
CHAPTER

1

INTRODUCTION TO PLANNING

WILLIAM TONER

*Planning makes Denmark look good. . . .
The ugliness all got voted down in committee.*

—GARRISON KEILLOR

Introduction to This Text

The thing about planning is this: If it's done right, the result is often around for 100 years or more, to be enjoyed again and again by the thousands of people who will follow the planner. If it's done poorly, it's a 100-year error, annoying the thousands of people who will follow the planner.

Of course it's not always that simple or that dramatic. But even the minor decisions that local officials or planners make can have remarkable results. Take the matter of road curb cuts along a fairly well-traveled road. In Anaheim, California, subdivision residents turning onto



Richard Hedman and Fred Bair, Jr. (Any Day, American Planning Association)

The Works of the Planner have a Permanence Not Found in Other Fields

2 Planning Made Easy

Katella Avenue face the normal hazards of oncoming traffic moving at 40-50 mph. That's bad enough, but within 100 feet or so on both sides of the road are three commercial driveways, each of which may be spilling cars onto Katella in either direction. Any driver pulling out of the subdivision must scan oncoming traffic as well as traffic from the three driveways before entering Katella. That's hazardous.

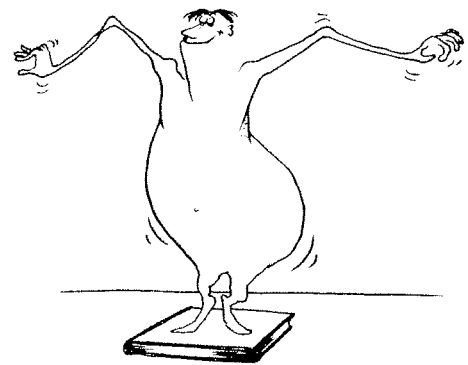
Roads like these are found all over the nation and it's instructive to note how they came to be such hazards. In 1950, traffic along Katella was light. There were few commercial establishments, mostly farmland adjoining the highway, and the road was safe. But over time, piece by piece, new developments emerged, traffic increased, and one by one additional road cuts were made. By 1993, the entire stretch was heavily developed and traffic loads were at

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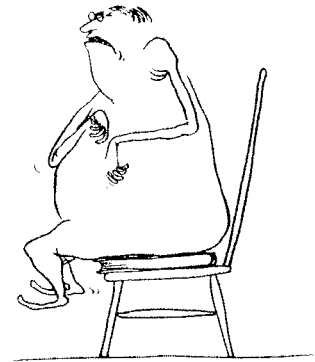
Richard Hedman and Fred Barr, Jr. (And On the Eighth Day, American Planning Association)



To Give Weight to Arguments



To Lend Stature to Your Argument



To Broaden Your Base of Reference

an all-time high. In the space of 33 years, a fairly safe and efficient road had evolved into one long and continuing traffic accident. A great and continuing hazard evolved through a simple matter of too many road cuts in too short a span.

Now note that any one of the road cuts, in and of itself, presented little hazard. It was only the accumulation of cuts that created the problem. Seemingly minor decisions, many of which are made by planners and planning commissioners, can lead to major results.

There are, of course, many decisions that have a dramatic effect in a very short time. Take the approval of a simple 25-unit subdivision. Once built, these homes, short of a disaster, will occupy that space for 120 years. So will the roads, sidewalks, sewer lines, and water lines. Small changes will undoubtedly be made, but the basic pattern will remain. Whatever the

local officials approved and the developer built, good or bad, will be evident in the year 2113. For 120 years, hundreds of people will rue or praise that work.

Change a single word in a zoning ordinance, and that change may reverberate for 20 or more years. It might change the entire look of your town or keep it just the same, it may start long-lasting neighborhood feuds or end them, it may increase the price of a new home or decrease the value of an old home. Just one word.

So planning is serious business, full of problems and full of great opportunities. It requires attention to detail—great attention to detail—while at the same time requiring a long look into the future, and figuring out how the future may be better than the present. Mostly it takes hard work, dedication, and huge amounts of common sense.

As authors we want to add a note on the text itself. Publishing an introduction to planning, zoning, subdivision regulations, and other planning topics for a national audience presented a practical problem for us: How do we describe planning tools in a general, simplified way without implying that what we say is exactly how it is done in every state and community. In fact, there are substantial and important differences. State law may permit, require, or prohibit particular practices. Even in the same state, planning practice may vary from community to community. Some states have adopted innovative new legislation that in effect redesigns the planning and zoning process, while others still follow model acts prepared in the 1920s.

Our approach is to present a basic, general model of planning and its tools that is essentially correct for a lot of places. The reader, and especially trainers, using these materials should be alert to this fact and must incorporate materials unique to the state or community.

MODULE 1: WHAT IS PLANNING?

The Process

Planning is the process through which we reach well considered decisions. In this sense, most every adult is a planner since the process used is much the same. Here are the typical steps in the process:

- Step 1. There is a problem—say we need a new car.
- Step 2. Collect information on new cars.
- Step 3. Compare the features of the various makes and models.
- Step 4. Pick one and buy it.
- Step 5. Over the years, evaluate the chosen car because, sooner or later, it's back to Step 1, and we need a new car.

That's the standard planning process. It may be approached in greater or lesser detail depending on the seriousness of the problem or the resources at hand, but the basic process remains the same.

So now let's look at it in more detail.

Step 1: Identify the Problem or the Opportunity. Note that we've added the word "opportunity" to our first step. That's an important point, since the first step in the process is an acknowledgement that there is a problem or an opportunity, or both. Further, given the complexity of towns, cities, and counties, there are multiple problems and multiple opportunities that need to be addressed. And these problems and opportunities change quite often.

Step 2: Collect Information on the Problems and Opportunities. Information is vital. Off-the-cuff planning on serious issues is typically a recipe for disaster, so considerable effort is given to gathering all the important information. This is something of a balancing act. Gathering more information can be used as an excuse to do nothing since information is seldom complete—there is always more to know. Thus, emphasis should be given to the critical or vital information on the problems or opportunities.

Step 3: Compare the Alternatives. This step really involves two actions: First, identify what the alternatives are. Having identified them, it is then important to compare them, one against the other, to identify the one that best addresses the problem or opportunity.

