
Chapter 1

Roles and Responsibilities in Planning and Zoning

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Chapter 1

Roles and Responsibilities in Planning and Zoning

Planning and zoning functions are primarily carried on by four entities: (1) the elected legislative body (city council or board of supervisors), (2) the planning commission, (3) the zoning board of adjustment, and (4) the administrative staff. State statutes set out required duties for each. Local ordinances may expand on these duties, but local ordinances must not transfer the statutorily-required functions of one entity to a different entity. This issue was recently raised by language in the Decorah zoning ordinance that permitted dumping of fill material on land in the floodplain district “subject to prior approval of the city council and appropriate state agencies.” The Iowa Supreme Court said that the language was akin to a special exception, and the city council’s assumption of that authority improperly usurped the statutory jurisdiction of the city’s board of adjustment. *Holland v. City of Decorah*, 662 N.W.2d 681 (Iowa 2003).

While state law and local ordinances define the *duties* of these entities, in order to be truly effective in managing land use change elected and appointed officials must understand the broader roles these entities play in community affairs. Each entity, in varying degrees, performs a *policymaking role* and a *policy-application* role. Policy-making refers to the actions and decisions that set the future course of the community as a whole. Policy application refers to the implementation of those policies in making day-to-day decisions. This chapter broadly addresses the roles and responsibilities of these entities in both the policymaking and policy application contexts, and the procedures the legislative body must follow to put commissions and boards into place. Detailed discussion of the development and adoption of the comprehensive plan, the zoning and subdivision ordinances, and the procedures for using these documents, will be addressed in later chapters.

Legislative Body

The elected body 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. How is this accomplished? Five activities of the elected body have an impact on community land use: (1) adopting and amending plans and ordinances; (2) approving some types of development proposals; (3) adopting the budget and directing expenditures; (4) making appointments to boards, commissions and (in some communities) staff positions; and (5) directing the work of the planning commission.

Adopting Plans and Ordinances. Few policymaking roles of local elected officials are more important than adopting the regulations that dictate how land is to be developed. Decisions of the elected body in adopting land use controls, and the choices it makes in whether or how to amend them, will be the defining statements guiding the physical development of the community.

Local elected officials have two options when it comes to the adoption and implementation of land use controls: they can either use planning, zoning and subdivision regulations to direct a well-thought-out pattern of growth for the future, or they can let development direct the use of land use controls — applying them and changing them according to the dictates of each new proposal. The incremental decision-making implied by the latter approach never results in a development pattern that is rational or efficient; nor does it recognize the interests of the community at large in the way land is used. Land use is what makes a local community what it is. Well-founded and impartially administered land controls will result in desirable places to live and work which, in turn, will protect and enhance the value of land as a private asset.

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* is a policy document or series of documents that present a guide for the future actions of a city or county. The Iowa Supreme Court has stated that the legal purpose of the comprehensive plan is to guide the “use and development of property by dividing it into districts according to present and potential uses.” *Ackman v. Board of Adjustment for Black Hawk County*, 596 N.W.2d 96 (Iowa 1999). The plan provides the underpinnings for the zoning ordinance and other development regulations. *Iowa Code* §§ 414.3 (cities) and 335.5 (counties) state that “[zoning] regulations shall be made in accordance with a comprehensive plan...” *Iowa Code* § 354.8 requires local governments with subdivision ordinances to review proposed plats to “determine whether the subdivision conforms to [the local government’s] comprehensive plan...” The full benefits of planning and the comprehensive plan, however, go beyond directing zoning and land division. The comprehensive plan can establish long-range goals and objectives for all activities that affect growth and development in the community, including public and private land development proposals; decisions relating to the expenditure of funds for infrastructure and public facilities; and methods to address issues of pressing concern.

