

City of Bishop, California
Tentative Tract Map 250, Kingston
Responses to Comments

On July 15, 2015, the City of Bishop submitted to the State Clearinghouse an Initial Study on Tentative Tract Map 250, Kingston (State Clearinghouse Number 2015071041). The public review period began on July 15, 2015 and ended on August 13, 2015. On August 10, 2015 the City of Bishop held a public hearing to take testimony on the adequacy of Initial Study. In total, the City received comments, either orally or in writing, from 34 individuals and one agency.

As a result of the comments and information received, more detailed soils and biological studies were conducted. The biological study found two new potentially significant effects. While those effects can be mitigated to less than significant with the measures identified in the biological study and revised Initial Study, the presence of new potentially significant effects necessitated recirculation (Guidelines For Implementation of the California Environmental Quality Act 15073.5 (b)(1) CEQA Guidelines). In addition to the conclusions of the additional studies, information contained in the Initial Study was expanded to further document the findings of the Initial Study.

The public review period for the recirculated Initial Study began on November 12, 2015 and ended on December 11, 2015. The Initial Study was circulated by the State Office of Planning and Research to ten state agencies. No comments were received from any state agency. Twelve sets of written public comments were received from ten separate commenters (including comments with multiple signers).

The City of Bishop appreciates the time spent and the interest shown by the public in this project. As a result of the comments received, additional mitigation measures are recommended and revisions to the project design have been made.

CEQA does not require responses to public comments on Negative Declarations. However; to provide full information to the decision makers and full disclosure to the public, the city is providing detailed responses to the comments on the November 11, 2015 Initial Study. The comment issue areas on the July 15, 2015 Initial Study are summarized at the end of these responses along with identification of the commenter(s) on each issue area. The revised Initial Study was created in response to these comments and expanded discussion of the identified issue areas is included in that document. Copies of all comments will be provided to the City Council and Planning Commission.

Included in the comments on both Initial Studies were numerous comments on the project design, density, and use. In accordance with CEQA, these comments were addressed to the extent to which the issues raised may cause or contribute to changes in the baseline environmental conditions. The remaining design, density, and use

comments will be included in the staff report to the Planning Commission for their consideration at the public hearing on the Tentative Tract Map and Use Permit.

Pursuant [CEQA Guidelines] Section 15064, an effect shall not be considered significant in the absence of substantial evidence. None of the comments provided on the Draft Mitigated Negative Declaration nor other information in the record provide substantial evidence (as defined in Public Resources Code §21080[e]) that there will be significant adverse physical impacts to the environment that are not mitigated to a level of less than significant as a result of implementation of the Project. Therefore, adoption of a Mitigated Negative Declaration is still recommended.

The Individual Comments follow. Only those comments that are directed to the Initial Study are numbered.

Good Evening, My name is Pamela Christner I reside at 777 Rome Dr.

I'm going to discuss the impact ON indigenous animals that will result from the proposed Kingston Tract 250 development, as well as point out some gaps in the City's understanding of green house gas emissions from this development:

P
Christner-1

First of all, the City of Bishop should be congratulated for hiring Jim Paulus Ph.D. to conduct a study of the Project's impact on Biological Resources. The effects on wildlife have been one of our main concerns with this proposal. The site provides considerable habitat for wildlife as well as enjoyment for us as we observe **their** activities. We view the removal of 30-35 mature trees as potentially devastating to bird and other life forms on the parcel. As I pointed out several weeks ago, certain animals rely on mature forests for their nesting and growth.

Dr. Paulus points out in his analysis the importance of minimizing the impact of noise, human activity and particularly night lighting to maintain some degree of integrity in the riparian corridor surrounding South Fork of Bishop Creek. Since the City has not defined what types of homes will be built, how can the City contend that Mitigation Measure BIO-2 will prevent Potentially Significant Impacts? A six-foot high wall will not block light or noise from a multi-story **structure**.

P
Christner-2

Around the world there is much discussion of the damaging effects of green house gases. I am not an expert on climate science or green house gas emissions. However, the analysis of emissions provided by the City assumes that home construction on the site will proceed five days a week for 220 days. (8) Since no homes are scheduled to be built until each lot has been sold now, how can the City make such an assumption?

Again, the City has not defined what kind of homes will be built. The City doesn't know who will purchase the lots or where or how they will get financing. We have spoken with Chase Bank, Bank of America, Alta One, Eastern Sierra Bank, and El Dorado Bank who all state they don't provide loans for vacant land. The City doesn't have any idea of how soon the lots will be sold or if they will be sold. Therefore the City cannot possibly know how long construction will take. It could take ten years. Obviously the greenhouse gas emissions analysis is speculative, not factual and is meaningless.

Thank you.

Received from:
Pamela Christner
12/14/2015 City Council Meeting

New Reply Delete Archive Junk Sweep Move

Search email

Folders

Inbox 7

Junk 6

Drafts 1

Sent

Deleted

contractors list ICWCSD

dell info

earthquake

ICWCSD

APC

ed and linda

janet

joel friedman

kay

kmart

McT

mineral rights

New furniture

NIH echo

Nursery

norton

SDMS

terry

New folder

FW:



Terry Tye 12/08/15

To: Terry Tye

From: tyet47@hotmail.com

To: rrj@jones-mayer.com; tyet47@hotmail.com

Subject:

Date: Wed, 2 Dec 2015 10:42:54 -0800

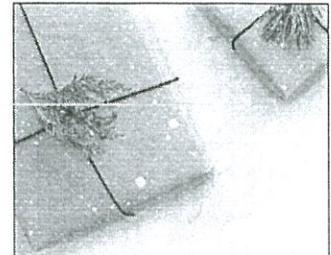
Ryan, I am seeking a legal opinion related to Kingston.

Does the zoning map or the land use map have legal authority?

Thank you,

Terry Tye, 747 Rome DR, 760-920-1472

TT-1



Give Beautifully

Receive a Stella Artois holiday Chalice with select Gilt purchases.



Received from:
Terry Tye 12/14/2015
City Council mtg.
[Signature]

To: Bishop City Council, Bishop City Attorney Ryan Jones

From: Terry Tye 747 Rome Dr.

Re: Kingston Subdivision TTM #250

Date 12/14/2015

The revised Initial Study on TTM #250 is unacceptable in its present form. It is filled with errors, contradictions, and inaccuracies.

The two main problems with the Initial Study are:

There is a contradiction between the Land Use Map (1991) and the Zoning Map (2011). The Land Use Map identifies the allowable density as medium. The Zoning Map identifies the allowable density as Low. Low density allows 1-5 units/acre, Medium 5-9.9 units /acre.

TT-2

Determining which Map has the prevailing legal authority is the essence of the argument. The Land Use Map is based on the General Plan, therefore it is general. The Zoning Map is specific. This leads me to conclude that the City has improperly identified the parcel as being able to be developed as Medium Density. Not being a lawyer, I decided to consult one for an opinion on this. On December 2, 2015 I emailed the City attorney, Ryan Jones, asking for his legal opinion on the matter. Unfortunately I never received a response from Ryan so I draw my conclusion from my own research which is referenced for you.

TT-3

The next big problem is the total lack of information provided by the City identifying what types of homes will be allowed to be built. The Project Description states, at least in one section, that no new homes will be built. The Project has not been defined. What is the Project?

The other problems with the Initial Study are too numerous to comment on in three minutes so I have written a document addressing my other concerns and I submit it to the City tonight. It is lengthy, thorough and referenced. Please take the time to read it. There are sixteen other residents of Rome Dr. that have signed on to the document. We would be happy to read it to you at the January 11, 2016 Public Hearing if you so desire.

RECEIVED

DEC 14 2015

CITY OF BISHOP

December 14, 2015

Dear city council members:

When I attended the city council meeting on August 10, 2015 there was public comment on the Kingston subdivision. The many comments against the project dealt with a variety of issues- too much added traffic, a poorly designed subdivision and the destruction of a beautiful and vigorous habitat. The only comment in favor of going ahead which was stated by a number of people was the fact that we need more housing in Bishop. I believe this deserves great thought.

I don't think anyone would argue that we need more housing but I would argue that we want to do it in the very best way. Do we want to build substandard houses in an area that requires the removal of mature trees and animal habitat? Do we want to further impact an over-stressed traffic area? Do we want to infuriate old neighbors and have new homeowners move into a hostile situation? I think the answer to these questions is no. If this were in fact the only place within the city to build new homes, then there would be no choice. The reality is, LADWP has lots of land that could be used where none of the above mentioned problems would occur. At the August 10 meeting, I suggested the area behind Von's/Kmart on Spruce Street. It would not require the removal of trees, there's little traffic and no one to anger. It would also allow for an intelligent plan with a wide enough street, sidewalks and parking.

I know it is the job of the city council to make decisions for its citizens. It's not enough, though to "just" make a decision. It has to be the right one: the one that will serve the city best as we move forward; the one that will provide great housing instead of adequate housing; the one that respects the environmental concerns of people; the one that will help us be an actual community and not simply a bunch of individuals who live within the same boundaries.

I am urging you to deeply consider this matter. We can always find a place to build a house but once we have destroyed the trees, the fields and the homes of our wildlife, there is no going back...

Sincerely,

Mary Baker
630 West Elm Street
Bishop, CA

Chad & Katie Galvin
786 Rome Dr.
Bishop, CA 93514

RECEIVED
DEC 14 2015
CITY OF BISHOP

December 13, 2015

Bishop City Council:

Comments Regarding Tentative Tract Map 250 - The Kingston Subdivision

We are writing to the City Council to voice our concern over the proposed Kingston Subdivision. We want to make it clear that we are not opposed to the development. However, we feel the manner in which the project is moving forward and the tentative plan itself requires further consideration.

Katie and I are third and fourth generation Bishop residents with a vested interest in seeing this community thrive. We have lived the majority of our lives within the city limits and are raising two children here as well. We can easily recognize and understand the need Bishop has for additional housing. That said, we also appreciate where the appeal of living in Bishop stems from.

The City of Bishop faces unique challenges separate from most municipalities due to the fact that Los Angeles owns a greater part of the Owens Valley. On one hand, this relationship with Los Angeles has allowed Bishop to maintain its tranquil quality of life due to the proximity of land which remains minimally disturbed. On the other hand, this relationship has resulted in almost non-existent economic growth. We take into consideration the nature of the given situation; yet we feel the current subdivision plans provide an imprudent solution.

The amount of exceptions required to proceed will produce an outcome that is marginal at best. When we look around Bishop we already see enough mediocrity. Unfortunately, the high cost of living limits the amount of money available to improve existing properties. Couple that with limited land and high development costs and the result is substandard quality. We understand the city's dilemma but the city shouldn't be so eager to compromise. In our opinion, the site merits closer to ten lots with a standard street; no CC&Rs, no awkward workarounds, and a density designation that suits the neighborhood.