Step 4: Select a Plan and Put It to Work. In many ways, this is the most difficult and trying step in the planning process. Because plans are complex, putting them to work is no easy matter. It takes a great deal of effort over a long period to keep any plan in motion. And keeping a plan in motion leads us to the final step.

Step 5: Monitor Progress. As soon as a plan is complete, things change, sometimes slowly, sometimes quickly. Monitoring is important, not only to deal with change, but also to keep the plan on track. Should things go seriously amiss, it's back to Step 1, and time for a major revision. If the plan is working, leave it alone. The longer it works, the more powerful the conclusion.

This, then, is the process of planning—basically a five-step process. It is continuous. It is long-term. There are no shortcuts. But the benefits can be great indeed.

What process did you follow in the selection of your current home? Consider the five steps. Outline your thinking for each step and jot down a few notes on each. Did you follow all five? If so, the standard planning process is nothing new to you. (Exercise 1-1)

The Products

There are two basic products that emerge from the planning process—plans and regulations. The first is a blueprint, while the second is a tool. Plans represent goals, things to be achieved, while regulations represent the vehicle to reach these goals.



Richard Hedman (Stop Me Before I Plan Again, American Planning Association)

Plans, generally speaking, are long-term—at least 5, and often 10 or 20 years—while regulations are made for the here and now. Yet the day-to-day decisions that are directed by regulations are designed to lead to the long-term goals. The plan represents where we want to go, and the regulations ensure that we are on the right track.

Think about this, for example. Two of the great planners of the late 19th century were Frederick Law Olmsted and his partner Calvin Vaux. In 1869, Vaux and Olmsted completed their general plan of Riverside, Illinois. It was a great plan, foreshadowing thousands of suburbs that would follow, full of winding streets, open space, modest homes, and a town center. In the 100-plus years that would follow, local officials in Riverside used local land-use regulations to keep the vision of Olmsted and Vaux. The vision is intact thanks to the day-to-day guidance that

local officials provided, and Riverside remains an outstanding example of what the combination of plan and regulation can do. Plan and regulation—the heart and soul of local planning.

But what exactly are these plans and regulations? What are their key features? How are they applied in practice?

For most communities the three key documents that form the planning effort are the comprehensive plan, the zoning ordinance, and the subdivision regulations. Other tools may include environmental regulations or economic development plans.

The Comprehensive Plan

This is the core document. It is the only document that considers all of the complex facets of a community, the things that, together, make up a town, city, or county. This means it considers neighborhoods, downtowns, industrial areas, as well as roads, highways, and bike trails. The comprehensive plan takes into account parks, open space, recreation, and the environment. Public services and utilities are also included, and maybe farmland, historic sites, and cultural amenities.

Yet the key feature of the comprehensive plan is that it treats all of these many subjects individually since all of these subjects together determine the makeup of the community.

The comprehensive plan typically reviews the current status of the community, identifies key problems and opportunities facing the community, and sets forth the community's goals and community development objectives. So the comprehensive plan usually contains detailed long-range plans for housing, business, transportation, public services, open space and recreation, and the natural environment.

These plans may contain maps and usually are filled with “policies”; that is, *statements* expressing an adopted policy position on a planning matter. For example, “The city will encourage the development of light industry within one mile of the interstate highway exchanges and discourage other locations.”

Richard Hedman (Stop Me Before I Plan Again, American Planning Association)



Typically, the comprehensive plan also includes a land-use plan map that shows the location of various land-use activities. These long-range comprehensive plans, along with the map, specify the community's interest in regulating how land is used. The clarity and content of the complete comprehensive plan package is central to good planning.



The Zoning Ordinance

Once the comprehensive plan is approved by the planning commission and elected officials, the zoning ordinance is the key vehicle for putting the plan to work. The zoning ordinance is made up of two parts—a zoning map and a text of the regulations.

The zoning map designates every parcel of land within a specific zoning district. A community could have various zoning districts—residential, commercial, industrial, agricultural, and so forth. A small town may have only three or four districts; a large city may have a dozen or more. The zoning text explains every zone on the map and describes all regulations pertaining to use and development of the property. For example, in Tower City, North Dakota, the residential district is limited to the following land uses: single-family homes, churches and schools, home occupations, and public parks.

The zoning ordinance also regulates development aspects such as minimum lot sizes, minimum setbacks, minimum side and rear yards, landscaping, fencing, signs, and parking. In this way, the zoning text sets descriptive standards for all zoning districts in a community.

The zoning ordinance (text and map) determines land uses throughout the community and controls some of the characteristics of those land uses. The zoning ordinance is used to achieve many goals of the comprehensive plan—the location of new neighborhoods, the population density of various areas, the preservation of historic areas, the location of commercial and industrial areas, the preservation of open space, the level of demand for various public services, the pattern of new development, and so forth.

When the zoning map and zoning text are developed from the detailed goals and objectives of the comprehensive plan, local officials put the plan to work by making proper zoning decisions. Over the long term, through hundreds or thousands of zoning decisions, steady progress is made toward the achievement of the goals of the comprehensive plan.

Subdivision Regulations

To understand subdivision regulations (and how they are different from zoning) let's take the case of a wooded parcel of land that is currently used for grazing. The land adjoins a new subdivision, and the owner of the wooded parcel, sensing development trends in the area, wants to convert the wooded land into a new subdivision.

The first step is to check the zoning on the parcel. If the current zoning is for residential use (or if the zoning is changed to allow residential use), the owner may then take the first step toward subdividing the property. But before the parcel may be subdivided, the owner must meet the standards for subdividing that are outlined in the subdivision regulations.

What are these standards? Think of what would need to happen before a single home could be built on the wooded parcel—streets, water lines, sewer lines, public utilities, storm water drainage, and so forth. Since these are of vital concern to the community, the subdivision regulation sets minimum standards for their placement and construction as a basic requirement for any proposed subdivision.

The subdivision regulation also governs the location and, sometimes, the shape of lots, as well as the patterns of streets, the location of parks or other public land within the subdivision, and perhaps minimum landscaping standards. It may also contain standards requiring that the subdivision be buffered from adjoining land uses, say by fencing or landscaping.