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 elected body is not obligated to adopt the plan verbatim. The elected body may adopt the plan without change, refer the plan back to the planning commission with specific recommendations on which parts need further study/clarification, make changes to the plan itself and adopt it without further input from the commission, or reject the plan. Chapter 2 contains a more detailed discussion of the comprehensive plan and the planning process.

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. The map illustrates how the entire area of the community is classified and divided up into distinct zoning districts. The text contains the regulations that apply in each district, and the procedures for administering the ordinance.

The zoning ordinance is adopted by the elected body after the planning commission develops the ordinance and holds public hearings. The elected body is not bound by the recommendations of the commission. The elected body may adopt the ordinance as submitted, make changes in the ordinance and adopt it, send the ordinance back to the planning commission for further study, or refuse to act altogether. *Iowa Code* §§ 414.4 (cities) and 335.6 (counties) require the elected body to provide notice and hold its own public hearing prior to adoption. Chapter 3 will discuss the zoning ordinance and zoning procedures in detail.

Zoning Amendments. A decision to amend the zoning ordinance is a decision to change the law that directs the future development of land. There are two types of zoning amendment actions: (1) amendments to the zoning map that change district boundaries, and (2) amendments to the zoning text that change the regulations. Either type of amendment may be instituted by the local government or a landowner. The latter blur the line between policy-making and policy application more than any other type of land use decision. **Although initiated by a landowner, a rezoning also calls upon elected officials to make decisions that will have obvious implications for future growth and development. A rezoning may stimulate similar requests in the surrounding area.** It may mean that there is an insufficient supply of land zoned to support the proposed use, or that conditions have changed in the area such that the

Planning is not zoning; zoning is not planning

The comprehensive plan and the zoning ordinance are very different documents.

- The comprehensive plan is a policy document that directs future land use.
- The plan is not a regulation; by itself, it cannot be used to control activities and developments on private property.
- The language and maps found in the plan are general in nature.
- The plan is adopted by resolution.
- The zoning text and map are legally-binding regulations.
- The zoning ordinance must specifically describe allowable land uses, and the reader must be able to identify, on a parcel-specific basis, which restrictions apply to which parcels.
- Zoning is enacted by an ordinance.

Unfortunately, the intermingling of the references to planning and zoning in state statutes and court cases has led to considerable confusion over the differences between a comprehensive plan and a zoning ordinance. Communities have adopted documents variously called the “comprehensive plan of zoning,” “comprehensive zoning plan” or the like. Almost without exception these are simply zoning ordinances with no different legal status or effect than the zoning ordinances of communities operating without a comprehensive plan, despite what the name implies.

proposed rezoning better meets the current needs of the community.

Iowa law requires that the procedures set forth in *Iowa Code* §§ 414.4 (cities) and 335.6 (counties)

for adopting the zoning ordinance (notice and hearing) “apply equally to all [zoning] changes or amendments.” *Iowa Code* §§ 414.5 (cities) and 335.7 (counties).

The *subdivision ordinance* provides standards and a set of procedures for dividing land into separate parcels. Subdivision regulations provide a method for assuring minimum public safety and amenity standards. While a community’s zoning ordinance may require residential development in a particular district, unless the community has adopted subdivision regulations it will have little control over whether the land is converted into reasonably functioning residential development. A locally-adopted subdivision ordinance can control the layout of lots and streets and coordinate the provision of public infrastructure such as water and sewer systems, sidewalks and street lighting. Because these improvements are permanent, costly to repair and replace, and become the property of the local government upon approval of a final plat, it is good public stewardship to see that they are built to reasonable standards.

Iowa Code Chapter 354 gives cities and counties the authority to adopt subdivision regulations. Although not required by statute, most elected bodies direct the planning commission to do the initial work to develop a draft of the ordinance and proposed amendments thereto. Chapter 4 takes a closer look at the subdivision review process.

Approving development proposals. There are several circumstances under which state law and/or local ordinances may require action by 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 judge and jury than the legislative body.