Most of the feedback the city will receive on this matter will be people trying to preserve their own self-interest. We want to see the city strive for providing us with a development we can be proud of, not something marginally adequate.

RECEIVED

DEC 14 2015

CITY OF BISHOP

To: Bishop City Council

From: Jane Gillam
861 Chamberlain Street
Bishop CA 93514

Date: 14 December 2015

Re: Development of the Kingston Subdivision, Tentative Tract Map 250

I support ~~of~~ the development of the Bishop Nursery property into residential lots. However, for the welfare of our neighborhood and the future of our town, I request the following conditions.

- The new street must meet city standards, with curbs and stop sign.
- Each individual lot in the development must meet current Bishop minimum lot size requirements.

- For environmental and wildlife considerations, a minimum number of trees to be removed should be established.

- I defer criteria for utility and drainage services to the City's Public Works Department.

JG-1



Michele Thomas

From: Toni Bayer [tonibayer@yahoo.com]
Sent: Tuesday, December 08, 2015 5:05 AM
To: Michele Thomas
Subject: Proposed Kingston Project

To Whom It May Concern:

As a resident of Bishop and specifically in the neighborhood affected by the proposed "Kingston Project" I would like to submit this email in **OPPOSITION** to the proposed project.

1. The City needs to follow it's own rules.

Although the City of Bishop has revised the plan, it is noted that the density of the 2.75 acre project remains at 15 subdivided lots. The City in it's own document states that minimum lot size is 7000 square feet. Most of the lots in this plan are well below 7000 sq. ft. If the City followed it's own rules regarding lot size, street width and sidewalk size, the number of lots would drop to approximately 11 lots. In the project documents it indicates that if lot development conflicts with "people" space (i.e. sidewalks, trees, etc.) the "people" space will be sacrificed.

2. No new housing is directly created by this project. Instead, it eliminates a business that has provided jobs in the Bishop and greater community.

The City asserts the need for more housing. This project merely eliminates a long established business, degrades open space and only benefits the developer.

Thank you.

Toni Bayer
852 Crosby St. #D
Bishop, CA 93514

Michele Thomas

From: Paul Slaton [pawslaton@gmail.com]
Sent: Monday, December 14, 2015 7:15 AM
To: Michele Thomas
Subject: kingston subdivision

Hello, I am opposed to the proposed subdivision. There are too many lots for that size land parcel. Put in fewer houses. Why crowd everyone together? Better yet, put in a park. 15 dwellings on 2.75 acres is demeaning and undignified, you even have to change city variances to get it done. The development smells of developer greed without improving the character of the town. Put in lot sizes that are appropriate for the area. Home street is already too busy. Again, put in a city park.- Thank you

Paul Slaton

Peter E. Conn, P.E.
Susan Diez, MD
774 Rome Drive
Bishop, CA 93514
916.812.4731



November 25, 2015

Mr. Gary Schley
Planning Department
City of Bishop
P.O Box 1236
Bishop, CA 93514

Subject: Revised Mitigated Negative Declaration, Tentative Tract Map No. 250,
Kingston Subdivision

Dear Mr. Schley:

We have read the Revised Mitigated Negative Declaration Provided for the Tentative Tract Map No. 250, Kingston subdivision and continue have the following questions and concerns.

The Use Permit for Tentative Tract Map No 250 states that the developer is proposing a street width of 42 feet that includes pedestrian sidewalk on one side of the street. The Tentative tract map indicates that the developer is proposing a vehicle travel way street width of 36 feet and 28 feet (or 26 feet if the dimension shown on the map is to the back of curb) for the hammerhead turnaround. These street widths and proposed lot frontages do not provide space for vehicle street parking, and vehicle ingress and egress to the parcels. Where are property owners and visitors going to park their vehicles to access these parcels?

Especially of concern is the hammerhead turnaround. Bishop Municipal Code requires a 50 feet minimum radius for cul-de-sac turnarounds. The 28 feet street width (or 26 feet if the dimension shown on the map is to the back of curb) and substandard lot frontage proposed by the developer does not provide for vehicle street parking, parcel access and safe vehicle turnarounds. Parcels 6, 7, 8, and 9 have restricted access and very limited street parking due to the design of the hammerhead turnaround. How are public safety, package delivery vehicles and local traffic going to maneuver in the hammerhead turn around with vehicle street parking to access parcels 6, 7, 8 and 9?

What is the justification for setting aside Bishop Municipal Codes and Mobility Element Design Standards for this project? The requested variances to the Codes and Design Standards are as follows:

Use Permit. The project would require a use permit to set aside several Bishop Municipal Code (BMC) and Mobility Element (ME) design standards. Exceptions are listed and describe below:

BMC Section 16.28.050 Local streets—Widths

BMC Section 16.28.060 Dead end streets—turnaround and street length

BMC Section 16.28.070 (B) Private streets

BMC Section 16.28.100 Curve radius

BMC Section 16.28.230 Lot size and lot frontage (lots 6 and 9)

BMC Section 17.20.050 (A) front yard setback (lots 13 and 14)

ME Local Street Residential Area - 4'6" planter strip between curb and sidewalk.

ME Local Street Residential Area - placement of sidewalk at each edge of roadway.

PConn-1

The Revised Mitigated Negative Declaration for this proposed project does not give reasoning behind such variances, nor does it provide satisfactory mitigation for not complying with Bishop Municipal Codes (BMC) and Mobility Element (ME) Design Standards.

BMCs and ME Design Standards exist for a reason to provide minimum standards for safety, aesthetics and functionality. The project as proposed is inconsistent with standards set by the City of Bishop and nearby existing development. It is precisely what the standards are in place to prevent.

We are aware that Bishop needs more housing options, and we are not opposed to the development of this parcel. We expect that any proposed development is consistent with the set standards of the City and existing land use.

We look forward to your responses to these additional concerns and questions.

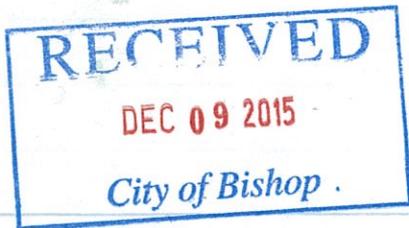
Sincerely,



Peter E. Conn, P.E.
RCE C 38015



Susan J. Diez, MJD.



12-6-2015

As a homeowner
living in the neighborhood
of the Kingston Subdivision,
I strongly oppose developing
that subdivision into
15 lots.

Robert Weber
851 Crosby Str
Bishop, Ca 93514

SW-1

Discussion of Transportation/Traffic-First of all the traffic study was done by Triad/Holmes Associates, the same company designing the project for Bob Kingston. Of course they are going to produce a favorable report. This is an obvious conflict of interest. Why didn't the City do their own impartial study using a simple traffic counting device to generate accurate numbers instead of speculating about the volume of traffic that the nursery generates. The study says that the Project with 15 homes will generate 150 trips per day. $150 \text{ trips per day} \times 365 = 54,750$ new vehicle trips per year all emptying onto Home St., arguably the most congested street in Bishop. The nursery does not generate anywhere near that volume of traffic. Yet the City contends that traffic generated by fifteen homes will be less than the average daily traffic generated by the nursery. It just isn't believable and there is no meaningful data to support the conclusions.

THE NURSERY HAS BEEN CLOSED THE PAST FEW SUNDAYS AND VERY LITTLE TRAFFIC THE REST OF THE WEEK. FOUR EMPLOYEE VEHICLES ARRIVE AROUND 7AM AND ONE MORE AT AROUND 9AM MONDAY TO FRIDAY.

~~THE~~ AS FAR AS ADDITIONAL VEHICLES, THE MOST I'VE OBSERVED IS FIVE ADDITIONAL CARS AT A TIME. I DO DRIVE BY SEVERAL TIMES A DAY.

SW-2

Discussion of Hazards and Hazardous Materials-The Document recognizes the existence of DWP's Phase 1 and Phase 2 Environmental Assessments. It also documents the site visit by Lahontan Regional Water Quality control Board. That visit resulted in water and soil sampling. The soil samples revealed high levels of contamination including VOC's. Lahontan turned over their investigation to the Inyo County Environmental Health Department. Environmental Health ordered DWP to clean up the contaminated soil. DWP assigned responsibility to Bob Kingston. In a letter to Bob Kingston dated 10/28/2015 from Marvin Moskowitz, director of Inyo County Environmental Health Services, Inyo County gave Notification of Case Closure for the Bishop Nursery, 789 N. Home Street, Bishop, CA, APN 008-090-02-03- No Further Action Required. In conclusion under the section titled No Further Action Required Rationale, bullet point #1 states that "contaminated soils have been removed". This is not true! The contaminated soil is still on site. 3-4 yards of contaminated soil is still on site (~10,000-12,000lbs). Mr. Kingston and the Environmental Health Dept. of Inyo Co. need to produce documentation of the soils removal and disposal at a certified hazardous waste site. (10) The Negative Declaration is again wrong, inaccurate and misleading.

HERE IS A PICTURE I TOOK TODAY OF THE CONTAMINATED PILES OF SOIL!

Received from
STAN WOODIN
12/14/15
City Counselor



12.14.2015 16:49

B546P NURSERY 12-14-2013
@ 3:49 PM

COTTONWATER SOIL COVERED

BY PLASTIC TANKS

To: Bishop City Council, City Attorney Ryan Jones

From: Terry Tye and Kay Eichstedt, 747 Rome Dr.; Stanley Woodin and Pam Christner, 777 Rome Dr.; Harry, Alene and Alex Greenland, 730 Rome Dr.; Ed and Linda Carlson, 737 Rome Dr.; Mark and Linda Holt, 746 Rome Dr.; Jacob and Vanessa Morgan, 770 Rome Dr.; Mike Slates and Lynne Almeida, 757 Rome Dr.; Paul and Michele Slaton, 756 Rome Dr.

Re: Tentative Tract Map 250, Kingston Subdivision

Date: 12/14/2015

In accordance with the California Environmental Quality Act the City of Bishop is required to conduct an Initial Study to determine whether Tentative Tract Map No. 250, Kingston Subdivision may have a significant adverse effect on the environment. The City contends that the Project will not have any significant effect with adherence to the Mitigation Measures suggested in the study. We disagree and present this document to the City to support our contention that the Initial Study is flawed and factually inaccurate and that the Project does have Potentially Significant Impacts.

The Bishop planning department sets forth criteria and processes that are followed in the environmental review of development projects or other actions by the City . These guidelines give specific information on what projects or activities are exempt, and criteria for determining whether a development project should receive a Negative Declaration (ND-having no significant impact on the environment) or have an Environmental Impact Report (EIR) prepared. The guidelines (in accordance with state law) state, "if any of the effects of a project may have a substantial adverse impact on the environment, regardless of whether the overall effect of the project is adverse or beneficial, then an Environmental Impact Report must be prepared." Environmental review is required in conjunction with an application for any discretionary action by the City. Discretionary actions include rezoning, tentative maps, variances, and conditional use permits.

