

# AN INTRODUCTION TO PLANNING AND DEVELOPMENT REGULATION

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"If you don't have a plan for where you are going, you may end up  
somewhere else." *--Attributed to Casey Stengel*

"If you want to predict the future, create it." *--Peter Drucker*

Planning and development regulation can be two of the most important activities of elected and appointed officials in Texas. The results of those two activities, whether beneficial or detrimental, may have a lasting effect on the community for years to come. This Chapter provides a general introduction into the variety of planning issues and tools that cities will use. It begins with an analysis of various methods for community planning, examines implementation of planning goals with regulatory tools, and briefly highlights new trends. Subsequent chapters provide greater detail into these various elements.

## **Why is Planning Important?**

The public consistently exhibits broad support for strong community planning. A national survey in 2000 (American planning Association, 2000) indicated that likely voters want professional planners in their community (81%), and want those planners to plan for adequate schools and educational facilities (76%), ensure the availability of public services (74%), create and protect parks and recreation areas (69%), preserve farmland and open space (67%), protect wetlands and other natural areas (65%), and create affordable housing options for low- and moderate-income families (64%). The support for planning

crosses all political interests and 57% believe that communities can manage growth and protect private property rights at the same time.

A similar survey of Texas voters two years later (Texas Chapter, American Planning Association, 2002) indicated that eighty-five percent of Texans believe it is important for their community to have a planner, and that the most important planning issues facing Texans was the need to protect open spaces, coastal areas and parkland (88%), provide incentives for affordable housing (85%), create transportation options like light rail, bus systems, and bicycle/pedestrian trails (81%), and support the right of local communities to make critical decisions for private property (81%.) When asked whether communities must choose between managing growth and the protection of private property rights, 68% of Texans said communities could do both.

Why is planning considered such an important part of government? Most people cite land use planning-related factors when they describe quality of life issues, such as low crime rates, clean air and water, good schools, the local economy, and low taxes. All of these quality of life values can be achieved and maintained through proper planning of the urban environment. Planning also reduces uncertainty by protecting public and private investment and by reducing conflict and controversy.

### **Types of Planning**

Planning is a universal process, and we all use planning processes in our daily life. Melville Branch (1990) said "individuals and families plan at least some of their daily activities, if not to survive, to function more efficiently or to improve their condition. This is so common

among the five and a half billion people on earth that it is often unrecognized or disregarded as a fundamental aspect of human behavior."

Because of its universality, planning has differing meanings ranging from land use planners, to financial planners, to estate planners. For our purposes, we will consider the various activities of city and urban planners, land planners, transportation planners, environmental planners, economic development planners, and social planners. Because planning is done by everyone, many people often discount the knowledge and skills of professional planners. Finally, planning is somewhat unique in that it combines the technical knowledge of professional planners with, the democratic decision-making, of elected and appointed officials.

### **Modern Physical Planning**

Modern physical planning refers to the process of graphically designing the future development of the City. This includes the laying out of lots and blocks and streets and utility systems to serve the growing community. This was the process of planning used by monarchs in the development of European cities, and by land grant recipients in the New World prior to the formation of the United States in 1781.

Modernism espoused that through proper design, social ills of the city could be mitigated. Modern physical planning invariably results in a map, a plan, developed by a single planner or group of professional planners.

### **The Rational Planning Process**

The rational planning process refers to the decision-making process that we all consciously or unconsciously use in evaluating alternative actions. A problem is identified,

alternatives are considered and evaluated, an alternative is selected for implementation, and the result is evaluated for its effectiveness.

While the rational planning process describes the process that many of us use in analyzing alternatives, it does have some limitations on implementation. Can we really start from a clean slate or are we bound to only change incrementally? Can we really identify and completely evaluate all possible alternatives? If we acknowledge that we have limitations in these areas, we must also acknowledge that the process is swayed by our own preconceived ideas and biases.

### **Comprehensive Planning**

Most cities use the approach of using the comprehensive plan. Like its name implies, the comprehensive plan looks at more than simply a single aspect of physical planning and often incorporates numerous aspects of the city plan and their inter-relationships. The noted Professor Kent notes the following six fundamental purposes of the comprehensive planning process:

1. To improve the physical environment of the community as a setting for human activities — to make it more functional, beautiful, decent, healthy, interesting and efficient.
2. To promote the public interest, the interest of the community at large, rather than the interests of individuals or special groups within the community.
3. To facilitate the democratic determination and implementation of community policies on physical development.
4. To effect political and technical coordination of community development.
5. To inject long range considerations into the determination of short-range actions. And
6. To bring professional and technical knowledge to bear on the making of political decisions concerning the physical development of the community.