*Rezoning*s were mentioned above. *Rezoning*s are in the main a policy-application function if the community has a well-thought-out plan, and the zoning consistently reflects the considered

decisions about land use found in the plan. The plan and current zoning together serve as a roadmap for the future. Unless these documents are out-of-date and no longer reflect current conditions in the community, changing the zoning classification of a parcel of property should only take place if the new classification still meets the objectives of these documents. Will the requested rezoning be consistent with the overall objectives of the plan? Is the proposal out of scale with the needs of the community? Will the proposal have a negative affect on neighboring properties?

The *Planned Unit Development (PUD)* is a device that introduces flexibility into the zoning process for larger scale developments. In general, a PUD is a way to allow for relaxation of the normal spatial requirements such as setbacks, minimum lot sizes or street configurations. Sometimes a PUD provision in an ordinance will allow a mix of land uses that can co-exist harmoniously – such as single-family and multi-family residential, or residential and small-scale retail – that otherwise would not be allowed under conventional district regulations. PUDs are useful devices to handle sites with difficult dimensions or natural areas that the community wishes to preserve. It is also a way to introduce innovative land development practices that are difficult to accomplish under conventional zoning. Most communities in Iowa implement the PUD concept via a separate PUD district in their zoning codes. In order for a landowner to take advantage of the PUD regulations the landowner must request a rezoning to the PUD district. Obviously under these circumstances the elected body is responsible for making the final decision whether to allow the rezoning in order for the development to go forward.

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

Site plan review is generally a review performed in conjunction with another zoning procedure, such as a PUD, special exception, or a permitted commercial use. Local ordinances vary considerably as to when site plan review is required. Many codes draw a distinction between “major” site plans (requiring elected body approval) and “minor” site plans (approval may be granted administratively). Major site development plans are generally required for developments with “significant” impacts on their surroundings, with the criteria defining significant spelled out in the ordinance. Most communities require the planning commission to review major site plans and provide recommendations to the elected body.

Subdivision plats. Finally, 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, which is certified and recorded, along with the plat, with the county recorder, auditor and assessor. Most communities require that subdivision plats be reviewed by the planning commission before they are taken up by the elected body.

Adopting the Budget. The budget is a financial mirror of the community’s plan for programs and activities for a fiscal year. If the elected body has activities it wants to pursue, the cost of those activities must be reflected in the budget. Through budgeting the elected body is following a formal process for deciding which activities are

important for the local government to carry out (Will we budget funds to revise the comprehensive plan?); which, among competing activities, are more important than others (Will we budget for a comprehensive plan revision or a new snow blade?); and the resources to bring to bear on these activities (Will planning staff revise the plan or will we hire an outside consultant to do it?). Land use policy, and the emphasis placed on it versus other competing priorities, is affected by a variety of budget decisions:

- Funds dedicated to advanced planning efforts.
- Funds set aside for public meetings.
- Staffing levels of offices charged with planning and code enforcement.
- Funds for continuing education of board members and professional staff.

Without adequate financing, planning is simply wishful thinking by a discussion group.

Appointing Land Use Decision-makers. How is the act of filling appointed positions “policy-making”? 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 through the appeals process and allows applicants to deviate from the strict mandates of the ordinance through variances.

Clearly an elected body hoping to keep a tight reign on how zoning policy is implemented will want to appoint board of adjustment members the elected officials think will be conservative in interpreting the board’s powers. The zoning administrator is the primary contact with the public on planning and zoning matters. The zoning administrator exercises considerable discretion in how to interpret code provisions and

which provisions to emphasize when bringing enforcement actions.