The actual process involves three stages: (1) sketch plan, (2) preliminary plat, and (3) final plat. In the first stage, local officials review a sketch plan of the subdivision provided by the developer. The objective is to determine whether the proposed subdivision meets the minimum requirements of the community in terms of its overall design; street pattern, number, size, and location of lots; and open space. If the sketch plan meets minimum standards, a preliminary plat is prepared.

The preliminary plat is the most important stage because here the real details are studied, discussed, and approved. Approval of the preliminary plat is tantamount to approval of the final plat. Thus considerable attention is devoted in this stage to topography, street design, lot lines and dimensions, drainage, entrances and exits, utilities, easements, and so on. In addition, the subdivision must meet the standards of the zoning district in which it is located.

In the last stage, a final plat is prepared. The final plat simply provides a further refinement of the approved preliminary plat.

Just as with the zoning ordinance, subdivision regulations are an extremely important tool in implementing the goals and objectives of the comprehensive plan related to new development. Like zoning, subdivision regulation puts the comprehensive plan to work on a day-to-day basis.

While the comprehensive plan, zoning ordinance, and subdivision regulations are the most important planning tools, a variety of other devices may be used to supplement them. These include capital improvements programs; plans for acquisitions of land for roads, parks, or areas with other public uses; and plans for special areas such as historic districts, a waterfront, or a unique natural or cultural resource, such as forest lands, agricultural lands, or downtowns. But all of these are an extension of and not a substitute for the three key documents: the comprehensive plan, the zoning ordinance, and the subdivision ordinance.

MODULE 2: THE LAW

If a policeman must know the constitution, then why not the planner?

—JUSTICE WILLIAM J. BRENNAN, JR.

Enabling Legislation

It may seem odd, in only the second module of the book, to be discussing the law even before treating the details of various planning tools and approaches. But because planners, appointed officials, and elected officials are charged with making decisions in the public interest, and only in the public interest, the first obligation one has is to identify the public interest. The place to begin is with the U.S. Constitution and its amendments.

It takes about one hour of careful reading to cover the Constitution and its amendments. You will find the amendments to be particularly important because they contain the fundamental protections that citizens enjoy. Protections from whom? Protections from you the planner, you the planning commissioner, you the zoning board member, and you the elected official. The amendments outline the limits of your governmental power, and you must be aware of what those limits are. The key amendments for planners? The First, Fifth, and Fourteenth. You should know what they are.

Read a copy of the U.S. Constitution as background for this chapter. For this module, read carefully the First, Fifth, and Fourteenth amendments. Do you understand their relation to planning? Read further to find out how they relate and how the Supreme Court has defined that relationship. (Exercise 2-1)

Cities, counties, towns, villages, and townships are creatures of the state. As such, it is the individual state that provides the legal authority for local planning and land-use regulation. This authority is derived from state enabling legislation. Some states may also mandate certain aspects of planning. Typically, enabling or mandated legislation outlines (1) the public interest in planning and land-use regulation; (2) elementary features of the comprehensive plan, zoning ordinance, and subdivision regulation; (3) procedural and administrative requirements and timetables for planning activities; and (4) the responsibilities of the planning commission, zoning boards, and elected officials. In short, the enabling legislation sets forth the legal framework of decision making.

While studying state statutes is often a painful experience, this is one case in which it is not only useful, but essential and should be mandatory for all local planners and officials. That's because any planning decision must be made in accordance with the state enabling legislation. The quickest way to lose a court battle is to violate your enabling legislation. And if one has not read the legislation and studied what it says, there is a strong chance that local decisions will fall outside the boundaries of state law.

Thus, before inundating yourself in the details of local planning and land-use regulation, discover what the enabling legislation says you should be doing and how you should be doing it. Not only will this enable you to make better planning decisions, it will also improve your chances should you find yourself in court.

The Public Interest

A key feature of enabling legislation is a statement of the public interest (sometimes called public purpose). This statement outlines the procedural and substantive criteria that local officials must use in making decisions on local planning matters. This means, in turn, that the goals and objectives of the comprehensive plan must be consistent with the public interest expressed in enabling legislation. It also means that the zoning ordinance and subdivision regulations must be consistent with the public interest set forth in the enabling legislation.

Idaho's Local Planning Act (1992), for example, contains the following broad purpose: "to promote the health, safety, and general welfare of the people." The act then spells out the purpose in greater detail, noting that local planning may be conducted:

- To protect property rights and enhance property values.
- To ensure adequate public facilities and services.
- To ensure that the economy . . . is protected and enhanced.
- To ensure that the important environmental features . . . are protected and enhanced.
- To encourage the protection of prime agricultural, forestry, and mineral lands.
- To avoid undue concentration of population and overcrowding.

The act goes on to identify additional elements of the public interest. But the point is that your enabling legislation will spell out the basic features of the public interest that you must use in the preparation and administration of comprehensive plans, zoning ordinances, and subdivision regulation. So rule number one is this: Know thy enabling legislation and make thy plans and regulations in conformance with it.

While enabling legislation is important, there are three other sources of legal guidance that are useful, and sometimes essential, in local planning work. The first involves other state statutes (called "statutory law") that supplement basic enabling legislation and extend or limit the authority or responsibility for land planning and regulation. The second includes state supreme court cases (called "case law") that further define local planning authority and responsibility. In most states, this will amount to only a handful of cases. The third includes the cases decided in the U.S. Supreme Court (also case law), and here again, the cases are few in number.

Need help identifying important court cases on planning and zoning? Ask your local city attorney for assistance. You will also find that *Land Use Law & Zoning Digest* and *Land Use and the Constitution*, both published by the American Planning Association, contain a wealth of information on the law.

Now then, back to the big three U.S. Constitutional amendments. The First Amendment is at the heart of a case before the U.S. Supreme Court in 1993. A homeowner placed a large sign on her front lawn. The sign expressed outrage over President Bush's policy in the Persian Gulf. The local zoning ordinance expressly prohibits large signs in residential districts, so local officials ordered the sign removed. Did local officials violate the constitutional rights of the homeowner? The First Amendment clearly states, "Congress shall make no law . . . abridging the freedom of speech." What's your opinion?

The U.S. Supreme Court has considered several cases under the First Amendment in recent years as related to signs and billboards. In essence, signs are a form of speech and any regulation must conform with federal court decisions.