TT-4

Therefore, if any portion of the Revised Draft Environmental Initial Study Mitigated Negative Declaration is shown to be factually inaccurate, the Document must be rejected in its entirety.

TT-5

The Notice of Public Hearing and the Negative Declaration both state that the General Plan Land Use designation for the site is Medium Density Residential (5.1-9.9 DU/AC) and is zoned R-1 Single Family Residential District. This is what the Land Use map (dated 1991) shows. However, the Zoning map (dated 4/25/2011) shows the parcel is designated as Low Density R-1 residential. Low density developments allow for 1-5 DU/AC. If the parcel was correctly designated as Low Density this would only allow for the development of 13.75 units. Since you can't build ¾ of a house then logically only 13 homes/lots could be developed. This would require redrawing the Tract Map and would necessitate the rejection of the Negative Declaration in its entirety.

This is a controversial assertion but one that deserves close scrutiny. The question is does a Zoning Map or a Land Use Map possess the prevailing legal authority? We emailed the City Attorney, Ryan Jones,

and asked for a legal opinion on this question. We have not received a response yet. An internet search came up with several documents or legal opinions that seem to indicate that the Zoning Map would be the governing authority in the determination of what the allowable density of this development would be. We are submitting these documents for the City Council to review and formulate their own opinion as to which map, Zoning or Land Use, possesses the prevailing legal authority. (1,2,3,4,5,6,9)

TT-6

We now know that the project will not create any new homes. This has been the City's primary selling point. We have been told that there is a dire need for new housing units in Bishop and this project will address that need. Not true. In the latest proposal, Appendix G, the Environmental Checklist Form #8 lays it out with clarity. "The proposed development is a 15 lot residential subdivision on 2.75 acres. The proposal is to develop LOTS FOR SALE with future residence construction to be by the individual lot owners."

The Document contradicts itself. On page 3 of the Document, the Project Description says this. "The proposed project would include the removal of the existing Bishop Nursery, followed by infrastructure improvement (including a main access roadway, drainage improvements, and extension of utilities to serve the individual parcels), site grading and preparation, and CONSTRUCTION AND SALE OF 15 SINGLE FAMILY DWELLINGS." Which is it going to be? Will there be homes or no homes? The document does not specify which will happen and therefore the public is inadequately informed and is unable to comment in an informed manner. The Document does not define the Project.

Furthermore, if no new homes will be constructed as a result of the project, what kind of homes will the individual lot owner's be allowed to construct? The Negative Declaration does not contain one word about what kind of homes the City will allow to be built or placed on the parcels. The City has to specify what types of homes will be built and what code will be followed in the construction of those homes. The Document is not complete without this information. Without this knowledge the City is unable to assert that there will not be Aesthetic, Air Quality, Geologic, Noise, Population and Housing, Public Services, Recreation, or Traffic impacts that are potentially significant. This means the document is at best incomplete and at worst flawed to the point that the City Council should reject it.

TT-7

Towards the end of the Environmental Checklist, Section XVIII; Mandatory Findings of Significance, subsection b, the Document questions "Does the project have impacts that are individually limited but CUMULATIVELY considerable?" There is a definition provided " "Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects and the effects of probable future projects?" (Remember Short St.)

There is a section of the Document called Evaluation of Environmental Impacts that reads like an instruction manual for the person responsible for preparing the Document. It is very useful and informative. #2 says "All answers must take account of the whole action involved, including off-site as well as on-site, CUMULATIVE as well as project-level, indirect as well as direct, and construction as well as operational impacts."

CUMULATIVE IMPACTS, more about that later.

TT-8

The next section of the checklist contains a final tally of the potential impacts and their significance. The City has marked six of these categories as having Potentially Significant Impacts. Based on our previous comments in this document, we believe that Aesthetics, Land Use/Planning, Population/Housing, Public Services, Utilities/Service systems, Geology/Soils, Noise, and Recreation should be designated as Potentially Significant. We believe that the final determination in the Environmental Checklist should be the third choice, "I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required". Mr. Schley checked box #2 finding that A MITIGATED NEGATIVE DECLARATION will be prepared. We disagree strongly with his decision to designate the project in this manner.

IMPACT DISCUSSIONS

TT-9

The Discussion of Aesthetics-This narrative seems to be sensible unless you take into account the fact that the City has not said one word about what kind of homes it will allow to be built in the subdivision. The view from our home may not be considered by the City to be exceptional, spectacular or "panoramic" but it is tranquil, serene and pleasant. Is there going to be a two story home blocking our view, looming over us like a warehouse? Or will it be a three story or four? We don't know and neither does the City. This Document should be thrown out for being incomplete. The Discussion of Aesthetics points out "the project site is largely unlit at night" and that "all exterior lighting shall be shielded and downward directed". What about the interior lighting from the second or third story?

TT-10

Discussion of Biological Resources- The City of Bishop should be congratulated for hiring Jim Paulus Ph.D. to conduct a study of the Projects impact on Biological Resources. The impact on wildlife has been one of our main concerns with this proposal. The site provides considerable habitat for wildlife and provides enjoyment for us when we observe these activities. We view the removal of 30-35 mature trees as potentially devastating to bird and other life forms on the parcel.

To quote Dr. Paulus, "Another potentially significant impact of the proposed project arises from its proximity to the incised channel bed and northern bank of S. Fork Bishop Creek. The disturbed yet relatively unobstructed and quiet riparian movement corridor along the northern channel edge will become blocked almost completely with completion of the project. Removal of concealing tree cover will occur in concert with the establishment of new barriers that include night lighting, noise, pets, and human activity in very close proximity. Loss of the remaining passageway for wildlife to urbanized landscape would be A SUBSTANTIAL NEGATIVE IMPACT, due to CUMULATIVE fragmenting and isolation of the riparian corridor. The affected riparian corridor is important for dispersal and population maintenance of aquatic wildlife that includes sensitive species (e.g. Owens sucker). It provides for movements and foraging by existing populations of native amphibians, birds, bats and other mammals. The best available strategy for minimization of impact to these functions would be to preserve as much as possible of the extant unobstructed and quiet quality of the riparian corridor at the southern edges of Lots 1-6." (7)

Dr. Paulus goes on to say “Minimizing new lighting, fencing, domestic pet and activity-related obstructions, and new noise affects reaching the bed, banks and the immediate bank top of S. Fork Bishop Creek, will require additional design measures with regard to lighting, fences, and planting of native vegetation. In regard to new lighting, shielding so that all light is cast downward (City of Bishop, 2015) is recommended across the site. Lighting impacts to the riparian habitat can be minimized if this requirement is extended as much as possible at lots 1-6 to disallow lighting of the southern Kingston Parcel edge. For example, fencing requirements should be specified at a minimum height of 6 ft or more at the southern edge of Lots 1-6, using only solid materials that will not transmit night lighting. This measure will also minimize noise reaching the stream, and will not allow access by dogs.”(7)

Dr. Paulus points out in his analysis the importance of minimizing the impact of night lighting, noise and human activity in maintaining some degree of integrity of the riparian corridor. Since we don’t know what types of homes will be built, how can the City contend that Mitigation Measure BIO-2 will prevent Potentially Significant Impacts? A six foot high solid fence will not block the light or noise from a two or three story home!

TT-11

Discussion of Hazards and Hazardous Materials-The Document recognizes the existence of DWP’s Phase 1 and Phase 2 Environmental Assessments. It also documents the site visit by Lahontan Regional Water Quality control Board. That visit resulted in water and soil sampling. The soil samples revealed high levels of contamination including VOC’s. Lahontan turned over their investigation to the Inyo County Environmental Health Department. Environmental Health ordered DWP to clean up the contaminated soil. DWP assigned responsibility to Bob Kingston. In a letter to Bob Kingston dated 10/28/2015 from Marvin Moskowitz, director of Inyo County Environmental Health Services, Inyo County gave Notification of Case Closure for the Bishop Nursery, 789 N. Home Street, Bishop, CA, APN 008-090-02-03- No Further Action Required. In conclusion under the section titled No Further Action Required Rationale, bullet point #1 states that “contaminated soils have been removed”. This is not true! The contaminated soil is still on site. 3-4 yards of contaminated soil is still on site (~10,000-12,000lbs). Mr. Kingston and the Environmental Health Dept. of Inyo Co. need to produce documentation of the soils removal and disposal at a certified hazardous waste site. (10) The Negative Declaration is again wrong, inaccurate and misleading.

TT-12

Discussion of Land Use and Planning-Section b. The Document says “The General Plan Designation for the site is Medium Density Residential and the zoning is R-1, Single Family Residential.” and goes on to say “The proposed use, a single family residential development is consistent with both the General Plan and Zoning...”. Not true, the Zoning Map identifies the parcel as low density as previously mentioned. This is yet another conflict in the Document.

TT-13

Discussion of Population and Housing-There is no basis for the conclusions drawn in this section. Since we don't know what type or size of houses will be developed by the parcel owners the City can't possibly substantiate these claims.

TT-14

Discussion of Public Services- section c. This section of the report estimates that student enrollment would increase "by approximately 4 students (0.2%)". Where did the City come up with this data. It is not credible.. The City doesn't even know what kind of homes will be allowed to be built. How can the City possibly know how many children the future owners have or may have. This kind of information is misleading and doesn't belong in the Negative Declaration if the City wants the Document to be credible.

TT-15

Discussion of Transportation/Traffic-First of all the traffic study was done by Triad/Holmes Associates, the same company designing the project for Bob Kingston. Of course they are going to produce a favorable report. This is an obvious conflict of interest. Why didn't the City do their own impartial study using a simple traffic counting device to generate accurate numbers instead of speculating about the volume of traffic that the nursery generates. The study says that the Project with 15 homes will generate 150 trips per day. $150 \text{ trips per day} \times 365 = 54,750$ new vehicle trips per year all emptying onto Home St., arguably the most congested street in Bishop. The nursery does not generate anywhere near that volume of traffic. Yet the City contends that traffic generated by fifteen homes will be less than the average daily traffic generated by the nursery. It just isn't believable and there is no meaningful data to support the conclusions.

TT-16

THE STREET- The street has been the source of many arguments against this project because it is a substandard street. This is acknowledged by the City in the Document. Safety is one of the concerns. Will it endanger pedestrians or the handicapped? Will it allow proper access for emergency services? The entire Project as currently proposed requires six variances to the Bishop Municipal Code and Mobility Element. All six variances deal with the street, although #4 also deals with lot sizes. This is conveniently concealed in the Document. Variance #4 is incorrect and is another reason to throw out the Document. The design of the street, and the need for the variances have one reason. Without a substandard street it would be impossible to put fifteen homes on this small parcel. This would decrease profitability and make development less appealing. The City should not be willing to set aside the rules that were written to prevent improper, undesirable development projects.