With the few exceptions discussed below, the *Iowa Code* does not suggest who should serve on planning commissions and boards of adjustment. For years it has been suggested that these bodies should be populated with representatives of groups with particular interests and experience in land use and development issues (business interests, homeowners, renters, farmers, old-timers, environmentalists, etc.). This belief is even reflected in the statutory language of some states. The membership of a county planning commission in Michigan, for example, “shall be in accordance with the major interests as they exist in the county, such as agriculture, recreation, education, government, transportation, industry and commerce.” (*Michigan Compiled Laws* § 125.102). Whether this is the best philosophy is open to debate. The late Albert Solnit, a long-time planning consultant, gave this advice on appointing planning commissioners:

“The myth that ‘the proper mix’ on the commission ought to be various representatives of special constituencies still persists. The best mix on a commission is as many people with broad-gauged, objective outlooks as can be found. A good commissioner represents the best interests of the entire community when issues arise. To the extent that a commissioner is tied to special interests, the community as a whole loses out. The ‘proper mix’ is therefore a collection of commissioners judicious enough to ‘belong.’”

— Solnit, Albert. (1987).

The Job of the Planning Commissioner.
Chicago: American Planning Association.

On the other hand, citizens involved in occupations or organizations that deal with land use issues do have expertise that consistently proves to be valuable in making difficult decisions. The distinction that Solnit draws seems to be between expertise and advocacy.

A planning commissioner who says “I’m here because I understand farming,” and who acts as a team player would be favored by Solnit, while a commissioner who says “I’m here to represent farmers” presumably would not.

Appointments generally. Iowa Code § 392.1, applicable to cities, requires that for every appointed board and commission a city must adopt an ordinance that clearly defines “title, powers, and duties . . . , the method of appointment or election, qualifications, compensation, term of members, and other appropriate matters. . . .” The ordinance should also direct the board or commission to establish a set of administrative rules and procedures that will guide how it carries out its functions. A similar requirement does not exist for counties; however, counties generally use a resolution to set forth the same directives.

The appointment of individuals to boards and commissions is done by resolution. Many communities fill the open seats on all appointed boards and commissions through one resolution adopted at the beginning of the calendar year, when terms begin. If a seat on a board or commission is vacated mid-term the elected body should make an interim appointment to serve out the unexpired period of the term.

In many cities appointments to boards and commissions are made by the mayor, subject to approval by the city council. In others the council itself is the appointing body.

Appointing planning commissioners. Iowa Code §§ 414.6 (cities) and 335.8 (counties) mandate 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, Iowa Code § 335.8 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.” A 1973

Attorney General Opinion concluded that this limitation does not violate constitutional principles of “one man, one vote, no taxation without representation or home rule.” (1973 Attorney General Opinion [#73-3-12]). For cities exercising two-mile extraterritorial zoning jurisdiction (discussed in Chapter 3) Iowa Code § 414.23 requires the city planning commission to include two members appointed by the county board of supervisors of the affected county. One of these members must be a county supervisor, the other a resident of the unincorporated area over which the zoning jurisdiction is extended. These two members serve only so long as the city continues to exercise extraterritorial zoning.

The size of the planning commission is left to the discretion of the elected body. Commissions range in size from five to fifteen members, with seven members being the most common. The term of office is typically five years (matching the term of office of board of adjustment members). At least a few Iowa cities and counties have planning commissions with no specific terms of office set for their members. Although this is perfectly legal, the duties of a commission member are sufficiently arduous and time consuming that prospective commissioners should have some measure of the commitment involved before agreeing to serve. Terms should be staggered so that, for example, no more than one-fifth of the membership (in case of five year terms) is up for reappointment in any given year.