In 1997, the Texas Legislature added a new chapter to the Local Government Code (now codified as Chapter 213) that enables all municipalities in Texas to develop and adopt comprehensive plans on an optional basis. The statute establishes some minimum requirements of adopted comprehensive plans (e.g. they must consider land use, transportation and public facilities; establishes procedures for adoption and amendment, and requires a statement distinguishing between land use plans and zoning regulations), but otherwise allows the city to determine for itself what constitutes a comprehensive plan. Plans may consist of traditional map-based plans, functional plans (such as a drainage plan, water distribution plan), policy plans, or sector/neighborhood plans (plans that address a specific geographic area within the community.) Perhaps more importantly, it also allows a city to determine the relationship between its comprehensive plan and its development regulations.

Although a comprehensive plan may consist minimally of land use, transportation, and public facilities elements, most cities have a greatly expanded breadth of coverage. One award-winning comprehensive plan includes the following contents:

1. Introduction and Framework
2. Historical Background
3. Factors Influencing the Comprehensive Plan
  - a. Environmental Constraints
    - i. Soils and Geology
    - ii. Topography and steep slopes
    - iii. Floodplains
    - iv. Noise
  - b. Demographic trends
    - i. Populations
    - ii. Economic Potential
    - iii. Land Uses

- iv. Population Projection
  - v. Development Trends
- 4. A Vision of the Future (the Year 2030)
  - a. Physical Development in 2030
    - i. Population and Demographics
    - ii. Land Uses and Housing
    - iii. Transportation and Communications
  - b. Economic, Social and Political Life in 2030
    - i. The Economy and Workplace
    - ii. Changing Work and Leisure Patterns
    - iii. Education
    - iv. The Return of the Neighborhood as a Social Unit
    - v. Government and Community facilities
- 5. Goals Objectives, Strategies and Planning Principles
  - a. Strategic Plan
  - b. Planning Tenets and Principles
- 6. Land Use
  - a. Existing and Planned Land Uses
  - b. General Land Use Considerations
  - c. Residential Areas
  - d. Commercial Areas
  - e. Industrial Areas
  - f. Protection of Environmentally Sensitive and Open Space Areas
- 7. Transportation
  - a. Historical Background
  - b. Street Functions
    - i. Types of Streets
    - ii. Traffic Volumes
    - iii. Street Capacity
    - iv. Relation of Land Use to Transportation
    - v. Street Location
  - c. Traffic Safety
    - i. Traffic Accidents
    - ii. Visibility
    - iii. Design Standards
  - d. Vehicular Circulationn
    - i. Traffic efficiency
    - ii. Traffic control
    - iii. Parking
  - e. Pedestrian and Bicycle Circulation
    - i. Pedestrian Circulations
    - ii. Bicycles
  - f. Public Transportation

- g. Railroads
  - i. At-grade crossings
  - ii. Spurs for industry
- h. Air Travel
- 8. Community Facilities
  - a. Public Buildings and facilities
    - i. City Administration
    - ii. Police and Courts Building
    - iii. Fire Stations
    - iv. Maintenance and Service Centers
    - v. Community centers
    - vi. Cemeteries
    - vii. Libraries
  - b. Parks and recreation Facilities
    - i. Current Park facilities
    - ii. Park Planning Efforts
    - iii. Park Planning Standards (Goals and Objectives)
    - iv. Planned Park Facilities
  - c. Schools and Other Education facilities
- 9\_ Drainage
  - a. Drainage Problems
    - i. Rainfall
    - ii. Runoff
    - iii. Drainage Areas
    - iv. Floodplains
    - v. Runoff Water Quality
  - b. Drainage Standards and regulations
    - i. City standards
    - ii. Federal Emergency Management Agency
    - iii. Corps of Engineers
  - c. Citywide Drainage Activities
    - i. Management Activities
    - ii. Public Outreach
    - iii. Repetitive Loss Properties
  - d. Site Specific Drainage Plans
- 10. Public Utilities
  - a. Water
    - i. Demand
    - ii. Water Supply
    - iii. Water Treatment
    - iv. Water Quality and Water Supply Protection
    - v. Water Distribution
    - vi. Water Conservation measures
  - b. Energy
    - i. Electricity
    - ii. Natural Gas
  - c. Communications

