buildings, and infrastructure that utilize sustainable design and construction standards and conserve natural resources by reducing waste and pollution through efficient use of land, energy, water, air, and materials.

10. Transportation Diversity.

Planning, zoning, development, and resource management should promote expanded transportation options for residents of the community. Consideration should be given to transportation options that maximize mobility, reduce congestion, conserve fuel, and improve air quality.

Thirteen Elements of a Comprehensive Plan from the Iowa Smart Planning Law — *Iowa Code 18B.2*

Subsection 2: A municipality [meaning a city or county] shall consider the smart planning principles under section 18B.1 and may include the following information, if applicable, when developing or amending a comprehensive plan under chapter 335 or chapter 414 or when developing or amending other local land development regulations:

A. Public Participation Element.

Information relating to public participation during the creation of the comprehensive plan or land development regulations, including documentation of the public participation process, a compilation of objectives, policies, and goals identified in the public comment received, and identification of the groups or individuals comprising any work groups or committees that were created to assist the planning and zoning commission or other appropriate decision-making body of the municipality.

B. Issues and Opportunities Element.

Information relating to the primary characteristics of the municipality and a description of how each of those characteristics impacts future development of the municipality. Such information may include historical information about the municipality, the municipality's geography, natural resources, natural hazards, population, demographics, types of employers and industry, labor force, political and community institutions, housing, transportation, educational resources, and cultural and recreational resources. The comprehensive plan or land development regulations may also identify characteristics and community aesthetics that are important to future development of the municipality.

C. Land Use Element.

Objectives, information, and programs that identify current land uses within the municipality and that guide the future development and redevelopment of property, consistent with the municipality's characteristics identified under the Issues and Opportunities Element. The comprehensive plan or land development regulations may include information on the amount, type, intensity, and density of existing land use, trends in the market price of land used for specific purposes, and plans for future land use throughout the municipality. The comprehensive plan or land development regulations may identify and include information on property that has the possibility for redevelopment, a map of existing and potential land use and land use conflicts, information and maps relating to the current and future provision of utilities within the municipality, information and maps that identify the current and future boundaries for areas reserved for soil conservation, water supply conservation, flood control, and surface water drainage and removal. Information provided under this paragraph may also include an analysis of the current and potential impacts on local watersheds and air quality.

D. Housing Element.

Objectives, policies, and programs to further the vitality and character of established residential neighborhoods and new residential neighborhoods and plans to ensure an adequate housing supply that meets both the existing and forecasted housing demand. The comprehensive plan or land development regulations may include an inventory and analysis of the local housing stock and may include specific information such as age, condition, type, market value, occupancy, and historical characteristics of all the housing within the municipality. The comprehensive plan or land development regulations may identify specific policies and programs that promote the development of new housing and maintenance or rehabilitation of existing housing and that provide a range of housing choices that meet the needs of the residents of the municipality.

E. Public Infrastructure and Utilities Element.

Objectives, policies, and programs to guide future development of sanitary sewer service, storm water management, water supply, solid waste disposal, wastewater treatment technologies, recycling facilities, and telecommunications facilities. The comprehensive plan or land development regulations may include estimates regarding future demand for such utility services.

F. Transportation Element.

Objectives, policies, and programs to guide the future development of a safe, convenient, efficient, and economical transportation system. Plans for such a transportation system may be coordinated with state and regional transportation plans and take into consideration the need for diverse modes of transportation, accessibility, improved air quality, and interconnectivity of the various modes of transportation.

G. Economic Development Element.

Objectives, policies, and programs to promote the stabilization, retention, or expansion of economic development and employment opportunities. The comprehensive plan or land development regulations may include an analysis of current industries and economic activity and identify economic growth goals for the municipality. The comprehensive plan or land development regulations may also identify locations for future brownfield or grayfield development.

H. Agricultural and Natural Resources Element.

Objectives, policies, and programs addressing preservation and protection of agricultural and natural resources.