We won't go into the legal technicalities here. Our point is to make you aware that the "mundane" subject of sign regulations in a zoning ordinance has serious legal implications. So, if one of your commissioners or a sign company representative says, "Are you trying to make a federal case about this sign ordinance provision?", your answer should be, "No, I'm trying *not* to. Let's check with our city attorney."

The Fifth Amendment to the U.S. Constitution provides that "private property shall not be taken for public use, without just compensation." Most state constitutions also contain taking clauses, and the Fourteenth Amendment makes the federal taking clause applicable to the states.

The taking clause raises the all-important taking issue in land-use regulation. Local governments enact land-use regulations under their police power, which does not require the payment of compensation. When a land-use regulation excessively restricts the use of land without compensation, the restricted landowner can argue that a taking of his land without compensation has occurred.

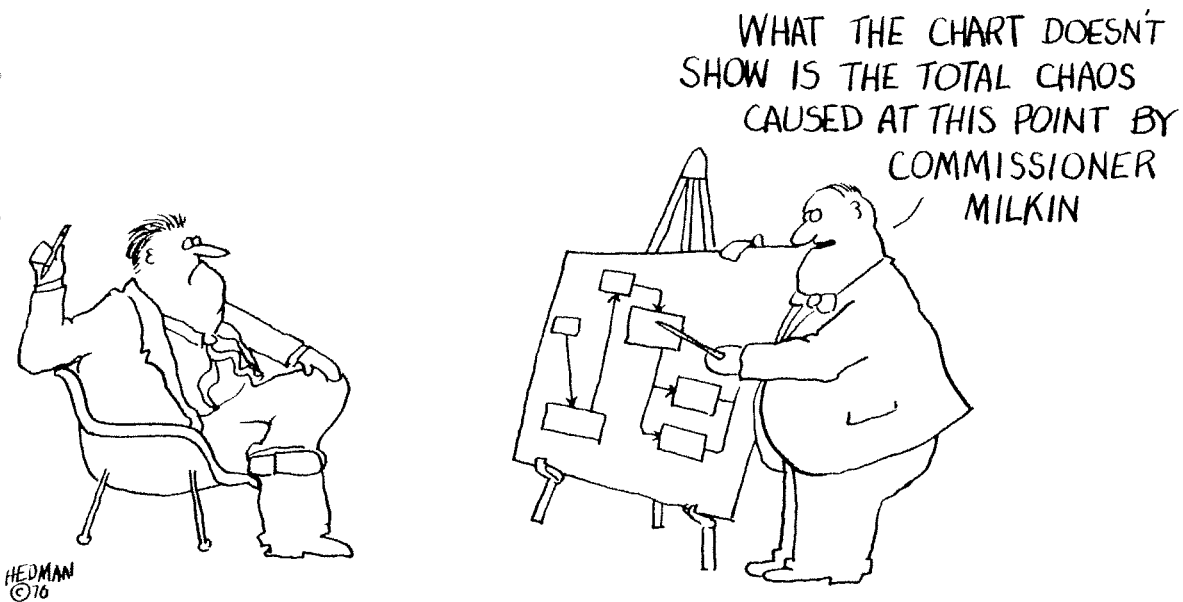
The Fourteenth Amendment directs planners and public officials to stick to the rules and to apply those rules equally to all people. No favors, no shortcuts. In the view of a federal court, a basketball hoop in the front yard is every bit as important as the Mall of America when it comes to the Fourteenth Amendment. The way that planners and local officials conduct their business is just as important as the outcome.

MODULE 3: THE WORK OF THE PLANNING COMMISSION

*My first thought, when I was appointed to this job,
was what the hell do I know about planning?*

—KERRY KIRSCHNER, SARASOTA, FLORIDA

Richard Hedman (Stop Me Before I Plan Again, American Planning Association)



What It Does

The chair called the planning commission meeting to order at 7:00 p.m. The first item on the agenda was a petition by a well-respected local cobbler who wanted a zoning change that would allow him to expand his shoe repair business. The planning commission denied it at 7:30 p.m.

The second item on the agenda was a planned unit development on a 195-acre parcel that featured 222 single-family lots, 58 lots for duplexes, a commercial center, and space for apartments. The presentation and ensuing discussion lasted until 9:45 p.m. when the commission moved to table further discussion until the next meeting.

The third item on the agenda was the review of a growth management plan for a rapidly developing area of the village. The discussion ended at 10:30 p.m. The final matter involved a proposal for a car wash. The applicant had selected two sites and had made application for both. The first application was denied at 11:15 p.m. The second, approved at 11:45 p.m.

In four hours and forty-five minutes, the planning commission dealt with a minor zoning change, the first step in a planned unit development, an amendment to the comprehensive plan, and another zoning change. In the process, they listened to and questioned the following people: four applicants, three lawyers, two site planners, two developers, 25 witnesses, and three staff members. They had reviewed various exhibits, site plans, and reports that, when stacked on the table, would stand five inches or more. The dollar value of the petitions ranged from roughly \$25,000 to \$50 million. The impact on the village as a whole would run from minor (shoe repair) to profound—the growth management plan and the planned unit development. Welcome to the world of the planning commission.

This story illustrates just a few aspects of the complex job of a planning commission. In the course of doing its work, a planning commission will make decisions involving friends and neighbors (always the toughest), and it will deal with large proposals by equally large corporations. It will hear from a range of experts—traffic experts, soils scientists, biologists, appraisers, planners, and more—and it will hear the opinions of dozens and dozens of citizens. There will be two, three, four, or five sides to nearly every question, and some meetings will be highly charged. There will be moments of humor and sadness, occasional boredom, and considerable intensity. A proposed home occupation may generate heated discussion, while a shopping mall may be approved without a serious question being asked.

The Commission's Goal

In the midst of all of this, the commission is expected to focus on the goal. The goal is simple to understand yet difficult to accomplish. Your goal is to make the comprehensive plan work—to move the plan from vision to reality. To do this, the planning commission must examine each issue and every application and ask the question, “Does this proposal further the goals and objectives of the comprehensive plan?” If so, the proposal conforms to the public interest as expressed in the plan and should normally be approved. If not, the proposal runs contrary to the public interest as expressed in the plan and should normally be rejected.