- i. Telephone
  - ii. Cable Television
- 11. Waste Management
  - a. Solid Waste
    - i. Solid Waste Generation
    - ii. Solid waste Collection
    - iii. Solid Waste Disposal
    - iv. Waste Minimization
  - b. Wastewater
    - i. Wastewater Quantity and Quality
    - ii. Wastewater Collection
    - iii. Wastewater Treatment and Disposal
  - c. Hazardous Waste
- 12. Public Safety
  - a. Police
  - b. Fire
  - c. Emergency Medical Care
  - d. Disaster response and Preparedness
    - i. Natural Hazards
    - ii. Manmade Hazards
    - iii. Emergency response
    - iv. Hazard Mitigation
- 13. Economic Development
  - a. Economic Development Corporation
  - b. Tax Increment Finance District
  - c. Local Business Climate
    - i. Historical Economic Development
    - ii. Existing Economic Base
  - d. Regional Economic Climate
  - e. Economic Development Plan
    - i. Retention and Expansion of Existing Business
    - ii. Attraction of New Industry
- 14. Housing, Health and Social Services
  - a. Housing
  - b. Health care
  - c. Social Services
  - d.
- 15. Quality of Life
  - a. Urban Design
  - b. Urban Amenities
- 16. Implementation and Monitoring
  - a. Techniques of Implementation
    - i. Ordinance and Policies



- ii. Municipal Administration
    - iii. Budgeting and Investment
    - iv. Actions by Others
  - b. Monitoring Report for Past Year
  - c. Action Plan for Current year
- 17. Capital Improvements Program
  - a. Status of Previously-Approved Capital Improvements Programs
  - b. Financial Analysis
  - c. Inventory of Existing facilities and Evaluation of Future Needs
    - Community facilities
    - ii. Streets
    - iii. Drainage Facilities
  - d. Five Year Capital improvement Program
    - i. Program Summary
    - ii. Detailed Project Summaries

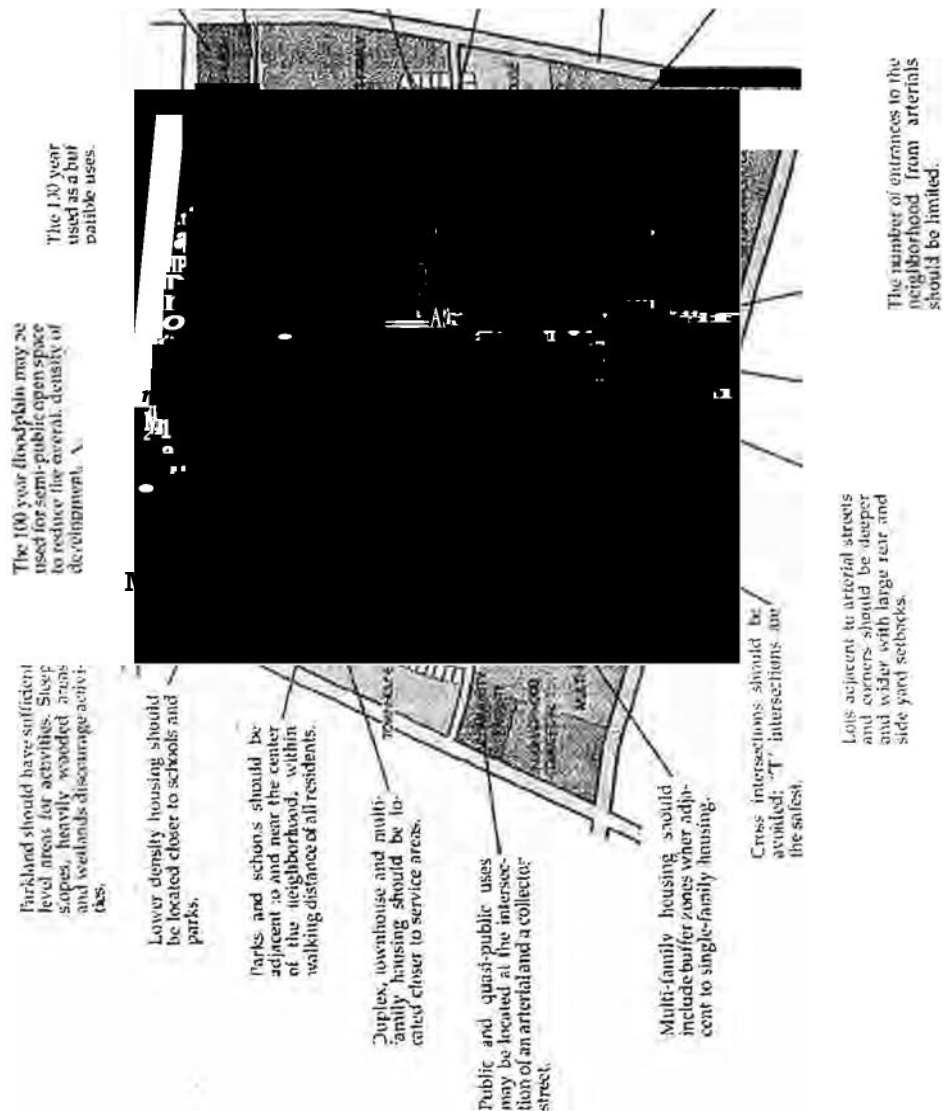
You can see that comprehensive plans can range in perspective, including time horizon, geographic extent, and topical coverage.

