The Standard Zoning Enabling Act

The Standard Zoning Enabling Act (SZEA) is the foundation for zoning laws by in virtually every state. An enabling statute provides a legislative model for state enabling acts that delegate power to designated local governments. It also imposes limitations and conditions on the exercise of that power (e.g. amending the zoning ordinance with proper notice and hearings). Texas' enabling zoning statute is contained in Chapter 211 of the Local Government Code. In accordance with this chapter, all zoning regulations must be adopted in accordance with a comprehensive plan and be designed to lesson congestion in streets; secure safety from fire, panic, and other dangers; promote health and general welfare; provide adequate light and air; prevent overcrowding of land; avoid undue concentrations of population; or facilitate provision of transportation, water, sewers, schools, parks, and other public requirements.

Texas adopted its version (a modification of the SZEA) in 1927 and delegated zoning powers to the legislative bodies of municipalities but not to counties. The Texas Legislature has for the most part delegated zoning authority to municipalities, although specific, limited land use regulatory authority has been delegated to certain counties and special political subdivisions (i.e. reinvestment zones, airport zoning, land use regulation near certain lakes).

Planning And Zoning Commissions

Even though a large majority of Texas cities utilize an appointed planning and zoning commission to approve plat applications and make recommendations on zoning requests, Section 211.007 expressly gives jurisdiction to the zoning commission on zoning matters. As a result, a few municipalities utilize both a planning commission and a zoning commission. The responsibilities of the planning commission include reviewing and approving subdivision plats. Home rule cities must appoint zoning commissions before adopting
zoning ordinances while general law cities may appoint zoning commissions or allow the governing body to perform this function. According to statute, the zoning commission serves only a planning and recommending function by recommending approval or denial of the original zoning district map and every subsequent rezoning case. The city council cannot act on a rezoning request until it receives the commission's recommendation. The zoning commission holds public hearings and also develops the first draft of the comprehensive zoning ordinance and comprehensive zoning map and recommends them to the governing body. Each amendment to the zoning district map must be reviewed by the zoning commission before being considered by the city council.

**The Zoning Process**

Although the governing body has the legislative power to approve and adopt zoning, precise notification and public hearing requirements are a prerequisite to the ability to act. The proper procedure for adoption of zoning is:

- Notification of all property owners within 200 feet of the subject property to be zoned ten days prior to the public hearing held by the zoning commission;
- The zoning commission conducts a public hearing and makes a recommendation to the city council via a written report;
- Fifteen (15) days prior to the public hearing by the city council, a notice of the zoning change and public hearing must be published in the newspaper of general circulation;
- A public hearing is conducted by the city council and a determination is made about the zoning.

According to Chapter 211.006 of the *Local Government Code* if a proposed zoning change is protested in writing by the owners of at least 20 percent of either: (a) the requested area; or, (b) the 200 foot notification area, the council must approve the request by at least three-fourths of the total membership. This is often referred to as a "super majority" vote versus a "simple majority" vote. Chapter 211.006 also allows a city, by ordinance, to require a similar three-fourths affirmative vote if the zoning commission recommends that the change be denied.
Comprehensive Planning

The SZEA considers zoning to be the second part of a two step process. The first step is planning or creating an overall plan for the growth of the community. Zoning is merely a tool used to implement the plan.

A comprehensive plan, also referred to as a master plan provides for the physical, social, economic, and environmental development of the municipality, including studies of land use, infrastructure, etc., and a report presenting the objectives, assumptions, standards, and principles that are entwined within the plan. A master plan may include proposals for various stages in the future development of the city. It anticipates the gradual re-shaping of a community's existing land uses through the discontinuance of nonconforming uses until the entire city mirrors the plan.

Board Of Adjustment

Section 211.008 of the Local Government Code allows the city council to appoint a board of adjustment of at least five members. The board of adjustment is a quasi-judicial board as its decisions may only be appealed to the district court and not to the city council. The court may reverse or affirm in whole or in part or modify the decision that is appealed. Costs are not assessed against the board unless it acted with gross negligence, bad faith, or with malice.

Boards of adjustment have the discretionary power to approve variances from the terms of the zoning ordinance so long as the variance is not contrary to the public interest and, if due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship. The board also has the power to hear and decide appeals from administrative decisions of zoning officials, with the power to reverse, modify, or affirm that decision. Finally, the board of adjustment has the authority to grant special exceptions as provided for within a zoning ordinance.

A concurring vote of 75 percent of the board members is required in order to approve a case. In addition, every case must be heard by at least 75 percent of the members of the board.

CONCLUSION

Some believe that more enabling laws need to be enacted to expand the state's role in land use planning. In the 1960's, the American Law Institute drafted a Model Land Development Code that would do just that as well as clarify some SZEA ambiguities in local zoning matters. This Development Code provides for increased responsibility for regulating development of greater than local concerns and
requires some formal planning activity as a condition of exercising certain zoning powers. It is anticipated that the Texas Legislature may eventually enact some of the provisions of the model code. Other legislative efforts are underway in other states, as well. For the present however, the SZEA with amendments, provides the foundation for local zoning efforts in Texas.