TT-17

Variance #4- BMC Section 16.28.230 requires minimum lot size of 7,500 square feet, the Document says 7,000 square feet. THE DOCUMENT IS WRONG! The City will argue that this was a typographic error. Be that as it may, it is still wrong and errors like this matter. They matter because the error is compounded when they lead to other errors that minimize the CUMULATIVE impact of the Project. The secondary error in this case is the conclusion that only 10 lots fail to meet the required lot size when in fact the number is actually 11.

TT-18

Green House Gas analysis- We are not experts on climate science or green house gas emissions. You don't need this expertise to see that the analysis of emissions provided by the City is also flawed in at

least one respect. The analysis assumes that home construction will proceed five days a week for 220 days. (8)

The City doesn't know what kind of homes will be built. The City doesn't know who will purchase the lots or where/how they will get financing (Chase Bank, Bank of America, Alta One, Eastern Sierra Bank, and El Dorado Bank don't provide loans for land). The City doesn't have any idea of how soon the lots will be sold or if they will be sold. Therefore the City cannot possibly know how long construction will take. It could take ten years. Therefore the greenhouse gas analysis is speculative, not factual and meaningless. As pointed out previously, one error leads to another.

Finally, on page 23 we find the Discussion of Mandatory Findings of Significance.

Section A states that "the Project DOES have the potential to degrade the quality of the environment and reduce the habitat of a fish or wildlife species. With the mitigation measures included in this Initial Study, that potential is reduced to less than significant."

Section B states that "the Project does not have impacts that are individually limited, but CUMULATIVELY considerable"

Section C states that "the entire record of information provided in this Initial Study indicates that there would be no significant CUMULATIVE impacts, or substantial adverse impacts on human beings, or substantial adverse impacts on fish or wildlife or sensitive species or cultural resources with adherence to the mitigation measures contained in this Initial Study."

The City cannot pretend to know what the individual or CUMULATIVE impacts of the Project will be, nor can it expect the public to be reassured that the mitigation measures will prevent individual or CUMULATIVE potentially significant impacts. The City doesn't even know what the full project entails because it has neglected to provide the most basic information. The Document does not specify what kind of houses will be allowed! What is the Project?

To conclude, the Planning Department sets forth criteria and processes that are to be followed in the environmental review of development projects. The guidelines give specific information on what projects are exempt, and criteria for determining whether that project should receive a Negative Declaration or have an Environmental Impact Report (EIR) prepared. State law states that "if any of the effects of a project may have a substantial adverse impact on the environment, regardless of whether the overall effect of the project is adverse or beneficial, then an Environmental Impact Report must be prepared".

The REVISED DRAFT ENVIRONMENTAL INITIAL STUDY MITIGATED NEGATIVE DECLARATION falls short of this standard. The Bishop City Council should reject the Initial Study in its entirety. The City Council should recommend that a formal Environmental Impact Report be prepared if this Project is to be allowed to move forward. The developer should bear the cost of conducting the EIR.

TT-19

TT-20

RESPONSES

Pamela Christner

PChristner-1

The commenter disagrees with the recommendation for a six-foot high wall or fence to reduce impacts to wildlife.

As noted by the commenter, the City hired Dr. James Paulus because of his extensive experience with both CEQA and the Eastern Sierra, including the City of Bishop. The proposed mitigation measures were recommended by Dr. Paulus to provide screening for animals using the creek corridor at night and deemed sufficient to mitigate the impact of the project to less than significant. The commenter provides no substantial evidence to contradict this recommendation.

PChristner-2

The commenter disagrees with the greenhouse gas analysis.

GHG calculations from construction activities are generally amortized over the useful life of a project which is normally assumed to be 30 years. From a GHG burden perspective, it is therefore not relevant if 15 homes are built in one year or 10 years, either assumption leads to 0.5 houses per year over the 30-year useful life.

The construction duration is the default value contained in the construction activity module of the CalEEMod computer model used for air pollution emissions and GHG quantities throughout most of California. The B4UBuild.com web site provides sample construction timelines for average residential construction showing a duration of 6 – 9 months (120 – 180 workdays). More complicated construction practice can take somewhat longer. The 220 days duration (11 months) used in the model allows for somewhat more sophisticated construction activities while still producing a realistic result. Lot sizes do not suggest that the proposed 15-unit subdivision will be mansions. If anything, the calculated GHG emissions are perhaps slightly over-predictive because many work-days are not fully productive (waiting for inspections, sequencing sub-contractors, waiting for permits, etc.) rather than assuming that every work day is a maximum activity day as done in the model. We would not agree in the least that the GHG impact analysis is “speculative, not factual and meaningless” as stated in the comment. The GHG study constitutes a full impact disclosure using conservative assumptions that allows the Lead Agency to make an informed decision as required by CEQA.

Terry Tye

TT-1

This is a request for an opinion from the City Attorney and does not comment on the Initial Study. The same topic is the subject of comment TT-2 and will be discussed in detail under the response to that comment. As described in Response TT-2, the alleged conflict does not exist and there is no need to determine whether the General Plan Map or Zoning Map is the governing document.

TT-2

The commenter alleges a conflict between the Land Use Map and the Zoning Map. In fact, no such conflict exists. Zoning and General Plans are not required to use identical terminology or identical definitions for terms as long as the development policies are consistent. The Land Use Map from the General Plan identifies the subject property as Medium Density Residential at 5.1 to 9.9 units per acre. The Zoning Map shows the property as being Low Density Residential and zoned R-1. The map does not define density for either the Low Density Residential district or the R-1 zone. Density for zoning is controlled by the text of the Zoning Regulations. The density for the R-1 zone is controlled by minimum lot size, not units per acre. The minimum lot size in the R-1 zone is 5,000 square feet. This equates to a maximum density in the R-1 zone of 8.7 units per acre. This is less than the maximum density identified on the General Plan Land Use Map for the subject property and; therefore, does not create a conflict between the General Plan and Zoning.

TT-3

The commenter challenges the accuracy of the Initial Study as it does not describe the types and sizes of the houses to be built on the proposed lots. He also states that in at least one section the Initial Study says that no new homes will be built.

The proposed action is the subdivision of land into residential lots for sale. The subdivider does not propose to construct any homes. CEQA requires that the environmental analysis include indirect as well as direct impacts of the project. Construction of new homes on the lots is a reasonably foreseeable outcome and; therefore, the analysis assumed development of all the lots. If any lots are left undeveloped, the impacts will be reduced.

The type(s) of homes are defined as single-family residences by city zoning. While there may be a mix of sizes, the houses were assumed to be up to two stories (26 feet high) as limited by the Bishop Municipal Code (BMC). Floor areas and occupancy were assumed to be similar to other single-family residential neighborhoods in the city. Absent specific requirements or objectives of the subdivider or the city, this is the standard analysis for single-family residential subdivisions.

TT-4

The commenter states “Therefore, if any portion of the Revised Draft Environmental Initial Study Mitigated Declaration is shown to be factually inaccurate, the Document (sic) must be rejected in its entirety.”

The commenter inaccurately represents the requirements of CEQA with regard to perfection in an environmental document. CEQA Guidelines Section 15151 states in part “The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.” As long as one or more new significant environmental effects are not identified, neither recirculation nor an EIR are required (CEQA Guidelines 15073.5).

TT-5

See response TT-2

TT-6

See response TT-3

TT-7

This is a comment on cumulative effects. See response TT-19

TT-8

The Commenter disagrees with the determination to prepare a Mitigated Negative Declaration. No supporting evidence is cited for this disagreement and issues raised elsewhere do not provide substantial evidence of new or more severe impacts or inadequate mitigation, so the determination of Mitigated Negative Declaration is still recommended.

TT-9

The commenter challenges the findings regarding aesthetics on the basis that the future home sizes are not specifically called out. As noted in Response TT-3, maximum building heights will be 26 feet as regulated in the BMC. The potential for three or four story homes as stated in the comment does not exist under current regulations. Because of the retention of a 20 foot buffer by LADWP, the current owner, and the 15 foot rear yard setback required by the BMC, the new homes would be a minimum of 35 feet from the rear property lines of the Rome Drive lots and because of the location of the South Fork of Bishop Creek, separation between potential new homes and any existing home on Rome Drive would be over 40 feet. This exceeds the minimum rear setback to rear setback requirements of the R-1 zone by at least ten feet. Existing vegetation will be retained within the property retained by LADWP and additional tree planting is required as mitigation for wildlife. These will provide some level of screening between

the proposed lots and the existing homes. Therefore, this impact is considered less than significant.

With regard to lighting, there will be fugitive light from residential windows. This; however, will not provide substantial exterior illumination. As noted, there will be no street lights and all exterior lights will be required to be shielded and downward directed, mitigating the effect of exterior lighting to a level of less than significant.

TT-10

See Response PChristner-1

TT-11

This comment notes that the contaminated soils have not yet been removed from the site.

As noted in the communication from the Lahontan Regional Water Quality Control Board in a letter to the City of Bishop dated September 17, 2015 (Attachment 6), the site posed little threat to water quality. Therefore, the presence of the material on the site does not constitute a potentially significant adverse effect. Nonetheless, the material has been removed from the site.

TT-12

See response TT-2

TT-13

As noted in the response to TT-3 the type(s) of homes are defined as single-family residences by city zoning. While there may be a mix of sizes, the houses were assumed to be up to two stories (26 feet high) as limited by the Bishop Municipal Code (BMC). Floor areas and occupancy were assumed to be similar to other single-family residential neighborhoods in the city. Absent specific requirements or objectives of the subdivider or the city, this is the standard analysis for single-family residential subdivisions.

TT-14

The commenter challenges the projections for new student generation. The methodology described in the Initial Study is a standard approach to estimating student

populations and is based on local housing to student ratios. The commenter does not provide any evidence to the contrary. That being said, the Bishop Unified School District in their 2012 Fee Justification Study used a state-wide student generation factor of .7 students per new household. Under this formula, the project would generate 10.5 new students. Overall, the District has an excess capacity of 445 students and can accommodate the projected number of new students. Closer review of the numbers shows that the K-6 grades exceed the classroom loading standard of 25 students per classroom. This is also where the majority of the new student generation from the Project (6 new K-6 students) is expected to occur. While class sizes in the District exceed the classroom loading standard for the elementary grades, the class sizes do not exceed the maximum class size established in the California Education Code. The anticipated increase of six K-6 students would still not lead to exceeding the state maximum class size. Since the District is not expected to exceed the maximum class size and the project will be paying state authorized mitigation fees, the impact is anticipated to be less than significant.

TT-15

The commenter challenges the accuracy of the Trip Generation Study in part because he alleges that it was developed by the project engineer. The Trip Generation Study was produced by the City Engineer, not the project engineer, and represents the independent opinion of the city. The commenter also challenges trip generation numbers. Trip generation was calculated using standard engineering principles using Institute of Transportation Engineers information. While the commenter disagrees with the conclusion, no conflicting evidence is provided.