Appointing board of adjustment members: State law is more detailed in setting forth requirements for the board of adjustment. Iowa Code § 414.8 requires a city’s board of adjustment to be five, seven or nine members. The statute specifies how the terms are to be staggered, and requires a majority of the board’s membership to be present to conduct official business. The statute also requires that a majority of the membership of a city board of adjustment “be persons representing the public at large and shall not be involved in the business of purchasing or selling real estate.” The Attorney General has concluded that the phrase

“business of purchasing or selling real estate” includes “one whose occupation is the purchasing or sale of real estate, or an employee of a business which purchases or sells real estate who is in a position of influence with that business,” and that “public at large” refers to occupations of the membership (1979 Attorney General Opinion 359 [#79-8-20]). Therefore, a majority of the membership of a city’s board of adjustment must be employed in occupations other than real estate. For cities exercising two-mile extraterritorial zoning jurisdiction *Iowa Code* § 414.23 requires the board of adjustment to include two additional members appointed by the county board of supervisors of the affected county. Both must be residents of the unincorporated area over which the zoning jurisdiction is extended. Like the additional planning commission members, these two members serve only so long as the city continues to exercise extraterritorial zoning)

The appointment of county boards of adjustment is governed by *Iowa Code* § 335.11. It is similar to *Iowa Code* § 414.8, except that county boards of adjustment are limited to “five members, a majority of whom shall reside within the county but outside the corporate limits of any city.” In addition, the limitation on individuals “purchasing or selling real estate” that appears in *Iowa Code* § 414.8 is not included in Section 335.11

Appointing administrative staff. *Iowa Code* § 335.9 requires the county board of supervisors to appoint a zoning administrator if the county undertakes zoning. The zoning administrator may hold another public office in the county or in a city within the county. In larger Iowa counties the zoning administrator is usually the head of a county department that may be responsible for planning, zoning, building and/or other land development activities, and may carry the title of planning director or community development director. In smaller counties without a separate planning staff the zoning administrator responsibilities are usually combined with the responsibilities of another office, such as the engineer or environmental health officer.

Iowa Code Chapter 414 does not contain a similar provision for cities; however, practice dictates the necessity to have someone oversee the day-to-day administration of zoning. In smaller communities the city administrator, a public works employee or other city employee may be charged with zoning administration. In others, the city may contract with a private individual or firm to act as zoning administrator. Larger cities may employ a city planner (generally appointed by the city manager) or create a separate planning department responsible for advance planning and zoning functions. Zoning inspection may be a function of that department or may be assigned to another entity that performs other inspections, such as building department (if separate from planning) or the fire department. The director of the planning department is usually hired by the city administrator. Regardless, it is important that the powers to carry out zoning administration are assigned to someone, either through the zoning ordinance or a resolution. Without this formal grant of authority the city will have no mechanism for enforcing the zoning code.

Removal from office. *Iowa Code* §§ 372.15 (cities) and 331.321 (counties) direct the process for removing an appointee, such as a planning commissioner or board of adjustment member, from office prior to the expiration of the appointee’s term. Each statute provides that the body making the appointment has the power to remove the appointee, but only by written order that specifies the reasons for removal. The written order must be filed with the city clerk (cities)/auditor (counties). A copy must be sent by certified mail to the appointee, who then has thirty days to request a public hearing before the council/board if the appointee wishes to challenge the removal. The hearing must be held within 30 days of the request. The Iowa Supreme Court has determined that removal from office under this process need not be for cause. *Waddell v. Brooke*, 684 N.W.2d 185 (Iowa 2004). The Iowa Supreme Court has also said that the individual/body given the authority, through local ordinance or charter, to make the appointment is the only entity with

statutory authority to remove the officeholder. The city council's authority to confirm an appointment made by the mayor does not make the council the appointing authority. *LaPeters v. Cedar Rapids*, 263 N.W.2d 734 (Iowa 1978).

For board of adjustment members an additional removal process is provided. *Iowa Code* §§ 335.11 (counties) and 414.8 (cities) allow removal for cause upon written charges and after a public hearing. In *Waddell v. Brooke* the Court said if a city chooses to remove a board of adjustment member under this provision a hearing must be held by the elected body unless the officeholder waives the right to a hearing; that is, it is not up to the officeholder to request a hearing.