I. Community Facilities Element.

Objectives, policies, and programs to assist future development of educational facilities, cemeteries, health care facilities, child care facilities, law enforcement and fire protection facilities, libraries, and other governmental facilities that are necessary or desirable to meet the projected needs of the municipality.

J. Community Character Element.

Objectives, policies, and programs to identify characteristics and qualities that make the municipality unique and that are important to the municipality's heritage and quality of life.

K. Hazards Element.

Objectives, policies, and programs that identify the natural and other hazards that have the greatest likelihood of impacting the municipality or that pose a risk of catastrophic damage as such hazards relate to land use and development decisions, as well as the steps necessary to mitigate risk after considering the local hazard mitigation plan approved by the Federal Emergency Management Agency.

L. Intergovernmental Collaboration Element.

Objectives, policies, and programs for joint planning and joint decision-making with other municipalities or governmental entities, including school districts and drainage districts, for siting and constructing public facilities and sharing public services. The comprehensive plan or land development regulations may identify existing or potential conflicts between the municipality and other local governments related to future development of the municipality and may include recommendations for resolving such conflicts. The comprehensive plan or land development regulations may also identify opportunities to collaborate and partner with neighboring jurisdictions and other entities in the region for projects of mutual interest.

M. Implementation Element.

A compilation of programs and specific actions necessary to implement any provision of the comprehensive plan, including changes to any applicable land development regulations, official maps, or subdivision ordinances.

A municipality's comprehensive plan developed using the guidelines under this section shall address prevention and mitigation of, response to, and recovery from a catastrophic flood.

Process for Adopting a Comprehensive Plan Added to *Iowa Code* by SF 2389, 2010

Iowa Code 335.5 is amended to include:

3. The regulations and comprehensive plan shall be made with consideration of the smart planning principles under section 18B.1 and may include the information specified in section 18B.2, subsection 2.
4.
 - a. A comprehensive plan recommended for adoption by the zoning commission established under section 335.8, may be adopted by the board of supervisors. The board of supervisors may amend a proposed comprehensive plan prior to adoption. The board of supervisors shall publish notice of the meeting at which the comprehensive plan will be considered for adoption. The notice shall be published as provided in section 331.305.
 - b. Following its adoption, copies of the comprehensive plan shall be sent or made available to neighboring counties, cities within the county, the council of governments or regional planning commission where the county is located, and public libraries within the county.
 - c. Following its adoption, a comprehensive plan may be amended by the board of supervisors at any time.

Iowa Code 414.3 is amended to include:

3. The regulations and comprehensive plan shall be made with consideration of the smart planning principles under section 18B.1 and may include the information specified in section 18B.2, subsection 2.
4.
 - a. A comprehensive plan recommended for adoption by the zoning commission established under section 414.6, may be adopted by the council. The council may amend the proposed comprehensive plan prior to adoption. The council shall publish notice of the meeting at which the comprehensive plan will be considered for adoption. The notice shall be published as provided in section 362.3.
 - b. Following its adoption, copies of the comprehensive plan shall be sent or made available to the county in which the city is located, neighboring counties and cities, the council of governments or regional planning commission where the city is located, and public libraries within the city.
 - c. Following its adoption, a comprehensive plan may be amended by the council at any time.

The Zoning Ordinance

The zoning ordinance is the primary mechanism for implementing the policies of the comprehensive plan. The zoning ordinance assigns compatible land uses to defined districts throughout the community. In addition to regulating uses, zoning controls the placement, height, bulk and coverage of buildings and other structures.

The zoning ordinance is comprised of a map and text. It is common for people to talk about the "zoning ordinance" when simply referring to the text, but because the same process must be followed for adopting and amending both the text and the map, both documents together technically constitute the ordinance. One cannot operate without the other, and both must be kept current at all times. The zoning map needs to be changed every time a rezoning request on a parcel of property is granted. Likewise, every time the elected body decides to change the regulations the text must be updated. Few things will bring a community more trouble than out-of-date zoning documents.