All of this seems straightforward enough, but in practice things are much more complex. The comprehensive plan, for example, while offering guidance and showing direction, will not often provide automatic answers. The goals and objectives of the comprehensive plan are *guidelines* for decision makers and so is a land-use plan. Of the many and varied proposals that come before the planning commission, a few will run absolutely contrary to the comprehensive plan, another few will obviously match the goals and objectives of the plan, but the majority will fall somewhere in between, and it may not be clear if the proposal conforms or not.

For those that are not clearly consistent or inconsistent with the comprehensive plan, the job of the planning commission is to weigh the evidence and come down, just as a jury does, in favor of the party with the most compelling evidence. Note that how the evidence relates to the comprehensive plan's provisions is extremely important. If the weight of the evidence is with the applicant, the proposal ought to be approved. If not, the proposal should be rejected. Remember that if your commission doesn't go through this rigorous process, an applicant's attorney may be wondering if the due process rights of the applicant have been violated—that Fourteenth Amendment assuring fairness again!

In addition to ensuring that the decisions of the planning commission conform to the comprehensive plan, it is also the duty of planning commission members to ensure that the plan is kept up to date. As technology changes, for example, what is practical or possible in the plan will also change. Further, as a community evolves, so too will the goals and objectives of its citizenry. New ideas will be introduced. Existing land uses will change. It may become evident that aspects of the plan are no longer relevant. For all of these reasons and more, a key task of the planning commission is to make certain that the plan is current and, if not, that the plan be updated and amended.

Evaluating and amending the plan should be a regular part of the planning commission's annual agenda. At least once per year, the commission should schedule time to review the existing plan and then develop any changes as required. This will ensure that the plan remains an accurate reflection of community values and will also serve to reinforce the importance of the plan to the members of the planning commission itself.

One planning commission has a practice of designating one of its meetings an “annual meeting,” at which time it reviews important decisions and projects in the last year, what might be coming up in the coming year, and the implications for updating the plan or amending ordinances to close loopholes.

Here's a little test. Think back over the last few planning commission meetings you have attended. How many times in those meetings did the phrase “comprehensive plan” or other similar phrase come up? Every case? Every other? Not at all? If it didn't come up at all, your plan needs attention right now. (Exercise 3-1)

Zoning

For the typical planning commission, much of the day-to-day work will revolve around the zoning ordinance—the zoning text and the zoning map. This will include proposed revisions to the language of the zoning ordinance (say increasing minimum lot size) as well as changes to the zoning map (changing a parcel from single-family only to a duplex). It will also involve a review of special uses—those land uses that may or may not be permitted in a zoning district depending upon the precise character of the proposed use and its fit with the surrounding land uses.

Once again, the comprehensive plan provides the basic guidance or rationale for zoning decisions. That is, the planning commission should reach its decision on the basis of the public interest. The public interest is spelled out in detail in the plan via the plan's goals, objectives, and policies. These goals, objectives, and policies should then be incorporated as appropriate into the zoning text itself as statements of public interest or public purpose. Implementing the zoning ordinance puts the plan to work.

Is your zoning ordinance related to your comprehensive plan? Here's one way to tell. Find the statements of public purpose or intent in your zoning ordinance. (These are often found in the introduction.) Then check the goals, policies, and objectives of the plan. Do they match up? (Exercise 3-2)

Clearly detailed statements of the public purpose or public interest are extremely helpful in reaching decisions on various zoning matters. In sufficient detail, the statements of public purpose can be turned into a checklist that the commission can use for many zoning cases. This will likely speed the entire process (shorter meetings!) and, more importantly, result in zoning decisions that are consistent with each other and consistent with the plan.

Make a checklist from the goals, policies, and objectives of the plan. Then, working individually, evaluate one or two typical zoning cases on the basis of the checklist. Reach a decision based on the checklist. Then compare the conclusions. What do you find? (Exercise 3-3)

In addition to working with the zoning ordinance, the planning commission is also responsible for ensuring that the zoning ordinance itself is kept up to date. Just as with the

comprehensive plan, the planning commission should review the entire ordinance once a year. This review should include an exam of the zoning process itself from the time an applicant walks in the door to the time a zoning permit is issued. It should also include a review of zoning standards, a review of the zoning districts and the land uses that are or may be allowed in them, and, of course, a review of the relationship between the plan and the zoning ordinance.

Subdivision Regulation

Depending upon the age and development pattern of the community, the regulation of subdivisions may or may not represent a major fraction of the work of the planning commission. But in high-growth areas, subdivision review is likely to represent a major part of the work load.

A subdivision generally involves the division of a single parcel of land into two or more parcels. Such a division may or may not involve a formal subdivision review by the planning commission since some divisions of land, such as those for farming, do not involve new development. But when land is subdivided for the express purpose of building some new development or for the purpose of selling lots for new development, then a formal subdivision review will likely occur. Any exceptions will be spelled out in your state's enabling legislation.

As with the zoning ordinance, decisions on proposed subdivisions should be made on the basis of the public purpose or public interest as spelled out first in the comprehensive plan and secondly in the subdivision regulations. But for any large subdivision, commission members can expect to engage in a considerable amount of discussion with the applicant over many details of the proposal.

Note, however, that a few subdividers take the position that if a subdivision meets the particular standards of the subdivision regulations and the overriding standards of the zoning ordinance, there is no room for changes or improvements to the plan—the standards have been met, and the next meeting will be in court. In such cases, the planning commission must be careful to outline its objections based on the public purpose of the subdivision regulations. Since most subdivision regulations contain standards that are partially judgmental, courts often find that while a proposal may meet the particular standards of subdivision regulations (i.e. roads, lot layout), the proposal does not meet the most important standard—the public interest.

The broad guidelines expressed in the public purpose must be joined by the particular standards that are set forth in the subdivision regulations. Since many of these standards are fairly technical ones, planning commission members will generally need professional help to ensure that they are met. This might include, for example, engineers to evaluate the proposal in terms of standards governing storm water runoff and storm drainage, or standards governing sewers, utilities, and roads. It should also include a review by a professional planner skilled in site plan evaluation. Many other experts may be required depending upon the location and characteristics of the proposed development.