Directing the Planning Commission. The planning commission's responsibilities come from three sources: (1) state law, which requires the commission's involvement in the development and amendment of the comprehensive plan and the zoning ordinance; (2) the zoning ordinance, which defines its responsibilities for reviewing specific development proposals; and (3) directives from the elected body to examine specific issues or undertake special studies. Because the elected body decides when it is time to update the plan and the zoning ordinance, and is ultimately responsible for the final version of those documents, the planning commission, in effect, gets its marching orders from the elected body. It exists primarily to help the elected body do a better job when acting on planning matters. In communities where the elected body has failed to involve the commission in planning and zoning activities – either by writing them out of development review processes or not seeking their input on development related issues – or has consistently ignored commission recommendations, the results are usually disastrous: “do-nothing” commissions that confuse or delay the development process or, worse yet, commissions that become hostile to the elected officials and volunteer advice (usually contrary) whether or not it is requested.

When deciding whether and how to allocate tasks to the commission the elected body should

consider the advantages of putting in place a fully-functioning, fully-participatory planning body:

- As the body with responsibility for initial development of the comprehensive plan and zoning ordinance, the planning commission ...
 - is in a unique position to know what changes are necessary to keep both documents current.
 - has the background knowledge necessary to assess whether a given development proposal is consistent with the community's vision for the future.
- As an appointed body not subject (at least in theory) to political pressures, the planning commission can...
 - act as the filter to objectively sort out facts from opinions and passions on controversial issues.
 - dig deep into planning issues so that policy debates can be well informed.
 - act as an impartial coordinating body between departments such as public works, health, parks, etc. to efficiently process development proposals.
 - possess a long-range outlook that extends beyond the next election.
 - provide the unvarnished truth on planning matters.

Community land use is a complex system of physical, economic and social interrelationships. The elected body has a host of other responsibilities besides land use requiring its attention. The planning commission should be seen (and treated) as an asset to better decision-making.

The Planning Commission

As with the elected body, the planning commission has both policy development responsibilities and policy application responsibilities. The most important thing to remember about the commission's role in land use decision-making,

Planning commissions and zoning commissions

Prior to the addition of the city home rule amendment to the Iowa Constitution and the resulting statutory changes, state law provided cities the option of appointing a “plan commission.” That specific provision was eliminated, but Iowa Code § 414.6 was amended to provide that “where a city plan commission already exists, it may be appointed as the zoning commission.” At least one Iowa city, Dubuque, still operates with separate planning and zoning commissions. Their duties correspond rather well to the policy development/policy application responsibilities described in this section. The Long Range Planning Advisory Commission oversees the development and amendment of the city’s comprehensive plan, while the Zoning Advisory Commission reviews and makes recommendations on rezoning requests, site plans, subdivision plats, PUDs and other zoning applications.

however, is that it does not make legally-binding decisions. The planning commission acts in a strictly advisory capacity. The commission studies issues, oversees the preparation of plans and ordinances, and reviews and advises on development proposals. The final decision, however, rests with the elected body on most issues, with the board of adjustment on others. Why expend so much time and effort to formulate advice that may or may not be followed or even considered? 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.

Policy development responsibilities. The *Iowa Code* spells out three responsibilities for the planning commission. All three are 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.” Again, however, the elected body is not bound by the recommendations of the commission.

Review zoning amendments. Any proposed change to the zoning ordinance, either policy changes to the text or map or site-specific rezonings, should be reviewed by the planning commission. As in the initial adoption of the ordinance, the commission should study the proposed change, hold a public hearing and forward its recommendations to the elected body. Again, the legislative body is not bound by the commission’s recommendations.

Recommend ordinance updates. Policy development also includes keeping the zoning ordinance current by recommending amendments when the commission’s study and experience indicates a change is necessary. *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.” Any recommendations for updates should be forwarded to the elected body. If the elected body agrees with the recommendations, then the same ordinance adoption procedures must be followed.