Zoning Map

The zoning map shows the boundaries and labels of the zones into which the community has been divided. Every parcel of land is identified as being in one zoning district. Local government staff and officials, landowners, residents, and developers can all refer to the map to determine how a particular parcel of land is zoned. If the zoning ordinance utilizes overlay districts (special supplemental regulations that apply across more than one district, such as floodplain or wellhead protection areas), some properties may lie in two or more districts. To maintain an accurate map despite frequent changes, many communities now use geographic information systems (GIS) or other computer technology to prepare the map in a form that can be cheaply and easily updated.

Zoning Text

The zoning text is the local law containing the regulations of the jurisdiction. The text may be organized in a variety of different ways; however, the same basic provisions appear somewhere in the body of every zoning text.

Statement of Purpose. The statement of purpose sets forth the public interest in zoning. It may establish, for example, that zoning is adopted "to promote the health, safety and general welfare of the citizens of X." It may also contain statements that mirror the goals identified in the comprehensive plan, such as the desire "to preserve prime agricultural land from development and protect agricultural operations from encroaching incompatible uses."

General Provisions. General provisions are the overriding rules that apply to all land uses and all parcels throughout the community, regardless of zoning district classification. Usually the general provisions include guidance as to the interpretation of the ordinance and its relationship to other laws.

Definitions. This section defines the regulatory terms used throughout the rest of the ordinance. Since zoning is a regulatory device, it is important that citizens understand what those regulations mean and how they apply. Precise definitions are very important to understanding the application of zoning regulations.

District Regulations. The district regulations are the heart of the zoning text. The fundamental purpose of the zoning ordinance is to establish districts where similar land uses are grouped together and governed by a common set of standards, such as lot sizes, setbacks, height requirements and design standards. Each district lists the uses that are permitted "by right" (without special conditions) and those that are allowed as special exceptions so long as the board of adjustment finds that certain criteria are met. There is an underlying belief that the uses "by right" are similar in type and range of impact, and that the special exceptions would be welcome additions to the district if additional standards could prevent them from undermining neighboring property values or the purpose and intent of the district. The common district classifications are agricultural, residential, commercial and industrial; however, most communities subdivide these classifications (e.g. single-family residential and multi-family residential) to further group similar types of land uses together while at the same time continuing to keep them separate from other incompatible uses.

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Regulations Applying to All Districts. Many ordinances include a separate section or sections setting out a variety of "impact" regulations or standards. This section of the ordinance contains the types of provisions that apply to land uses in all districts, but may vary by district. For example, signs are regulated in all districts, but they are regulated differently depending on the district. The size, location and type of sign appropriate for a commercial district will often be inappropriate for a residential neighborhood. Parking standards, landscaping requirements, urban design criteria, historic preservation standards and various environmental protection controls are examples of regulations that may be found in this section.

Nonconforming Uses. When a new zoning ordinance is adopted there will be lots, structures and uses that do not meet the new ordinance standards. This section of the text generally describes how the land use decision makers will treat these nonconforming uses under the new code.

Administration. This section sets forth the processes of zoning by (1) describing the roles of each of the bodies involved in land use decision making; (2) outlining the exact procedural steps that must be taken to process the various types of requests and applications related to zoning; and (3) setting forth the criteria that the decision makers must use in deciding on these requests and applications.

Enforcement. This section explains the processes to use, and the penalties to assess, when a landowner is found to be in violation of the ordinance.

Spot Zoning

Spot zoning is when a rezoning decision results in a single parcel, or small island of property, with restrictions on its use different from those imposed on the surrounding property. Spot zoning can be valid if there is a reasonable basis to treat the spot-zoned property differently from the surrounding property. For example, a parcel or two designated as neighborhood commercial in a residential area is perfectly appropriate if it provides needed retail services to residents. However, zoning is not appropriate if it is for the financial benefit of an individual property owner but detrimental to the surrounding area. According to the Iowa courts, the factor of primary importance is whether the rezoned tract has a peculiar adaptability to the new classification as compared to the surrounding property. Spot zoning for the sole benefit of the landowner and contrary to the comprehensive plan is unreasonable.