At the heart of all comprehensive planning activities is the analysis and projection of future population. From the future population, one can also project land use demands, traffic generation, water and sewer demands, increased runoff from new development, and other future population needs. Many land use planning efforts rely on the "neighborhood unit" as the basic building block of future land use. This concept was originally formulated by Clarence Perry as part of the Regional Plan for New York and its Environs in 1929, but is still used today as can be seen from the excerpt from Fort Worth in Figure 1.

During the 1960s and 1970s, increased emphasis was placed on planning for social and housing needs and environmental protection. In other communities, economic development is given higher priority. More recently, urban design issues have become important parts of the comprehensive plan.

Figure 1. A Typical Neighborhood Unit (Source: Fort Worth, 1991)

## A "Typical" Neighborhood Unit



However detailed, as a general rule, all comprehensive plans should have the following characteristics (Kent, 1961):

1. They should be visionary
2. They should focus on a 10 to 20 year horizon
3. They should be updated every five years or so
4. They should be dynamic and flexible (but not too flexible)
5. They should guide day-to-day decisions.

### **Strategic Planning**

In contrast to the long-range, comprehensive approach that the comprehensive planning process takes, strategic planning takes a more focused approach with the identification of specific short-term actions to be taken to achieve the long term goal. The two time horizons generally considered are long term (three to five years) and short term (one year.) It addresses the three major forces that are acting on organizations:

1. The mission of the organizations (what is it that you are intending to accomplish.)
2. The internal strengths and weaknesses of your organization (what is it that you do best, and what resource limitations do you have.)
3. The external opportunities or threats to your organization (what may happen beyond your control, but that you should plan for in undertaking your mission.

Strategic planning follows a relatively specific methodology that was developed by the Defense Department in the 1960s:

1. Review (or revise) your Mission Statement. Is what you are about to undertake really something that you should be doing? Many organizations get bogged down because they are trying to do things that are not part of the mission or for which their organization is not well-suited to address. Sometimes you need to rethink your mission in terms of changing times. For example, telephone and telegraph companies had a limited future if they focused simply on telephones and telegraphs. When you consider that they were really in the communications business, their potential is endless. What is the mission of your community and your unit of local government?
2. Prepare an environmental scan and conclusions about future possible scenarios over the next three to five years. Here is where the SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis is performed. Consider the possible futures that may affect how you address a specific issue: what if the economy goes into recession, what is a planned project doesn't get built, etc.?
3. Identify Goals and Objectives that will help you achieve your mission. An important difference between strategic and comprehensive planning is that strategic planning goals should be relatively few in number, measurable, and be achievable within a relatively short period (typically one to two years.) Objectives are then identified that serve as measurable targets to know whether the goal has been achieved. Strategic planning also requires that the resources required to achieve each target be identified and that a specific person be given responsibility for reaching the objective.

So which type of planning is best for you? Cities will often employ both types (comprehensive and strategic) of planning and integrate them into a single document. In any event, you should use the planning type that meets your community's needs and one that is likely to be implemented.

### **Capital improvements Planning**

A specialized type of planning is capital improvements planning, or the planning of the city's investments in infrastructure. The vast majority of the community is built by private developers, and therefore it is important that the City have a plan for what facilities are built

and how they interconnect with each other. But the City itself also invests in the community through the construction of those public facilities that are beyond the scope of private development. The capital improvements plan can be a stand-alone document or a part of the comprehensive plan.

Capital improvements are those city assets with a life time longer than one year; but in this case, we are primarily concerned with the construction of streets, drainage facilities, water and sewer facilities, and community facilities, such as parks and public buildings. A city will finance these facilities using general obligation bonds, revenue bonds, certificates of obligation, or the general fund and the capital improvements plan is how the city manages its long-term debt. Funding for capital improvements may also come from special assessments, developer contributions, or through the use of special districts such as public improvement districts or tax increment finance districts.

Capital improvements planning looks at several time horizons, including the coming fiscal year and a longer time horizon, such as five or ten years. A five-year plan is the traditional length of a capital improvements plan, but cities that have adopted impact fees must have a ten-year plan.