Professional help is important since many of the details of a proposed subdivision go beyond the competence of planning commissioners. This may be troublesome for communities that do not have adequate staff expertise. But the solution to this problem is straightforward—require the applicant to pay for any review of the proposal, and make certain that the payment comes through the municipality or county and not directly from the applicant to the consultants. Planners, engineers, biologists, soil scientists, and traffic experts must work for and be paid by the community, *not* the developer. It is crucial that this arrangement be explicitly authorized in local ordinances (zoning and subdivision regulations) and be legal under state law as well.

MODULE 4: THE WORK OF THE ZONING BOARD

*If the board looked at the facts instead of
listening to fiction, I would have won.*

—DISGRUNTLED APPLICANT

Well, they listened to your fiction but looked at my facts.

—PLEASED OBJECTOR

Depending on state law, communities have zoning boards of appeal or zoning boards of adjustment. For convenience, we'll call it the "zoning board."

The moment a zoning ordinance is adopted, the work of the zoning board begins. As the name implies, the board's work centers on zoning appeals, but, just as with the planning commission, a second goal of the zoning board is to implement the comprehensive plan, or to at least assure that its decisions don't violate the plan.

We said it before and we'll say it again. To do a good job on a zoning board, know your enabling legislation, study your comprehensive plan, and read your zoning ordinance carefully. (Exercise 4-1)

The zoning board is charged with a complex set of duties that typically include:

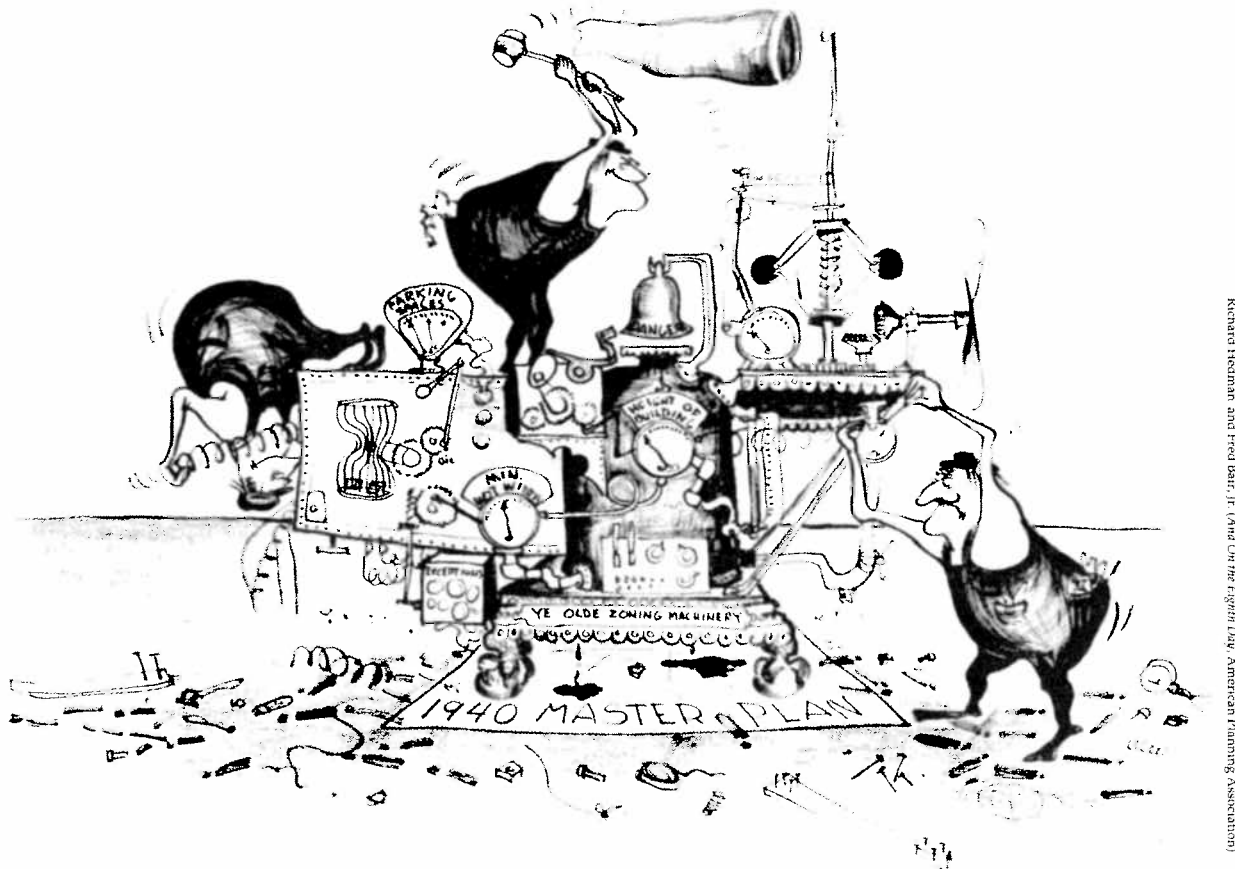
1. Deciding on variances to the zoning ordinance.
2. Reviewing decisions of the zoning administrator that are appealed.
3. Interpreting the meaning and the intent of the zoning ordinance.
4. Evaluating special exceptions or conditional uses. (In some states, the planning commission may have this authority.)

In many states, the zoning board is charged with other duties—in New York, for example, the board deals with land uses that do not meet zoning standards (called "legal nonconforming uses"). In Wisconsin, the board may authorize solar or other alternative energy systems. In California, there is no zoning board; the planning commission handles these duties. But in most states the zoning board evaluates zoning variances and special exceptions, reviews decisions of the zoning administrator, and defines the words and intent of the zoning ordinance.

Special Uses

The *Chicago Tribune* reports that in Calumet City, Illinois, saloon keepers are objecting to a proposed special use in their neighborhood—a church. A church? Why? Because saloon keepers feel that a church opens the door to zoning restrictions on their saloons and thus lowers property values.

Elsewhere in Illinois, another man objected to an adjoining special use since "it would raise my property values." He's retired and says that a rapid increase in his property value would result in a sharp increase in his property tax—an increase he can't afford.



The Zoning Ordinance must be kept Attuned to Public Needs

In many ways these two stories tell the tale of life on a zoning board. There is never one side of a story, and there are seldom only two. Pleasing everyone is almost always out of the question. And the best example of that is with special uses.