Other policy-making responsibilities. The planning commission plays a vital role in developing land use policy that goes well beyond the statutorily-mandated duties. While the policy-development responsibilities of the planning commission vary

considerably from community to community, some of the most common tasks include:

- The preparation of the comprehensive plan.
- The preparation of the subdivision ordinance.
- The preparation of functional plans such as bike trail plans, transportation plans or sanitary sewer expansion plans.
- The preparation of plans for geographic subareas like downtowns, commercial corridors or recently annexed areas.
- 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 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.

Working with consultants. In this section we have addressed the responsibilities of the planning commission for the development of the plan, ordinance and other documents. In fact, most communities will engage outside consultants to conduct major projects such as major revisions to the comprehensive plan or development regulations. The consultant may be a private firm, or it may be the council of government/regional planning commission serving the community. In smaller communities without planning staff, it is often the role of the planning commission to oversee the project and the work of the consultant.

Effective management of a consulting project is a major factor in its successful completion. The attitude of the planning commission toward the consultant, the type of relationships established, and the communication patterns are crucial to the successful use of planning consultants. A number of considerations must be addressed early on in any consultant relationship:

- The request for services should make clear full scope of the work desired, thereby enabling the consultant to address the project precisely and to make realistic cost estimates. The final contract should be consistent with the request for services unless different provisions are negotiated by the community and the consultant.
- Who is the ultimate client? While the planning commission may be the regular contact point for the consultant, there may be cases where the mayor, city manager or elected body actually decides the fate of the consultant's work or recommendations. If this is the case it must be clearly articulated to the consultant at the outset.
- The commission should work with the consultant to develop a work schedule that lists meeting times, the various tasks, target completion dates and interim reporting dates.
- Establish an efficient means of communications with the consultant. Rather than subject the consultant to redundant calls from individual commissioners, decide on a primary contact person on the commission. The commission as a whole should be working to provide the consultant with prompt feedback on work submitted for comment, constructive feedback on work that may not meet the commission's expectations, and updated briefings both before and after public meetings.

Engaging a consultant to develop a plan or an ordinance does not mean that the planning commission takes a "hands-off" role. A number of intensive work sessions with the consultant will be required for the planning commission to review

the work and understand its potential implications for development in the community.

Policy-application responsibilities. The planning commission also applies the policies set out in the plan and zoning ordinances by reviewing and providing recommendations on specific project applications. The commission's involvement is invaluable because of the knowledge it brings to the table from its experiences developing the plan and the ordinances. No other decision-making body is in a better position to assess a particular proposal for its "fit" with community development goals and objectives.

The commission's responsibilities vary considerably from community to community depending on which types of development proposals the zoning ordinance charges it with reviewing. The commission is commonly called on to review and provide recommendations to the elected body on subdivision plats, planned unit developments, and major site development plans. Some ordinances give the planning commission responsibility for providing recommendations to the board of adjustment on special exceptions and, occasionally, variances.

Being an effective commission. Because of its status as an advisory body the role of the planning commission often is 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* and *The Citizen's Guide to Planning* 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 (i.e., 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 they would like to see done, if anything.
- 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.

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.

Like the planning commission, the zoning board of adjustment carries the responsibility of seeing that the community's goals for development are realized. Unlike the planning commission's role in policy development, however, the zoning board of adjustment's primary responsibility is to see

that decisions about development conform to established policy.

The board of adjustment oversees the administration of zoning. Zoning administrators are required to make many decisions relating to the interpretation and implementation of the zoning ordinance. For example, the zoning administrator may need to decide whether a business proposed to operate from a citizen's home is a "home occupation," an "accessory use," or a "commercial establishment." This determination will have a significant impact on the conditions under which it will be permitted to operate, if at all. If the landowner is dissatisfied with the 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.

The board of adjustment ensures compatibility of land uses. When a proposed use meets the criteria for a special exception or variance it is the board's responsibility to attach conditions that will make the use "fit" with the surrounding uses.