### **Public Participation in Planning**

Although there are many technical aspects of the planning process (population projections, land use projections, traffic modeling, drainage calculations, etc.), in the final analysis, planning is a political process. The planning process offers an opportunity for consensus building toward a shared future vision of the community. If the public does not support the plan that is developed, its likelihood of implementation is low.

Public participation is an important component of any planning process, and particularly for comprehensive planning. There are a number of techniques to engage the public during the planning process. Citizen's advisory committees can be useful, particularly if you need to involve specific types of people, such as business leaders, neighborhood associations, or politically-active social organizations. Public meetings can also be used as a way of keeping the public up-to-date on the plan's progress and to obtain input from the public at large. Interviews and surveys can also be useful, particularly visual preference surveys or alternative futures surveys. Finally, many communities employ the charrette process, which is an intensive two to three day process of brainstorming and refining ideas for the physical layout of the community.

### **A Brief History of Planning in Texas and the United States**

The earliest planning in Texas and the United States was performed under the authority of European royalty, either directly or to land speculators under Royal charter. Many of these plans were based on the grid system (Santo Domingo, 1502; New Haven, 1630, Philadelphia, 1681; Savannah, 1733), though a few also had a radial street plan reminiscent of Paris (e.g., Williamsburg, 1699; Washington, D.C., 1791).

Spanish development in the New World was developed under the so-called Laws of the Indies, first published in 1573 under King Phillip II. The laws were actually a codification of edicts and documents issued and amended over two centuries and included 148 ordinances that directed that new Spanish towns be developed with a grid system surrounding a plaza that served as the market and the center for political and religious life. The larger town site also included approximately 28 square miles of supporting farmland.

Under the federal constitution of 1789, the states and local government assumed the role of planning and development regulation. During the 19<sup>th</sup> Century, many towns in Texas were laid out by the railroads, which were granted land as a way of financing railroad construction. Railroad town sites were again based on the grid system. Some northern counties in Texas were influenced by the Northwest Ordinance of 1785, which established a rectangular survey system. Elsewhere in the country, New York's Central Park was planned and developed in 1858. By the end of the 19<sup>th</sup> Century, many urban areas in the North had suffered major fires, epidemics and other problems associated with overcrowding and poor sanitation.

Modern physical planning in the United States generally traces its roots to the World's Columbian Exposition of 1893 in Chicago designed by Daniel Burnham. Modernism espoused the theory that proper design would solve the social ills of the day and spawned movements such as the City Beautiful movement (with grand boulevards and parks) and the City Efficient movement (with an engineered approach to land use, streets, and public utilities.) Early zoning and subdivision ordinances appeared, supported by the U.S. Department of commerce's Standard Zoning Enabling Act (1922) and the Standard City Planning Enabling Act (1926). The first national conference on city planning (the beginnings of the planning profession) was held in Washington D.C. in 1909. Cincinnati adopted the first comprehensive plan in 1925. Dallas adopted an early land use plan (including streets and parks) by George Kessler in 1911.

Following World War II, the growth of the suburbs ballooned with the creation of mass-produced communities such as Levittown (1947) and the Interstate Highway System in 1956. A number of "new towns" were developed and the concept of regional

councils of government was established. Fort Worth adopts, but never implements, a plan for downtown that eliminates automobiles in 1957.

During the last decades of the 20<sup>th</sup> Century, a number of states have adopted growth management programs in an attempt to curb urban sprawl and preserve agricultural areas and open spaces. There has also been a movement toward strengthening urban design as part of the New Urbanism and neotraditional town planning movements.

### **Planning versus Development Regulation**

Planning is the method of identifying the desired future and identifying steps to achieve that desired future. The two most important techniques of implementing the long range plan are through capital improvements and through development regulation, such as zoning and subdivision regulation. The largest amount of time spent by professional planners and planning commissions is on development regulation, rather than the planning.

It is important to remember that development regulation is simply a tool to achieve planning goals, and development regulations without a plan can be aimless. It is important to take time to review and update the plan on a periodic basis, and then review your development regulations to make sure they are leading you in the direction you want to go.



## **How Government Type Affects Regulation of Development**

Before you can consider development regulations, it is important to know what type of government you are designated. There are two types of local governments, general-law and home rule. General Law governments include counties, special districts and small municipalities (generally less than 5,000 population.) When a municipality's population exceeds 5,000, they may elect to convert to a home-rule form and adopt their own home-rule charter. The difference is described by Dillon's Rule: general-law governments can only do what they are specifically authorized to do by the State, while home-rule cities can do almost anything as long as they are not specifically prohibited from doing so by the State. So home-rule cities have a lot more flexibility in adopting regulations than do general law units of government.