Special uses are just that—special, not ordinary or routine. Recall that a special use is merely a use that may not be permitted “by right”—without going through a special procedure—in a zoning district. The decision depends on two things: (1) the precise character and features of the proposed special use and (2) the precise character and features of the surrounding area.

So, if a proposed special use is a good fit with the neighborhood or area in which it is proposed, the zoning board normally approves. If not, the zoning board normally rejects. But what is a good fit? How does one know?

There are three main sources of information, or, more properly, sources of decision-making rules—criteria, if you will—that will lead to a rational and defensible result. They are all connected in a long chain of planning.

Here are the links in the chain. The *state enabling legislation* sets the basic goals for zoning, the reasons for which zoning is adopted and applied. Know these goals. These goals are then transferred to your community’s *comprehensive plan*. In the plan the goals are spelled out in greater detail. Finally, the goals of the comprehensive plan are detailed (or should be) in the *zoning ordinance*. So the decision that you make on a special use should be anchored in state enabling legislation, should not violate policies in your comprehensive plan, and be spelled out in your zoning ordinance. Use these goals as your guide. You will not only make better zoning decisions, but you will also be putting the plan to work—that’s your real job.

Here's a case. A commercially operated softball complex containing six lighted fields on 12 acres is proposed as a special use in a rural residential district. What general and specific factors would you consider in reaching your decision? There will be more on this issue later. (Exercise 4-2)

The Role of the Zoning Administrator

The zoning ordinance is a large and complex document. Most communities have a staff person called a zoning administrator to help implement the ordinance. The zoning administrator receives and examines all zoning applications for completeness. In addition, the administrator coordinates the planning department's review and site inspections, and prepares a report or recommendation to the zoning board of appeals. Now let's look at what the work might entail.

The rules for deciding zoning cases are often difficult. But a zoning administrator must take the complex rules and make sense out of them. Here's an example.

A zoning administrator rules that a proposed sawmill is not an agricultural use and will not be permitted in the agricultural district, so the sawmill operator objects. She then petitions the zoning board, asking for a ruling that says that a sawmill is an agricultural use. If approved, she may then establish the use.

This is an example of an appeal—an appeal from the zoning administrator's decision. The zoning board must determine whether or not the sawmill is an agricultural use.

Take another example. The zoning administrator rules that a hairdresser meets the requirements of the zoning ordinance for home occupations in a single-family residential district. A neighbor, however, objects and says that the zoning administrator is dead wrong.

In both cases, the zoning board will decide. It will review the decision of the zoning administrator and decide whether or not the zoning administrator made a good decision based on the zoning ordinance, which, in turn, is based on the comprehensive plan and the state enabling legislation.

The key test, as always, is this: Did the decision of the zoning administrator meet the goals of the state enabling legislation, the goals of the comprehensive plan, and the goals of the zoning ordinance?

The Importance of Definitions

In one city's proposed zoning ordinance, a home occupation is defined as, "A commercial enterprise in an R District conducted entirely in a dwelling unit, garage, or accessory structure, which is incidental to the principal residential use." The word "incidental" is not defined. So consider the following scenario.

A homeowner conducts a garage sale every two weeks. The sale is held inside the garage and the neighbors complain. Is this a home occupation or does it belong in a commercial district? Are the garage sales "incidental to the principal residential use?" In such a case, the zoning board may be asked to make the determination.

But there are many other words (even the shortest zoning ordinance has 5,000 words), and the zoning ordinance will not spell these out in detail. So it is up to the zoning board.

The zoning board may also be asked to define the proper district for proposed uses that are not already identified in the zoning ordinance. For example, how about the commercially operated softball complex that contained six lighted fields? Such a complex would typically

be identified, as in Rockingham County, Virginia, as a recreational use conducted outside a building. While softball fields are common features of parks in residential areas, such a large commercial complex may not be appropriate. The lighting, for example, would spill over to the residential area. So would the noise and traffic. And, if the fields were close to a residence, the homeowner could be assured of a steady stream of softballs which, in fact, are not soft at all. The zoning board would be asked to make the determination—to select the appropriate zoning district for the softball complex.

So when it comes to clarifying any uncertainty in the zoning ordinance, it is up to the zoning board to do so, and members must make their decision on the basis of the public interest as defined in the zoning ordinance.

It should also be noted that a zoning board could conclude that a new use is such an important policy issue that the planning commission should study the matter and consider amending the text of the zoning ordinance to explicitly authorize the use.

Variances

A zoning board is often asked to vary minor requirements of the zoning ordinance in order to minimize a genuine hardship that would result if the ordinance were strictly applied to an applicant. In reaching its decision, the zoning board balances the interests of the petitioner with those of the community at large. If it is a minor zoning requirement, and if it results in a genuine hardship, and if the community suffers no harm, the variance would be granted. These are three large ifs.

Let's look at them in more detail. What is a minor zoning requirement? That depends on the specific context of the petition. For example, asking for a variance of 1 foot from the required 8 feet for side yards (a side yard is the distance from the side of a house to the lot line) might seem a minor matter, until it is discovered that the house in question is already over the maximum allowable lot coverage. If, on the other hand, the required side yard was 15 feet and the applicant requested a variance to 14 feet, and all other requirements were met, that would normally represent a minor change.

The typical subjects of variance applications include lot size, lot coverage (space on the lot occupied by buildings), lot depth and width, side yards, back yards, front yards, building height, and parking spaces. Zoning boards should not issue variances from the lists of permitted land uses or special land uses that are identified for the various zoning districts unless expressly provided for by state enabling legislation.

So the first rule in dealing with variances is to make certain that the application represents a minor change to the strict application of the terms of the zoning ordinance.

In cases where the strict application of the rule would present a genuine hardship to the applicant, the hardship must be as a result of application of zoning rules and not be self-induced—brought on by the action of the applicant.

Is it a genuine hardship if you need a variance for the express purpose of making more money? No.

Is it a genuine hardship if you need a minor front yard variance because the stream bordering the back yard has eroded 10 feet of it? Very likely.

Is it a genuine hardship if you need a variation from lot coverage requirements because you have exhausted the buildable space on your lot? No, that's a self-induced hardship.