TT-16

This comment is a criticism of the proposed modifications to local subdivision Design Requirements and primarily deals with the street design. None of the questions raised relate to the environmental effects of the design modifications and as noted in the analysis, the street section including sidewalk meet minimum AASHTO (American Association of State Highway and Transportation Officials) standards for the number of lots proposed. The discussion of the appropriateness of modifying standards is only a CEQA issue to the extent that it adversely affects the physical environment.

The commenter also notes an error in the minimum lot size stated in the Initial Study. That is discussed under Response TT-17 that follows.

TT-17

The commenter is correct that the minimum lot size established in the Design Requirements is 7500 square feet, not 7000 square feet as described in the Initial Study. The Initial Study did correctly note that the minimum lot size in the R-1 zone is 5,000 square feet. This discrepancy is not material to the analysis. The analysis in the Initial Study was based on the environmental effects of number and size of lots

proposed. The degree to which those lots deviated from the code does not change those effects. Reconciling the different lots size minimums in the Subdivision Design Requirements and R-1 Zone in the BMC is the function of the Planning Commission through the Use Permit process.

TT-18

See Response PChristner-2

TT-19

This is a criticism that the cumulative effects of the project cannot be known without knowing precisely what types of homes will be constructed. See Responses TT-3 and TT-13.

TT-20

This comment recommends that the City Council reject the recommendation to adopt a Mitigated Negative Declaration and require that an EIR be prepared. As noted in the comment, state law requires that “if any of the effects of a project may have a substantial adverse effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, then an Environmental Impact Report must be prepared.” The comments provided by the commenter do not provide any substantial evidence of potential adverse environmental effects not fully disclosed and mitigated in the recommendations of the Initial Study. Therefore, the recommendation to adopt a Mitigated Negative Declaration remains.

Mary Baker

Commenter addresses project alternatives and project rationale. No comments on the content of the Initial Study were provided.

Chad and Katie Galvan

Commenters address modifications to standards and alternative design. No comments on the content of the Initial Study were provided.

Jane Gillam

The commenter provided two comments on the design modifications and one comment on the Initial Study.

JG-1

The commenter recommends that “a minimum (sic) number of trees to be removed should be established.” It appears that this comment intended to prevent excessive tree

removal. The comment did not suggest a number different than that identified in the Initial Study. The Initial Study recommends limiting the trees to be removed and meets the request of the commenter.

Toni Bayer

Comments are provided on project design and rationale. No comments on the Initial Study are provided.

Paul Slaton

The commenter expresses opposition to the project. No comments on the Initial Study are provided.

Peter Conn and Susan Diez

The commenters provide comments on the project design and proposed standards modifications. One comment on the Initial Study is provided.

PC-1

This comment is a criticism of the lack of justification for the proposed code modifications in the Initial Study.

The purpose of the Initial Study is to identify possible adverse environmental effect of the proposed project. It is not the rationale for the project. The discussion of the need for the modifications and the concurrence of the City that the need justifies the proposed modifications takes place within the context of the Tentative Map and Conditional Use Permit review by the Planning Commission.

Robert Weber

The commenter expresses opposition to the project. No comments on the Initial Study are provided.

Stan Woodin

This comment notes that the contaminated soils have not yet been removed from the site.

See Response TT-11

**July 15, 2015 Draft Initial Study and draft Mitigated Negative Declaration
Tentative Tract Map No. 250
Comment Response List**

Copies of all Comments will be provided to the City Council and Planning Commission for review and consideration.

Aesthetics:

Peter Conn, P.E./Susan Diez, MD

Mary Baker

Terry Tye/ Kay Eichstedt

Pam Christner

Agriculture Resources:

Peter Conn, P.E./Susan Diez, MD

Air Quality:

Peter Conn, P.E./Susan Diez, MD

Terry Tye/ Kay Eichstedt

Biological Resources:

Peter Conn, P.E./Susan Diez, MD

Terry Tye/ Kay Eichstedt

Mike Slates/Lynn Almeida

Phyllis Mottola

Pam Christner

Stanley Woodin

State of California Department of Fish and Wildlife

Cultural Resources:

Peter Conn, P.E./Susan Diez, MD

Geology and Soils:

Peter Conn, P.E./Susan Diez, MD

Terry Tye/ Kay Eichstedt

Hazards and Hazardous Materials:

William Talbot

Terry Tye/ Kay Eichstedt

Stanley Woodin

Peter Conn, P.E./Susan Diez, MD

Hydrology and Water Quality:

William Talbot

Peter Conn, P.E./Susan Diez, MD

Land Use and Planning:

Peter Conn, P.E./Susan Diez, MD

Mineral Resources:

Noise:

Peter Conn, P.E./Susan Diez, MD

Terry Tye/ Kay Eichstedt

Population and Housing:

Peter Conn, P.E./Susan Diez, MD

Public Services:

Marilyn Ray

Recreation:

Peter Conn, P.E./Susan Diez, MD

Transportation/Traffic:

Gayla Wolf

William Talbot

Terry Tye/ Kay Eichstedt

Mike Slates/Lynn Almeida

Mary Baker

Cindy Wahrenbrock

Larry Clark

Pam Christner

Karen Kong

Peter Conn, P.E./Susan Diez, MD

Utilities and Service Systems:

Teri Giovanine

Mike Slates/Lynn Almeida

Phyllis Mottola

Peter Conn, P.E./Susan Diez, MD

Terry Tye/ Kay Eichstedt

Mandatory Findings of Significance:

Peter Conn, P.E./Susan Diez, MD

General Plan Land Use Density:

Paul Slaton

Teri Giovanine

Mike Slates/Lynn Almeida

Terry Tye/ Kay Eichstedt

Ed Carlson

Karen McCoy

Right of Way and Street Design:

William Talbot

Mike Slates/Lynn Almeida

Terry Tye/ Kay Eichstedt

Ed Carlson

Cindy Wahrenbrock

Peter Conn

Karen Kong

Peter Conn, P.E./Susan Diez, MD

Economic Impact: No Adverse Environmental Affect, comment will be noted and put into public record.

Mike Slates/Lynn Almeida

Pam Christner

Qualifies for CEQA Categorical Exemption: Comment will be noted and put into public record.

Mark Heckman

Support of Project: No Adverse Environmental Affect, comment will be noted and put into public record.

Jake Rasmuson 8/10/2015

Allan Pietrasanta 8/10/2015

Julie Faber 8/10/2015

Opposition to Project: No Adverse Environmental Affect, comment will be noted and put into public record.

Kay Eichstedt 7/27/2015

Pam Christner 7/27/2015

REFERENCES:

1-Planning and Zoning; Fayette County, Georgia

2-Land Use Designation versus Zoning; Williamsburg, VA

3-Beginner's Guide to Land Use Law; Land Use Law Center Pace University School of Law

4-Land Use and Zoning Basics; <http://lawyers.findlaw.com>

5-Zoning; Wikipedia

6-Land-Use Planning; Wikipedia

7-Assessment of Biological Resources for Tentative Tract Map No. 250, Kingston Subdivision, Bishop; Jim Paulus Ph.D. 10/16/2015

8- GHG IMPACT ANALYSIS TENTATIVE TACT MAP 250 CITY OF BISHOP, CALIFORNIA; Giroux and Associates 1800 E. Garry Avenue #205, Santa Ana, Calif. 92705; Project No. P15-X19 AQ; Appendix COMPUTER MODEL OUTPUT, PAGE 5

9- Frequently Asked Questions, Olathe, Kansas

10- 10/1/2015 email from Marvin Moskowitz (Director of Inyo County Environmental Health Services) to Scott Cimino (DWP). Jim Tatum, Gary Schley, Dave Grah (City of Bishop)



ZONING MAP

of the City of Bishop

Adopted by City Council 25 April 2011

Legend

- City Limit
- Zone Districts
- Emergency Shelter Combining District
- Downtown Core
- Parcels

Zone	Acres	%
R-1	186.18	17.3%
R-2	169.10	14.9%
R-3	138.66	12.6%
R-2000	74.99	7.0%
M-1	64.58	6.0%
M-1	48.51	4.5%
A-R	30.87	2.9%
R-2000-P	11.05	1.0%
C-1	10.97	1.0%
C-2	8.52	0.8%
R-3-P	8.00	0.8%
O-P	3.62	0.3%
Total	1073.96	