General-law cities are also classified as Type A, B, or C, depending on its population and government form. The type of general law city has little effect on development regulation, but does have an affect on the ability to annex new territory into the municipality.

The size of a city has affects the size of its extra-territorial jurisdiction, or ETJ, as shown in Table 1, below:

Table 1. Extent of ETJ by City Size

Population	Extent of ETJ
< 5,000	1/2 mile
<b>5,000 to 24,999</b>	1 mile
25,000 to 49,999	2 miles
50,000 to 99,999	3 1/2 miles
100,000 or more	5 miles

Source: Texas Local Government Code, Chapter 42

The extent of the ETJ is important in that some development regulations, such as subdivision and sign regulations, can be extended into the ETJ. The ETJ and type of City Government also affects a city's ability to annex land into the city. The enabling legislation for annexation was significantly amended in 1999 and is set out in Chapter 43 of the Texas Local Government Code.

### **Development Regulations**

Contrary to the approach of the Europeans, Americans have always held private property rights in high regard. The 5<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution provide that government cannot take private property without just compensation to the property owner. The Supreme Court has also ruled that overregulation of private property, to the extent that it cannot be used for its intended purpose, may also constitute a "taking" that requires compensation. This needs to be balanced with the Court ruling that cities can regulate the use of private property to protect the health, safety and welfare of the community at large. Government and the courts have been adjusting and modifying the balance between these two competing interests (government land use control vs. private property rights) for the past 100 years.

Development regulations have always been intended to conform to the comprehensive plan, since they serve as a means of implementing the plan. One of the features of Chapter 213 of the Texas Local Government Code is that it allows cities to determine how closely zoning and subdivision regulations must conform to the comprehensive plan. In some cases, cities want to have strict conformance and will only allow a zoning change that conflicts with

the comprehensive plan if the comprehensive plan is amended. Other cities want to have more flexibility in changing zoning without having to change the plan first.

### **Zoning Regulations**

In its simplest terms, zoning regulations govern the use of land, and the location, size and height of buildings. Traditional (or Euclidean) zoning divides the jurisdiction into multiple districts, with each district containing a distinct set of regulations applicable to all property within the district. Zoning ordinances consist of two parts, a map defining the boundaries of the districts and the text that includes the regulations for each district. Zoning can only be applied to property within the city limits and, with few exceptions, there is currently no zoning in the unincorporated portions of the County.

The earliest nuisance regulations appeared in San Francisco in an attempt to keep certain nuisance land uses (such as slaughterhouses, hog storage, animal hide curing plants and Chinese laundries) out of residential areas. Los Angeles took this further in 1909 in its early zoning ordinance. New York is considered to have adopted the first comprehensive zoning ordinance in 1916, and the U.S. Department of Commerce issued its Standard Zoning Enabling act in 1922. The U.S. Supreme Court upheld zoning as a valid police power in *Euclid v. Ambler Realty Company* in 1926, hence the term Euclidean zoning.

Texas adopted the Standard Zoning Enabling Act and it is codified as Chapter 211 of the Texas Local Government Code. It outlines the purposes of zoning to be the protection of health, safety and morals and the protection of historic, cultural and architectural areas, though many ordinances enumerate other purposes as well.

For each district, the zoning ordinance typically identifies which uses are allowed to be built by right, which uses may require a specific use permit, and which uses may require a special exception. The district regulations also specify the minimum lot size, minimum setbacks from property lines, maximum building height, maximum building floor-area-ratio (FAR), maximum impervious area, and minimum off-street parking. Some zoning ordinances also regulate signs, landscaping, and architectural standards.

The intended purpose of traditional zoning was to segregate uses to prevent the detrimental effects of one use on another use area, and to aid in planning for adequate infrastructure since the use for each property was known with relative certainty. Recently, planners have realized that this approach can have the unintended consequence of promoting urban sprawl by separating where we live from where we work and where we shop. Many cities are now adopting mixed use districts, or using planned unit developments to mix uses. A planned unit development, or planned development, is essentially a zoning district with its own specially developed regulations.

The Standard Zoning Enabling Act also recognized that application of zoning regulations on individual pieces of property may result in the inability to use the property for any economic purpose. To prevent a takings claim, the Act created a safety valve through the ability of the Zoning Board of Adjustment to grant variances to portions of the zoning regulations. A variance is the authorization to violate a law that presumably everyone else must comply, so the granting of variances should be a rare event.