The case for creating these "spot zones" is best made through the comprehensive planning process, where the community can explain the benefits that such differential treatment brings to the area.

Nonconforming Uses

A nonconforming use is generally defined as “a land use or structure that was legal when established, but does not conform to the restrictions of the current zoning ordinance.” The term “nonconforming use” actually covers several situations, including nonconforming uses, nonconforming lots and nonconforming structures.

The pattern that is created as new areas develop and older areas redevelop means that some long-established uses simply do not meet newly adopted regulations such as setback requirements, use requirements or minimum lot sizes. Rather than require the immediate elimination of these long-established uses (which could open up the community to liability) the zoning ordinance will outline a set of conditions for the continued existence of nonconforming uses.

Landowners are given some latitude with nonconforming uses to change the original use “if the changes are not substantial and do not impact adversely on the neighborhood.” However, expansion, enlargement or intensification of nonconforming uses is strictly prohibited. Another way to think about it is that any change that increases the negative impact on surrounding properties should be prohibited. To decide if the aggravation is increased, courts examine the nature and extent of the changes to the nonconforming use and their effects on the surrounding area. The Iowa Supreme Court stated this principle quite eloquently when it said “the prohibition against expanding or enlarging a non-conforming use defends against the growth of a pre-existing aggravation. That pre-existing aggravation, the nonconforming use, survives as a matter of grace. The public is not required to expand upon that grace to its increasing aggravation.”

To prevent nonconforming uses from becoming blights, communities should allow for routine maintenance and repair.

Resumption of a use or structure after it has been “destroyed” is likewise prohibited. Zoning ordinances traditionally have set a specific threshold (often 50% of assessed value) for defining this destruction, and courts generally defer to the stated threshold. Recently some communities have been redrafting their ordinances to relax this requirement—permitting reconstruction if the structure was destroyed by an act of God and the new structure will be of the same size, area, use, etc.

Once a nonconforming use has been “abandoned,” its resumption can also be prohibited. The courts seem to make a distinction between “abandonment” (indicating no intent to resume the use) and “discontinuance” (use stopped temporarily, but with every intention of resuming), but the courts have also had considerable difficulty over the years defining the distinction. They seem to give landowners the benefit of the doubt when they eventually try to re-establish nonconforming uses after periods of nonuse. Local governments also have difficulty establishing abandonment, both in terms of timing and whether a property is being used. Most ordinances state a time period (usually six months to a year) that creates a presumption of abandonment if the property is not used for that period.

Special Uses and Conditional Uses (Special Exceptions)

The Board of Adjustment has the power to “hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance” (Iowa Code §§ 335.15 (counties) and 414.12 (cities)).

The terms “special use,” “use exception” and “conditional use” are frequently found in zoning ordinances, and are generally synonymous with the term “special exception.”

Zoning districts are defined within the zoning text. In each district, two broad classes of land uses are explicitly identified: (1) permitted uses, which are those listed by the ordinance as being allowed by right in any location, and (2) special exceptions, which are listed by the ordinance as being permissible only at the discretion of the zoning board of adjustment. Special exceptions are generally uses that are unique and slightly out of character with permitted uses. With conditions imposed by the board of adjustment, an appropriate special exception is one that can be made to fit into its surroundings.

In order to be granted a special exception, the applicant carries the burden of proving to the board that, given the imposition of conditions, the requested use will comply with the standards established in the ordinance. If the use cannot be made to fit, then it is within the board’s discretion to deny the special exception. A board of adjustment’s power to grant special exceptions, therefore, must be governed by adequate guidelines. The zoning ordinance includes general criteria for granting special exceptions. The criteria typically state something to the effect that, with the imposition of conditions, the special exception will be:

- Compatible with the principles and objectives of the plan.
- Compatible with uses permitted in the zoning district under which it is regulated.
- Compatible with existing or planned uses of nearby properties.
- Will not endanger public health or safety.

The ordinance typically includes specific criteria that must be met, in addition to the general criteria, before certain types of special exceptions will be approved. Home occupations, cell towers and some specific commercial uses often carry such specific criteria that must be met.