The board of adjustment is a "safety valve." Zoning regulations cannot be written to address every circumstance of the use of property. Therefore, zoning ordinances empower the board of adjustment to balance the strict application of a set of regulations against a landowner's fundamental property rights. This balance is accomplished in Iowa by permitting variances from the standards of the ordinance when applying those standards would result in an "unnecessary hardship."

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. As discussed in Chapter 3, the board of adjustment is bound by relatively strict criteria that define the limits of its discretion.

The three tasks assigned to the board of adjustment are often referred to as "quasi-judicial" functions because they involve reviewing previous decisions and/or applying the law found in the zoning ordinance to the facts of the case, much as a judge does in a court case. Because the decisions of the board of adjustment have a direct and substantial impact on an individual's property rights, boards must follow decision-making procedures that ensure landowners' due process rights are protected. It is a matter of good practice, not to mention a requirement of state statute, that the board of adjustment draft and adopt good rules of procedure. *Iowa Code* §§ 335.12 (counties); 414.9 (cities). Chapter 5 will address meeting procedures and the elements of effective administrative rules.

Administrative Staff

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 responsibility is the day-to-day interpretation and administration of 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.

- Helping citizens follow the required procedures.
- 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.
- Providing information on planning and zoning to citizens and other governmental agencies upon request.

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.

The job of zoning administrator is an important, albeit thankless one. 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. Some citizens constantly will be seeking a break, looking for a short-cut around the procedures or asking the administrator to ignore violations. An administrator that goes along to get along is not discharging the administrator's duties properly, and is creating legal problems for the community.

The Importance of Working Together

If anything is clear from reading this chapter it should be the interrelatedness of the various entities involved in the planning and zoning system. For this reason each must understand the responsibilities of the entity to which they have been elected or appointed ("What do I do?"), and the responsibilities of others ("What *don't* I do?"). When it works, it works quite well. Landowners and developers themselves will tell you it is easier to work in communities where the roles of the decision-makers, and the rules of the game are transparent and understood. In fact, with clear rules and procedures the necessity of saying no to applicants will decrease, because they will avoid at the outset bringing proposals that they know don't meet community standards.

Coordination, of course, is easier said than done. Each member of each entity brings to the task his or her own beliefs and experiences concerning land use. Lay this against the environment in which they work – the many competing interests of individual landowners, neighborhoods, interests, and the goals of the "community as a

whole” – and it’s easy to see how the system can sometimes fail. The following situations are not uncommon:

- After careful study and deliberation, the planning commission forwards a recommendation for a rezoning to the city council, only to have the city council completely ignore the recommendation. (“If I did what the planning commission suggested I would never get reelected.”)
- The board of supervisors has fundamental disagreements with, and therefore ignores, goals set forth in the plan. (“That’s not what we’re hearing from the people who call us.”)
- The board of adjustment “takes over” the system by indiscriminately approving variances and special exceptions without regard to the criteria set out in the zoning ordinance. (“What’s the harm?”)
- The board of adjustment recommends revisions to the ordinance based on repeated variance requests of the same type, only to have the planning commission ignore the recommendations. (“They don’t understand the plan.”)

The system succeeds when a well-conceived plan is developed, everyone sticks to the policies of the

plan in making day-to-day decisions, and there are regular communications between all parties. The elected body, planning commission, board of adjustment and zoning administrator that want to become a more effective team should consider these suggestions:

- Periodically attend meetings of the other team members. You will have a greater appreciation of the issues and problems they must address.
- Meet periodically as a group to exchange ideas and to assess mutual objectives. Listen to others problems for ways you can help. Set annual goals for accomplishing planning tasks.
- Tour other cities/counties to see what others are doing. Sometimes you will be surprised to find that you really are keeping current. Sometimes you will get fresh ideas worth borrowing.
- Consider holding a public forum together so that everyone can hear the same thing at the same time.
- Attend educational programs together for the same reason.
- Speak with a single voice to promote good planning

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