The issue that generally faces a Zoning Commission and City Council is a request to rezone property to a use different from its currently designated use. The

State enabling laws outline the process and notification requirements necessary to process a zoning change, and zoning can only be changed by an ordinance of the City Council. Only two parties have standing to request a zoning change: the land owner or the City Council. No one is entitled to a zoning change, and the courts generally defer to the City Council in making zoning changes so long as there is some justification for *the* action taken.

### **Subdivision Regulation**

Subdivision regulations govern the division of land into two or more parts. The regulations specify the standards for drawing and recording a plat, and the requirements for public improvements necessary to make the property suitable for development. Unlike zoning, which is limited to the city limits, subdivision regulations can be extended into the extraterritorial jurisdiction, or ETJ, subject to any agreement with the County under Chapter 242 of the Texas Local Government Code.

Early subdivision regulations were developed in Los Angeles and in New Jersey (1913). The Standard City Planning Enabling Act, which included subdivision regulations, was developed in 1928. Texas has codified its municipal subdivision statutes in Chapter 212 of the Texas Local Government Code, while county subdivision authority is provided in Chapter 232. The State Statute provides the general requirements and procedures for approving and recording plats within cities and their extraterritorial jurisdiction. Unlike the discretion provided to cities under zoning, plat review is considered a ministerial act and the city must approve a plat that conforms to its regulations.

A local subdivision ordinance generally consists of general provisions and definitions; a discussion of the platting process and the content required for each plat submittal;

requirements for the provisions of public rights-of-way, easements, and public improvements, including design standards; and provisions for financial assurance that the improvements will be completed if the plat is allowed to be filed before completion.

An important part of the platting process is the requirement that the developer provide the necessary public improvements to support the proposed development, called exactions. An exaction is a requirement to dedicate land (including rights-of-way, easements and parkland), construct public improvements, and payments of fees in lieu of providing such improvements, as a condition to development approval. The U.S. Supreme Court has supported cities ability to require exactions, but has placed two important restrictions on them. First, there must be a logical relationship (rational nexus) between what the City is requiring and the demand that the development is creating. Secondly, the exaction required must be roughly proportional to what is required of other similar developments.

State law also makes a distinction between what is required for on-site improvements versus what may be required for off-site improvements. Generally, the developer is required to build all of the on-site improvements, as long as there is not significant oversizing of on-site facilities to serve other areas where the municipality may participate financially. Developers are generally not required to provide offsite facilities, except through an impact fee system.

### **Site Plans and Other Development Regulations**

Site Plans: Site plan review and approval may be required as standard in some zoning ordinances, for planned unit developments, for specific use permits, or other flexible zoning approvals in other ordinances. This allows the City to review the actual layout of a site as a

precondition to approval. City Councils and Planning and Zoning Commissions should resist the temptation of redesigning a project, but instead use the site plan review to assure that the goals of the City are being met and that any amenities being offered by the developer are sufficient to offset any concessions to the development regulations that the developer may be requesting. Look at the big picture and leave the details (like dumpster locations) to your planning staff.

Sexually-Oriented Businesses: Many cities regulate the location of sexually-oriented businesses through provisions of their zoning ordinance, or as a stand-alone ordinance. While there may be a strong movement to outlaw them completely, the courts have ruled that these businesses have some protection under the First Amendment of the U.S. Constitution. Cities can adopt minimum separation requirements (e.g. 1,000 feet) between sexually-oriented businesses and residences, schools, parks, hospitals, etc. To adopt such regulations, the city must demonstrate that the presence of such businesses are detrimental to adjacent property and that at the time the ordinance is adopted, there remains some minimal amount of land available for the location of such businesses. The Texas Municipal League has, in recent years, undertaken a secondary effects study that may be useful for all Texas cities considering regulation of these businesses.

Signs: Many cities regulate signs as part of their zoning ordinance, or in a stand-alone ordinance. A city may regulate the size, height, and location of signs, but it should endeavor to make the regulations "content-neutral" to the extent possible. In other words, be careful about having different regulations for different types of signs. Political speech (i.e. campaign signs) has certain protections and cannot be prohibited completely, though you can regulate the size and location of such signs.

Landscaping: Many cities also regulate landscaping as part of the zoning ordinance or in a stand-alone ordinance. Some cities require that a minimum percentage of each lot be landscaped, or that a minimum percentage of tree canopy cover be provided, or specify the size, widths and plantings for various types of landscaping required (such as bufferyards, parking lots, and interior landscaping. Be careful about required landscaping in areas where utilities may be buried (rights-of-ways, easements) and consider the use of native or adapted plants where possible.