Commonly imposed conditions of approval include buffering, hours of operation, site improvements or submission of special site plans (such as landscaping or parking). Conditions carry the same force of law as the ordinance; that is, a violation of a condition is subject to enforcement proceedings just as violation of any provision of the ordinance itself.

Variances

The board of adjustment has the power to:

Authorize upon appeal in specific cases such *variance* from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done. Iowa Code §§ 335.15 (counties) and 414.12 (cities).

A variance is an authorization to allow a landowner to do something that is generally forbidden by the ordinance. In order to be granted a variance, the applicant carries the burden of proving to the board that strict enforcement of the terms of the ordinance will inflict an unnecessary hardship on the landowner. Iowa courts have set out specific criteria that must be satisfied before the zoning board of adjustment may find that an unnecessary hardship exists, sufficient to grant a landowner a variance. The landowner must satisfy all three parts of the test to be granted a variance:

1. The land in question cannot yield reasonable return if used only for purpose allowed in that zone,
2. The plight of the landowner is due to unique circumstances and not to general conditions in neighborhood, and
3. The use to be authorized by variance will not alter essential character of locality.

The Iowa courts have established several guidelines for assessing whether the above-listed criteria have been met:

- Lack of a “reasonable return” may be shown by proof that the owner has been deprived of all beneficial use of his land. All beneficial use is said to have been lost where the land is not suitable for any use permitted by the zoning ordinance.
 - o It is not sufficient to show that the value of land merely has been depreciated by the zoning regulations, or that a variance would permit a landowner to maintain a more profitable use.
 - o It is not sufficient to show mere inconvenience to the applicant.
- Problems common to several properties do not constitute “unique circumstances.” The appropriate response is through a zoning amendment, not wholesale application of the discretionary power of the board of adjustment.
- The “unique circumstances” must not be created by the landowner’s own actions. For example, a landowner cannot build a house to fill the building envelope of a lot (i.e., so that the walls are built to the minimum front, side and rear setback lines), then seek a variance to put a porch or deck on that house that will violate a setback.
- When a landowner purchases property he or she assumes the circumstances created by the previous landowner.
- A variance that alters the “essential character of the area” is beyond the authority of the board of adjustment to grant. The board cannot grant a variance that, in effect, constitutes a zoning amendment. Factors to consider in determining whether a variance will alter the “essential character of the neighborhood” include the degree of variation from district regulations, the size of the parcel, and the parcel’s size and character in relation to the size of the district.

Remember that a variance should protect a landowner’s property right, not grant a landowner a special privilege unavailable to other landowners.

Rules of Decorum for Audience at Board of Adjustment Hearings

Although the public hearing process is governed by certain rules, the Board of Adjustment strives to conduct hearings in a relaxed and informal manner. The procedure used by the Board during the public hearing is as follows:

1. The planner/zoning administrator presents a staff report including any recommendations.
2. The applicant/proponent of the proposal is given an opportunity to speak.
3. Audience members may enter testimony.
4. At the Board's discretion, the applicant/proponent, zoning administrator, and/or audience members are given an opportunity to enter rebuttal testimony.
5. The Board may then close the public hearing, or continue the public hearing to another date.

The Board may request clarification of the issues presented or may ask questions at any time during the hearing. Cross examination of persons entering testimony, applicants, staff or the Board by any other party is not permitted.

Please follow these simple rules if you will be testifying during the public hearing:

1. Come to the speaker's podium/microphone and state your name and address.
2. Keep your comments as brief as possible.
3. Keep your comments relevant to the proposal and the issues.
4. Try not to duplicate information that has already been presented.

The Board of Adjustment also encourages the submission of written testimony and information. These materials are reviewed prior to a decision. All written and graphic material presented at the hearing must be retained as a part of the permanent record. Copies of items such as photographs, reports, etc., should be made prior to submission to the Board of Adjustment, as they may not be returned.