So the second rule in dealing with variances is that the strict application of the zoning rule would generate a genuine hardship, and the genuine hardship must not be self-induced.

If the variation represents a minor change, and if there is a genuine hardship involved, the board must then consider the broader public interest. The public interest is summed up in the answers to three major questions.

- Would the variation, if approved, be consistent with the intent of the zoning ordinance?
- Would the variation, if approved, result in harm to others?
- Would the variation, if approved, set poor precedent for future cases?

Variances are tricky. Many of them seem so trivial, so minor that they ought to be approved. But granting variance after variance simply because they appear trivial quickly erodes the intent of the zoning ordinance and the integrity of the zoning process. The zoning board, in this case, simply becomes a vehicle for evading the well-considered rules of the zoning ordinance.

The zoning board should also remember that granting a variance just because no one objects isn't the basis for a good decision. Evidence about the case and findings that there is indeed a hardship is the right standard.

Yet zoning boards must also recognize that a steady flow of variance requests on a single topic or zoning standard likely indicates a problem in the zoning ordinance itself. And rather than deal with the variance requests, the zoning board should move to amend the zoning ordinance to correct the problem.

In any event, the best way to deal with a variance is to ensure:

- That it's a minor change to the zoning ordinance.
- That the zoning standard inflicts a genuine hardship (not self-induced) on the applicant.
- That approval of the variance is consistent with the public interest.

TRAINER'S GUIDE

CHAPTER 1: WHAT IS PLANNING?

Education Goals

- Orient the learners to overall training course.
- Introduce the learners to the concepts and logic of planning.
- Allow the learners to relate the planning process to their own decision-making process.

Materials Needed (*one for each learner*)

- Copy of the community comprehensive plan
- Copy of the community zoning ordinance
- Copy of the U.S. Constitution with amendments
- Sample presentation to board or commission or short case study / description of a zoning case
- Flip charts and markers (*optional*)
- Overhead projector and transparencies (*optional*)

Time Needed for Exercises

For each exercise allow approximately 5-15 minutes with discussion.

How to Prepare Visual Aids

Trainers may wish to use visual aids in presenting this training program. This can include copies of maps, copies of planning department publications, and other public information displays. The planning department may have a short orientation slide show or a video. You can use flip charts to record discussion questions and answers and show transparencies on an overhead projector. All these tools add visual stimulation to the learning environment. Some trainers may wish to make an outline of their presentation or outline of discussion points to follow after reading. This outline can be drawn from the text itself by selecting the highlighted topics and discussion issues. A sample of how the first outline would look on an overhead transparency is attached here.

There are two ways to make transparencies. You can make them on your computer, insert laser transparency film sheets into the laser printer, and print them directly from the computer. Or, you may make them on the computer, print them out, put transparency film sheets into the copy machine, and photocopy them. Copy machine transparencies also allow you to incorporate map graphics, cartoons, and other materials onto the transparencies. Be certain to use the appropriate transparency film for the job: the printer and copy machine take different film sheets.

The most important point in using visual aids—whether slides, overhead transparencies, flip charts, or other graphics—is legibility. A person sitting in the back of the room must be able to read them. On the following page is a sample of an overhead. Alongside the text of the sample overhead are the lettering sizes needed for visibility. Remember, too, that lines of text separated by blank space are easiest to read.

Training Method

Throughout the chapter are prompts. The prompts require the learner to stop and think about a particular question. The responses to the questions should be recorded on the sheets marked Exercise (and labeled by chapter and module) in the back of the chapter. Trainers should have all the learners write their answers to the exercises into their manual. In this way, they will develop a handy reference guide for themselves on their community's planning process and published plans.

Prompts and exercise sheets may be used for group work and large-group discussion as well. Allow 5 minutes for the learners to complete the exercises, and wrap up with 5 minutes of open discussion. Some prompts and exercise sheets require individual work, for example the second prompt/exercise in the zoning module. In this case, allow learners to work alone and follow up with group discussion.

SAMPLE OVERHEAD

INTRODUCTION TO PLANNING

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What is Planning?

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Step 1: There is a problem

Step 2: Collect information

Step 3: Compare information

Step 4: Pick one option

Step 5: Evaluate

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STOP

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Exercise 1-1

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The Products

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Comprehensive Plan

The Zoning Ordinance

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EXERCISE: MODULE 1

The Planning Process

1-1. What process did you follow in the selection of your current home?

- Consider each of the five steps. Outline your thinking for each and jot down a few notes on each step.

Step 1. There is a problem. How did you arrive at the conclusion you needed a new car?

Step 2. Collect information.

Step 3. Compare the options.

Step 4. Pick one option and act.

Step 5. Evaluate the decision. Decide when a new problem arises.

- Did you follow all five steps? If so, the standard planning process is nothing new to you.

EXERCISE: MODULE 2

The Law

2-1. Read a copy of the U.S. Constitution as background for this chapter. For this module, read carefully the First, Fifth, and Fourteenth amendments. Do you understand their relation to planning?

EXERCISE: MODULE 3

The Work of the Planning Commission

3-1. Here's a little test. Think back over the last few planning commission meetings that you have attended.

- How many times in those meetings did the phrase "comprehensive plan" or other similar phrase come up? Every case? Every other? Not at all?
- If it didn't come up at all, your plan needs attention right now.

3-2. Is your zoning ordinance related to your comprehensive plan?

- Here's one way to tell. Find the statements of public purpose or intent in your zoning ordinance. (This is often found in the introduction).
- Then check the goals, policies, and objectives of the plan. Do they match up?

3-3. Make a checklist from the goals, policies, and objectives of the plan.

Checklist

Working individually, evaluate one or two typical zoning cases on the basis of the checklist.

- You should reach a decision based upon the checklist.
- In group discussion, compare the conclusions. What do you find?

EXERCISE: MODULE 4

The Work of the Zoning Board

4-1. We said it before and we'll say it again. To do a great job on a zoning board, know your enabling legislation, study your comprehensive plan, and read your zoning ordinance carefully.

4-2. Here's a case. A commercially operated softball complex containing six lighted fields on 12 acres is proposed as a special use in a rural residential district. What general and specific factors would you consider in reaching your decision?