Religious Institutions: Religious institutions (churches, synagogues, mosques, etc.) have certain protections under law, especially since the passage of the federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). Under that law, no cities can impose a substantial burden on a religious activity unless it can show that it furthers a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. While this doesn't eliminate a cities ability to regulate religious institutions, it places the burden on the city to demonstrate that the regulation is necessary.

Manufactured Houses: There are three types of housing that are constructed off-site and moved to another location for occupancy. A mobile home is a transportable dwelling built prior to June 15, 1976, while a manufactured home was one that was built under the "HUD Code" after June 15, 1976. Cities may prohibit mobile homes completely, and may regulate the location of manufactured homes within the city. A third type, industrialized housing, is constructed to the International Residential Code and a city cannot regulate them any differently than any other "stick built" house. Each



biennium, the Texas Legislature considers bills that would limit a city's ability to regulate manufactured housing.

Unified Development Codes: Most cities have separate zoning and subdivision ordinances because their statutory authority is derived from two different laws. Some cities, however, have chosen to combine zoning and subdivision requirements into a unified development code.

Vested Rights: Chapter 245 of the Texas Local Government Code provides that if a series of permits are required for a project, then the rules in effect at the time the first permit issued shall remain in effect for the life of the project. There are certain conditions and exemptions for this restriction, but in general it prohibits a city from rushing in to change the rules after a project has started.

### **Recent Trends and Issues**

Geographic information systems (or GIS) have become increasingly important in the development and analysis of plans. Simply put, a GIS is a computerized map that combines both graphic and tabular data that is able to analyze spatial information and generate maps of data that easily display spatial relationships of various data. One simple example is the development of environmental suitability maps, which formerly were generated by physically layering information on soils, slopes, hydrology, vegetative cover, etc. Now, those layers are contained within the computer and can easily generate a map showing the relationships between each environmental attribute.

Smart growth has become the mantra for many states around the country in an attempt to mitigate the problems associated with urban sprawl. Smart growth promotes

mixing land uses, more compact development, preservation of open space, provision of alternate transportation modes (especially a pedestrian orientation), and infill development. Many state are revising their planning statutes to promote these ideals, as opposed to the traditional low-density residential subdivision that is pedestrian unfriendly. Transit-oriented Development (TOD) seeks to develop these types of communities at transit nodes.

Two related movements are new urbanism and sustainable development. New urbanism (sometimes called neotraditional town planning) is promoted by the Congress of New Urbanism, a group of architects and planners. New urbanism rejects traditional zoning and seeks to regulate development by regulating the form of the street and the adjacent buildings (known as form-based codes.) Different street and building types are allowed based on the location along a transect between the urban core and the rural fringe, and the building form will promote certain land uses rather than the need to regulate land uses. Several Texas cities are beginning to experiment with these types of approaches. Sustainable development seeks to promote development that will conserve energy and environmental resources, will maintain a sustainable economy that achieves social equity. The concern being that current development patterns are consuming resources at a rate where future generations will suffer.

## **References**

- American Planning Association, 2000. "The Millennium Planning Survey: December 2000.
- Benbrook, City of, 2005. *Comprehensive Plan for the City of Benbrook, Texas*.
- Branch, Melville C. Planning, 1990. *Universal Process*. Praeger.
- Chapin, F. Stuart and Edward J. Kaiser, 1979. *Urban Land Use Planning, Third Edition*. Urbana, IL: University of Illinois Press.
- Fort Worth, City of, 1991. "West Fort Worth District Plan." Department of Planning and Growth Management Services.
- Gordon, Gerald L. 1993. *Strategic Planning for Local Government*. Washington, D.C.: International City/County Management Association.
- Hoch, Charles, Linda C. Dalton, and Frank S. So, eds, 2000. *The Practice of Local Government Planning, Third Edition*. Washington, D.C.: International City/County Management Association.
- Kent, T.J., Jr., 1964. *The Urban General Plan*. San Francisco: Chandler Publishing Co.
- Levy, John M., 2003. *Contemporary Urban Planning, Sixth Edition*. Upper Saddle River, NJ: Prentice Hall.
- Mixon, John, Dougherty, James L. and Brenda N. McDonald, 2004. *Texas Municipal Zoning Law*. Lexis Nexis.
- Salkin, Patricia E, ed., 2004. *2004 Zoning and Planning Law Handbook*. Thompson West.
- Texas Chapter, American Planning Association, 2002. "Here's What Texans Think." September 2002.
- Vaselka, Robert E., 2000. *The Courthouse Square in Texas*. Austin: University of Texas Press.