The public hearing is recorded on tape. Please state your name each time you address the Board of Adjustment or are requested to respond to a question from the Board of Adjustment. The audio recording does not recognize head nods or shoulder shrugs. When referencing written material please refer to it by exhibit number. When referencing locations on a map please describe the location with as much detail as possible, rather than pointing to it or saying "over here."

Persons attending public hearings are also expected to conduct themselves with decorum to assure fairness and equity in the proceedings. Participants must:

- Step to the podium/microphone each time you wish to be recognized by the Board of Adjustment to offer a comment, or to ask or answer a question, and state your name for the record.
- Address all testimony, comments and questions to the Board and not the other participants, the applicant or the staff. The Board will determine the appropriateness of all questions, and when and where to direct them.
- Allow others in attendance an opportunity to present their testimony. Do not interrupt the proceedings with applause, heckling, outbursts or other disruptive behavior.
- Address the issues and application that are before the Board. These proceedings are not the forum to discuss the appropriateness of particular land use policies or regulations, or alternatives.
- Turn off all audible communications devices such as pagers and cellular telephones.

Conflicts of Interest

Acting as a public servant on an elected or appointed body requires loyalty to the public. Conflicts of interest arise when a public servant is in the position of deciding between public duty and private interests. The two most common conflict of interest situations are (1) when a member is in a position to gain financially from a decision being rendered, and (2) when the member is a relative of an interested party.

The most obvious example of a financial conflict is when a board member has an ownership interest in a property that is the subject of a requested action. But a review of court cases from around the country quickly reveals the range of possible conflict situations:

- The member is in a business relationship with the applicant.
- The member's business partner is in a business relationship with the applicant.
- The member is employed by a company that stands to gain from approval of the development proposal.
- The member owns a business that would directly compete with the applicant's business.

The tangle of familial relationships that can potentially give rise to conflict of interest questions is equally broad:

- The member's spouse is the realtor working with the applicant holding an option to purchase contingent upon rezoning.
- The member's elderly mother lives near the property proposed for a shopping mall.
- The member's elderly mother owns a small interest in the strip mall for which a special exception has been requested.
- The member's nephew is an attorney with the firm representing the applicant.

The Iowa Supreme Court has determined that business dealings and familial relationships—standing alone—are not disqualifying interests. Local governments would be seriously handicapped if any conceivable interest, no matter how remote and speculative, would require the disqualification of a zoning official. The court has stated that for a conflict of interest to exist:

- The board or commission member's interest in the matter must be different from that which he or she holds in common with members of the public.
- The interest must be "direct, definite, capable of demonstration, not remote, uncertain, contingent, unsubstantial or merely speculative."

If a conflict of interest does not exist, it is the board or commission member's duty to participate and vote, even if the situation might be uncomfortable because it involves a friend or associate.

A Pre-hearing Ethics Checklist

Elected officials, planning commissioners and board of adjustment members should review the following list in advance of hearing every application brought by a landowner to judge whether a situation might be present that would prevent them from taking part in the case.

Do you own the property that is the subject of this case?

Do you own property, the value of which may be affected by the decision in this case?

Could your business potentially benefit from, or be harmed by, the decision in this case? Could you be involved in the project as...

architect

attorney

builder

developer

subcontractor

engineer

land surveyor

mortgage broker/agent

realtor

Do you have stock or any other type of ownership interest (including a silent limited partnership interest) in any company or organization that could potentially benefit from, or be harmed by, the decision in this case?

Are you on the board of, or a member of any not-for-profit organization that could potentially benefit from, or be harmed by, the decision in this case?

Could a member of your immediate family benefit from, or be harmed by, the decision in this case (consider property interests and the other potential situations posed by the previous questions)?

Has a party to the case spoken to you about the particulars outside the normal development review process?

Have you already made up your mind about this case?

Do you, or a member of your immediate family serve in another public office? If so, have you or that family member been involved in this case in that public capacity?

If you answered **yes** to any of these questions you should consult your city or county attorney to further investigate whether you should recuse yourself from the proceedings.