Overlay Areas

Overlay	Acres
Downtown Core	13.79
Emergency Shelter	31.53

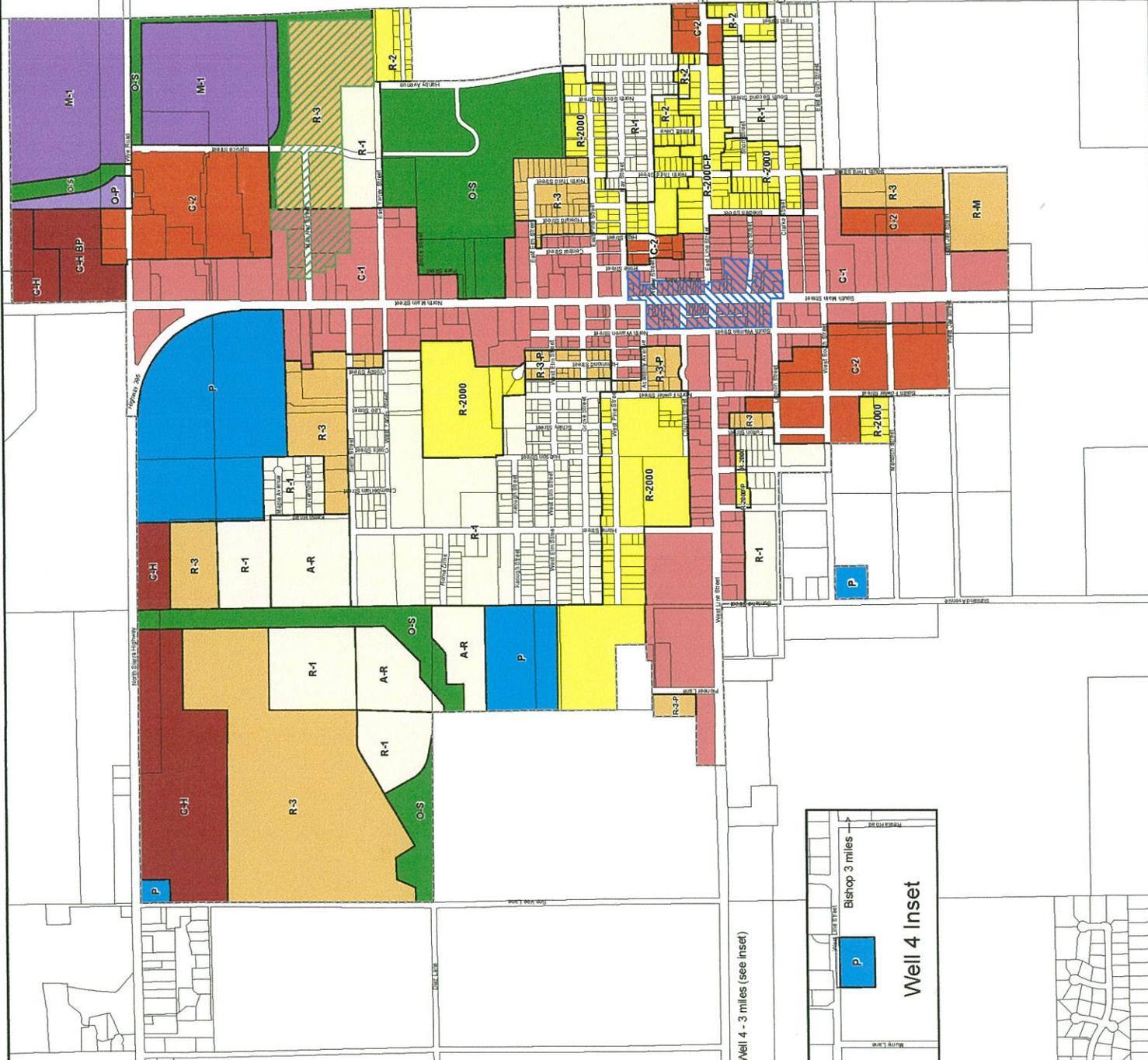


Zone Categories

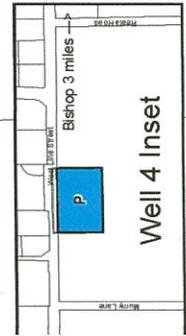
- LOW DENSITY RESIDENTIAL
- MEDIUM DENSITY RESIDENTIAL
- HIGH DENSITY RESIDENTIAL
- GENERAL COMMERCIAL
- HIGHWAY COMMERCIAL
- OFFICE AND PROFESSIONAL
- GENERAL INDUSTRIAL
- OPEN SPACE
- PUBLIC

District Definitions

- A-R Low Density Residential
- R-1 Single-Family Residential
- R-2 Low Density Multiple Residential
- R-2000 Medium High Density Residential
- R-2000-P Multiple Residential and Offices
- R-3 Multiple Residential
- R-3-P Residential Mobile Homes
- R-M Residential Mobile Homes
- C-1 General Commercial
- C-2 Commercial and Retail
- C-H Commercial Highway Services
- EP General Hospital
- O-P Office and Professional
- O-S Open Space
- ES Emergency Shelter



Well 4 - 3 miles (see inset)



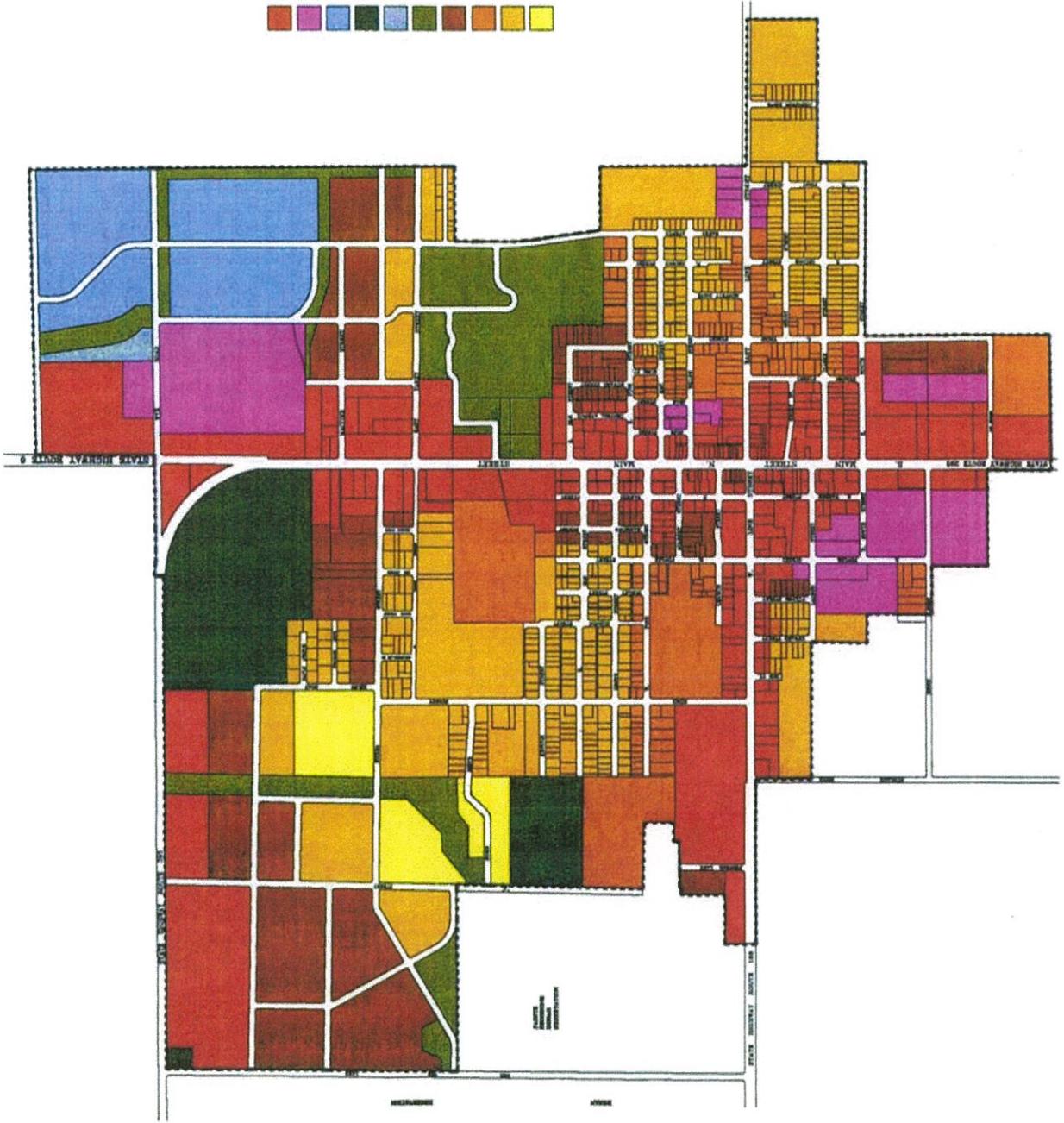
CITY OF BISHOP

1991 GENERAL PLAN

LAND USE

LEGEND:

- GENERAL COMMERCIAL
- HEAVY COMMERCIAL
- INDUSTRIAL
- PUBLIC LAND
- OFFICE AND PROFESSIONAL
- PARKS/OPEN SPACE
- HIGH DENSITY RESIDENTIAL (22.1 - 35 DU/AC)
- MEDIUM HIGH DENSITY RESIDENTIAL (10 - 22 DU/AC)
- MEDIUM DENSITY RESIDENTIAL (5.1 - 9.9 DU/AC)
- LOW DENSITY RESIDENTIAL (2 - 5 DU/AC)



THE PLANNING CENTER
 GEOGRAPHIC INFORMATION SYSTEMS
 1855 MAIN STREET, SUITE 203
 HESPERIA, CALIFORNIA 92345

Job: BPH-01
 Date: March 1994

HOME

OPEN
GOVERNMENT

AGENDAS/MEETINGS

FORMS/DOCUMENTS

FAYETTE
MAPS

EMPLOYMENT

ABOUT
FAYETTE

LIST OF
DEPARTMENTS

BOARD OF
COMMISSIONERS

BUILDING
DEPT

COURTS

ELECTIONS/MEETINGS

FINANCE/BUDGET

LIBRARY

PLANNING/ZONING

PUBLIC
SAFETY

PUBLIC

Fayette County, Georgia

Where Quality is a Lifestyle

CALENDAR

QUICK LINKS

SEARCH

PLANNING & ZONING

[Home](#) : [Planning And Zoning](#) : Zoning Overview -You are here

Planning & Zoning Home

Planning Functions:

Solid Waste
Management Plan
Comprehensive Plan
Fayette County
Thoroughfare Plan
Census Data
Septic System
Maintenance
Fayette Forward

Planning

Commission:

Agenda, Meeting
Schedule & Minutes

Zoning Functions:

Application Process
Fees
Development
Information
Ordinances

ZONING OVERVIEW

Learn more about the Zoning Department and what we do with the links below:

- [What is zoning ?](#)
- [What is the difference between planning and zoning ?](#)
- [History of zoning](#)
- [Purpose and intent of zoning](#)
- [Regulation development through adopted ordinances](#)
- [Boards served](#)
- [Property Parcel Identification](#)
- [Zoning Districts and Development Regulations](#)
- Basic zoning applications
 - [Rezoning](#)
 - [Variance](#)
 - [Preliminary Plat](#)
 - [Final Plat](#)
 - [Site Plan](#)
 - [Landscape Plan](#)
 - [Inspections](#)
- [Fayette County Zoning Department](#)

- WORKS
- PURCHASING
- RECREATION
- UTILITIES
- TAX ASSESSOR
- A-Z INDEX
- CONTACTS

- Zoning District Matrix
- Zoning Board of Appeals:
- Agenda
- Meeting Schedule & Minutes
- Subdivisions/Streets Authorized Plan for Golf Carts
- Application to Authorize Streets Plan for Golf Carts

- [Administrative Zoning](#) - no hearing required
- [Public Hearings](#)

Fayette County Administration

140 Stonewall Avenue West
Suite 100
Fayetteville, Georgia 30214

WHAT IS ZONING ?

State law gives Fayette County the authority to plan and control the use of private property through zoning. Zoning regulates where uses and development may locate.

Planning and Zoning are corresponding terms. Planning is a process that sets the growth pattern in the form of a Land Use Plan. Zoning is a system where different land uses are categorized into zones, each having its own set of standards and requirements. Zoning seeks to protect health, safety, and welfare of the general public, and is the mechanism that carries out the Land Use Plan.

Every piece of property in unincorporated Fayette County is zoned. The Fayette County Zoning Ordinance contains 17 residential zoning districts, and 6 nonresidential zoning districts.

Rezoning is the process by which a property owner requests to change the zoning and the use of their property. In Fayette County this process involves public hearings before the Planning Commission and the Board of Commissioners.

The application for rezoning is made through the Zoning Department and involves submitting an application, survey, legal description of the property to be rezoned, a letter of intent, a Concept Plan which indicates proposed buildings, uses, parking, landscaping, and the application fee.

After the application is accepted it is sent to various county departments and agencies for their comments. The Zoning Administrator prepares a staff report and makes a recommendation based on these comments and county policies.

The request is then brought before the Fayette County Planning Commission in a public hearing. Based on information provided by the applicant, input from the public, and the recommendation of the Zoning Administrator, the Planning Commission makes a recommendation.

The request is then brought before the Fayette County Board of Commissioners who either approve or deny the request for rezoning. This decision is based on information provided by the applicant, public input, and the recommendations of the Planning Commission and the Zoning Administrator.

By Ordinance, each rezoning request is evaluated by the following standards:

- Whether the zoning proposal conforms with the Land Use Plan and policies;
- Whether the zoning proposal will affect nearby properties and uses negatively;
- Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing or planned streets, utilities, or schools; and,
- Whether there are other existing or changing conditions affecting the use and development of the property which give grounds for either approval or denial of the rezoning request.

Depending on the outcome of the request and the specific zoning and use of the property, further county regulations come into effect (such as subdivision plats, site plan approval

for nonresidential uses, and various development permits). The rezoning process is only one of the many applications relating to development regulation at the Fayette County Zoning Department.

[Top](#)

WHAT IS THE DIFFERENCE BETWEEN PLANNING AND ZONING ?

What is planning ?

Planning is a process of setting the future growth pattern, usually in the form of a land use plan. The land use plan is a result of comprehensive studies of the area to determine growth projections and anticipate public need. The Planning Department's challenge is to plan for future growth by providing a plan or vision for preserving the rural characteristics of the county that drew people here originally, while meeting the demands and development pressures of a county that is part of a growing metropolitan area.

[Top](#)

The Planning Department generates and periodically updates the following two (2) long-range plans which provide a framework for future development in Fayette County:

- **The Fayette County Land Use Plan (1993 - 2000)**, adopted in 1985, provides policies for the pattern, intensity and phasing of land use and development in Fayette County in a manner consistent with community goals and objectives. The land use plan assigns a land use category to all areas within the County. The land

use categories are general (commercial, industrial, agricultural, conservation/open space and residential) and stipulate the type of future land use projected for that particular area. Residential land uses are classified according to allowable density (number of dwelling units per acre) based on infrastructure and drainage basins.

The purpose of the Land Use Plan is to assist in identifying and avoiding potential conflicts between land uses, transportation, housing, utilities, environmental protection, economic productivity and other interests that may need to be considered and coordinated at the Federal, State, regional and local level. The Land Use Plan is required to be updated at least every five (5) years, as mandated by the State.

- **The Fayette County Comprehensive Growth Management Plan (1991 - 2020)**, adopted in 1991, is a policy guide whose purpose is to guide planning and decision making and provide general policies in terms of future development. This plan encourages development patterns based on the extension of infrastructure and drainage basin locations, and provides standards and criteria which measure proposed development with the wishes and desires of the community. This plan attempts to meet the challenge to preserve the existing quality of life in the County, while still accommodating the necessary and inevitable forces of change. The Comprehensive Plan is required to be updated at least every ten (10) years, as mandated by the State.

In addition to providing census/demographic information and

special project studies, the Planning Department occasionally assists municipalities with studies on an as needed basis. The Planning Department is responsible for maintaining and updating the Fayette County Map, the Fayette County Land Use Plan Map, and the Fayette County Thoroughfare Plan Map. It is anticipated within the next two (2) years that the Planning Department will have Geographic Information System (GIS) mapping capabilities which will assist many county departments.

[Top](#)

What is zoning ?

Zoning is the primary means of trying to ensure that land uses are compatible with each other. Zoning is a system by which the different land use classifications of the Land Use Plan are categorized into zones. Each of these zones has its own set of standards and requirements. As a police power, zoning is the mechanism by which the land use plan can be carried out.

[next >>>](#)

[Top](#)

Contact Information:

Planning Division 101-A Mounts Bay Rd. Williamsburg, VA 23185

Directions - Directory

P: 757-253-6685 F: 757-253-6822 HOTLINE: 757-259-4990

planning@ jamescitycountyva.gov

Hours of Operation

8 a.m. - 5 p.m.
Monday-Friday

Division Home page

Building Safety & Permits

Development Management

Engineering & Resource Protection

Zoning Enforcement

Quick Links

We want your input!

Land Use designation versus Zoning

While Land Use designations are considered with future uses, Zoning designations more specifically define what use is currently allowed on a specific parcel and outline design and development guidelines for those intended uses (such as setbacks, minimum lot sizes, and the like). While your Zoning designation is what you can legally do with your parcel today, the Land Use designation, in conjunction with development guidelines, details how you may be able to use your parcel in the future.

Do you know what your property is designated? If not, visit the County's current land use map developed during the 2009 Comprehensive Plan. Land Use designation and zoning information can be viewed for a specific property on the JCC Property Information webpage. Hard copies of the 2009 Land Use Designation Map are also available from the Planning Division. If you want to learn more about zoning regulations please go to our [Zoning Enforcement page](#). On the Zoning Enforcement page you will find the Zoning map of the County. Use the tab labeled Subdivision Ordinance/Zoning Ordinance to find more information on zoning designations, to include: general intent, permitted uses, specially permitted uses and much more.

Land Use designations

Community Commercial

General business activities located within the PSA and usually having a

moderate impact on nearby development are designated Community Commercial.

Location criteria for Community Commercial uses are access to arterial streets, preferably at intersections with collector and arterial streets; moderate to large sized sites; public water and sewer service; environmental features such as soils and topography suitable for compact development; and adequate buffering by physical features or adjacent uses to protect nearby residential development.

[Read More >>](#)

Conservation Area

Conservation Areas are critical environmental areas where ordinary development practices would likely cause significant environmental damage. Lands surrounding or adjacent to Conservation Areas can also be sensitive, and development of these lands should consider negative impacts and methods to mitigate or eliminate these impacts. Wetlands, marshes, flood hazard areas, steep slopes, critical plant and wildlife habitats, and stream banks are types of Conservation Areas. Lands designated for conservation are intended to remain in their natural state. Examples of preferred land uses include hunting and fishing clubs, fish and game preserves, parks, and other open space that complement the natural environment.

[Read More >>](#)

Economic Opportunity

Lands designated as Economic Opportunity are intended primarily for economic development, increased non-residential tax base, and the creation of jobs. The lands should be at strategic locations in the County relative to transportation, utilities infrastructure, and adjacent uses, and the lands should only be developed consistent with comprehensive area/ corridor master plans.

[Read More >>](#)

State, Federal and County Land

Publicly owned lands included in this category are Eastern State Hospital, military installations, County offices and facilities, and larger utility sites such as the Hampton Roads Sanitation District treatment plant. Development in these areas should follow applicable development standards listed in the charts.

[Read More >>](#)

General Industry

Areas located within the PSA that are suitable for industrial uses which, because of their potential for creating dust, noise, odor, and other adverse environmental effects, require buffering from adjoining uses, particularly residential uses.

General Industry uses usually require access to interstate and arterial highways, public water and sewer, adequate supply of electric power and other energy sources, access to a sufficient labor supply, and moderate to large sized sites with natural features such as soils, topography, and buffering suitable for intense development.

[Read More >>](#)

Limited Industry

Designated sites within the PSA for warehousing, office, service industries, light manufacturing plants, and public facilities that have moderate impacts on the surrounding area.

Limited Industry ordinarily requires access to arterial roads or major collector streets, public water and sewer, nearby police and fire protection, small to moderate sized sites, environmental features such as soils and topography suitable for intense development, and adequate buffers for nearby residential development.

[Read More >>](#)

Low-Density Residential

Located in the PSA where public services and utilities exist or are **expected to be expanded** to serve the sites over the next 20 years.

Have natural characteristics such as terrain and soils suitable for residential development.

[Read More >>](#)

Mixed Use

Mixed Use areas are centers within the PSA where higher density development, redevelopment, and/or a broader spectrum of land uses are encouraged. Mixed Use areas located at or near interstate interchanges and the intersections of major thoroughfares are intended to maximize the economic development potential of these areas by providing areas primarily for more intensive commercial, office, and limited industrial purposes.

The other Mixed Use areas are intended to provide flexibility in design and land uses in order to protect and enhance the character of the area.

[Read More >>](#)

Moderate-Density Residential

Located in the PSA **where utilities are available**.

Optimally located near the intersections of collector or arterial streets.

Have natural characteristics such as terrain and soils suitable for compact residential redevelopment.

May serve as transitional uses, primarily to general commercial, Neighborhood Commercial, or Mixed Use areas.

[Read More >>](#)

Neighborhood Commercial

Located in the PSA, serving residents of the surrounding neighborhoods in the immediate area and having only a limited impact on nearby development.

Location criteria for commercial uses are small sites; access to collector or arterial streets, preferably at intersections with local or other collector arterial roads; public water and sewer service; environmental features such as soils and topography suitable for compact development; and adequate buffering by physical features or adjacent uses to protect

nearby residential development and preserve the natural and wooded character of the County.

[Read More >>](#)

Park, Public, or Semi-Public Open Space

Large, undeveloped areas owned by institutions or the public and used for recreation or open space are included in this category. These areas serve as buffers to historic sites and sensitive areas such as reservoirs, educational resources, and areas for public recreation and enjoyment.

Primary Service Area (PSA)

The PSA defines areas presently provided with public water, sewer and high levels of other public services, as well as areas expected to receive such services over the next 20 years. Most residential, commercial, and industrial development will occur within the PSA. Development outside of the PSA is strongly discouraged. Public utility sites, easements, and facilities are not shown on the Land Use Map; however, it is the intent of the Comprehensive Plan that any development of these sites, easements, and facilities, inside or outside the PSA, be subject to individualized review under §15.2-2232 of the Code of Virginia.

[Read More >>](#)

Rural Lands

Rural Lands are areas containing farms, forests and scattered houses, exclusively outside of the PSA, where a lower level of public service delivery exists or where utilities and urban services do not exist and are not planned for in the future.

[Read More >>](#)



PACE LAW SCHOOL
P A C E U N I V E R S I T Y

BEGINNER'S GUIDE TO LAND USE LAW

**Land Use Law Center
Pace University School of Law
www.law.pace.edu/landuse**

TABLE OF CONTENTS

Click on a link to read a particular topic.

- [What is Land Use Law? – A Primer](#)
- [What gives your town or village the authority to regulate what is done with privately-owned land?](#)
- [County and Regional Actions](#)
- [What are Zoning and Planning?](#)
- [How the Law Supports Citizen Participation](#)
- [Legal Doctrines That Help Balance Property Rights against the Public Interest](#)
 - [Fairness in Land Use](#)
- [How Zoning Works](#)
 - [As-of-Right Uses and their Accessory Uses](#)
 - [Nonconforming Uses](#)
 - [Variances](#)
 - [Special Use Permits](#)
 - [Rezoning](#)
- [The Function of the Local Boards](#)
- [Judicial Review of Land Use Decisions](#)
- [Subdivision and Site Plan Regulation: Community Development](#)
- [Local Environmental Review](#)

- TOPICS COVERED IN DEPTH

- [Planning and Land Use Regulation](#)
- [Zoning Law and Its Amendment](#)
- [The Comprehensive Plan](#)
 - [Why have a comprehensive plan?](#)
- [Home Rule Authority](#)
 - [What home rule authority encompasses in terms of land use](#)
- [The Role of County Government in Land Use](#)
- [Vested Rights](#)
- [Regulatory Takings](#)
- [Judicial Review](#)
- [Variances](#)
 - [Why are variances allowed?](#)
 - [Authority to issue variances](#)
 - [How variances work](#)
 - [Statutory Standard for Use Variance](#)
 - [Statutory Standard for Area Variances](#)
 - [Limitations on variances](#)
- [Subdivision](#)
- [Site Plans](#)
 - [What a site plan accomplishes](#)
- [Special Use Permits](#)
 - [Why Allow Special Uses?](#)
- [Building Permits and Certificates of Occupancy](#)

- [The Building Permit Application](#)
- [Illustrations](#)
- [Can a permit be revoked?](#)
- [Permit Conditions](#)
 - [Illustrations](#)
- [Nonconforming Uses](#)
 - [Reconstruction and Restoration](#)
 - [Enlargement, Alteration, or Extension](#)
 - [Changing to another Nonconforming Use](#)
 - [Abandonment](#)
 - [Amortization](#)
 - [Limitations on the Restriction of Nonconforming Uses](#)
 - [Accessory Uses](#)
 - [Why have Accessory Uses?](#)
 - [Illustrations](#)
- [Home Occupations](#)
 - [Why are there limitations on home occupations?](#)
 - [Illustrations](#)
- [Exclusionary Zoning and Affordable Housing](#)
 - [Exclusionary zoning](#)
 - [Inclusionary zoning](#)
 - [Why encourage affordable housing at all?](#)
 - [Group Homes, Disabilities and Zoning](#)
 - [Why regulate the number of people living in a home?](#)
- [Environmental Review](#)
 - [Environmental Review Techniques](#)
 - [When does Environmental Review come into play?](#)
 - [Limitations on environmental review](#)
 - [Resource Protection](#)
 - [Local Natural Resource Protection](#)
 - [The Benefits of an Effective Conservation Advisory Councils](#)
 - [Conservation Easements and Land Trusts](#)
 - [What conservation easements and land trusts accomplish](#)
 - [Watershed Protection/New York City Watershed Protection](#)
 - [Regulations to Protect the New York City Watershed](#)
 - [Protecting Aesthetic and Scenic Resources](#)
 - [What is the legal justification for aesthetic regulations?](#)
 - [Agricultural Land Protection](#)
 - [When are regulations to protect agricultural lands necessary?](#)
 - [Agricultural Zoning](#)
 - [Freshwater Wetlands Regulation](#)
 - [Why do wetlands regulations exist?](#)
- [Links for more or related information](#)
- [APPENDIX A: GLOSSARY OF TERMS AND PHRASES](#)

What is Land Use Law? – A Primer

Land use law, broadly defined, encompasses the full range of laws and regulations that influence or affect the development and conservation of the land.

This law is intensely intergovernmental and interdisciplinary; there are countless intersections among federal, state, regional, and local statutes. It is significantly influenced by other legal regimes such as environmental, administrative, and municipal law, to name a few.

By dividing their jurisdictions into zoning districts and prescribing the specifications for land development pertaining to each district, local governments create a blueprint for the future development of each community. The aggregate result of these blueprints, when aligned on an intermunicipal basis, is a plan for the future development of the region. These patterns evolve as local boards and agencies review, approve, and condition applications for site plans, subdivisions, and special permits; they change as the local legislature rezones discrete areas and as property owners are awarded variances from the strict application of the zoning law.

Many of the intersecting laws and regulations of higher levels of government are adopted either to influence or remedy the consequences of local land use planning and regulation. This is true particularly in the area of environmental law where state and federal agencies shape and sometimes preempt local decision-making in the interest of protecting endangered natural resources such as rivers and aquifers. Nonetheless, it is the decisions made by boards and agencies at the village, town, and city level that constitute the primary regulatory influence on the land.

What gives your town or village the authority to regulate what is done with privately-owned land?

Under the New York Constitution, the state legislature is authorized to adopt laws to protect the public health, safety, morals, and general welfare of the people. The legislature has, in turn, delegated significant authority to regulate land use to the local level: the over 1,600 villages, towns, and cities in the state. These acts of delegation are both specific and general.

Specific authority has been delegated to municipalities to adopt comprehensive plans and zoning laws and to adopt subdivision and site plan regulations under the Village, Town, and General City Law. General authority to legislate with regard to the public health, safety and welfare and the physical environment is delegated under the Municipal Home Rule Law, which is the source of authority often relied on to adopt natural resource protection regulations. The General Municipal Law provides specific authority to local governments to adopt laws relating to the protection of trees, the preservation of historic districts and landmarks, and the creation of conservation advisory boards, among other matters.

The state has retained authority to regulate certain aspects of land use, delegated some authority to county or regional agencies, and in certain instances has shared land use authority with local governments. Occasionally, the legislature withdraws this delegated authority by enacting legislation which preempts the local role.

County and Regional Actions

For their own purposes, counties can create planning boards, and adopt comprehensive plans and official maps. They can provide technical assistance to cities, towns and villages regarding the creation of comprehensive

plans and the adoption of land use regulations. Certain local land use actions that affect intermunicipal, county or state interests must be referred to and commented on by county or regional planning boards before they are taken by cities, towns and villages. Counties can build roads, establish sewer and water districts that service developed areas, and form or assist a variety of boards that affect land use matters such as soil and water conservation and farmland protection boards.

What are Zoning and Planning?

Perhaps the most significant land use power that the state legislature has delegated to local governments is the authority to adopt zoning laws. These laws divide land within the municipality into zones, or districts, and prescribe the land uses and the intensity of development allowed within each district. This delegated authority is found in the provisions of the Town, Village, and General City Law known as the zoning and planning enabling acts.

The enabling statutes require land use regulations to be "in accordance with a comprehensive plan" or "in accordance with a well considered plan." Planning "is the essence of zoning" says the judiciary in New York State. Comprehensive planning is society's insurance that the public welfare is served by land use regulation.

How the Law Supports Citizen Participation

Statutes delegating land use planning and regulatory authority to municipal governments encourage local officials to provide meaningful opportunities for citizens to shape and influence the development of comprehensive plans and land use regulations. Public hearings are required or encouraged to be held regarding all local board decisions on development proposals. In state regulations governing local environmental review of such proposals, local agencies are encouraged to involve all affected parties in the development of a scope of the content and methodology of the environmental study that is to be conducted on the proposal. These provisions express a clear policy favoring the early and continual input of involved parties at each stage of the local land use process.

Legal Doctrines That Help Balance Property Rights against the Public Interest

The critical role given to local governments in regulating land use involves them in a delicate act of balancing private property rights with the greater public interest. There are several legal doctrines which protect landowners' interests by limiting the government's authority to regulate land use.

- **Substantive Due Process:** Requires that land use regulations serve a legitimate public purpose.
- **Procedural Due Process:** Requires that the administrative process by which regulations are adopted and enforced must follow the prescriptions of state statutes and meet fairness requirements.
- **Equal Protection:** Localities must avoid improperly discriminating among similar parcels or against types of land users in violation of equal protection guarantees of the state or federal constitution.
- **Authority:** Since local governments in New York can exercise only those powers delegated to them by the state legislature, land use regulations cannot be beyond the local authority.
- **Taking of Property:** Local land use regulations must not effect a taking of private property for a public purpose without just compensation in violation of the "takings" provisions of the state and federal constitutions.
- **Vested Rights:** Limits the authority of municipalities in certain cases to impose significant new regulations on existing investments in land, such as completed structures or projects under construction.

- **State Preemption:** Local land use regulations are not permitted to control matters whose regulation has been preempted by the state legislature.
- **First Amendment Rights:** Local regulations must not abridge freedoms of speech, expression and the exercise of religion protected by the state and federal constitutions.

Fairness in Land Use

Local land use authority is subject to rights created by state and federal statutes and constitutional provisions. A number of these are based in equity, or notions of fairness. For example, a local zoning law that excludes all growth or types of housing affordable to lower income people is said to be unconstitutionally exclusionary. The state's police power is to be exercised in the interests of *all* the people of the state and cannot, by definition, be used for exclusionary purposes, an inherent constitutional principle. In New York, statutes provide that housing for groups of developmentally disabled individuals or substance abusers must be considered single-family housing and allowed in single-family zoning districts. The courts have found either an express or implied intention in these statutes to preempt local government's authority to exclude these types of group residences from single-family districts, the predominant residential zoning district in most communities.

How Zoning Works

Local governments in New York are not required to adopt zoning laws or other land use regulations. Instead, they have the discretion to do so. If a zoning law is adopted, the local legislature must establish a zoning board of appeals, but no other local land use agencies *must* be created. Most local governments in the state have adopted zoning laws and have established a zoning board of appeals and a planning board to perform various functions necessary to the efficient administration of the zoning regime. Others have adopted a comprehensive plan and have established a variety of other agencies such as a conservation advisory commission (CAC), architectural review board (ARB), historic district commission, or wetlands commission.

The roles that these bodies play and the procedures and standards they must follow are found in the state statutes. These are often supplemented extensively by provisions in the local zoning law and regulations. Local governments have flexible authority to establish standards and procedures that meet their unique needs.

Under the typical zoning law, private land use is governed by five basic techniques. Each triggers a different procedure and is governed by different substantive standards. These five categories are as follows:

As-of-Right Uses and their Accessory Uses

In each zoning district, certain land uses are permitted as the principal and primary uses of land; these are called as-of-right uses. Accessory uses that are customarily found in association with these principal uses, but which are incidental and subordinate to them, are also permitted as-of-right. In a single-family zoning district, a single-family home is the principal use and a garage or shed is allowed as an accessory use. In most cases, the owner of an individual lot who proposes an as-of-right use of that lot need only submit construction drawings and secure a permit from the building inspector or department. Typically, no zoning decisions are involved in such an application.

Nonconforming Uses

A use of land that was in existence when a zoning restriction was adopted and that is prohibited by that restriction is called a nonconforming use. Because of the landowner's investment in that use before it was

forbidden by law, most zoning laws permit nonconforming uses to continue but not to be expanded or enlarged. Typically, nonconforming uses may not be reestablished after they have been abandoned or reconstructed after serious damage. Where certain nonconforming uses are particularly inconsistent with the as-of-right uses permitted in a district, the zoning law can require the nonconforming uses to be terminated, or amortized, after a specified number of years. Nonconforming uses that are considered threats to public health or safety can be required to cease immediately. The local zoning administrator must decide questions raised as to whether a use is nonconforming or conforming, whether it has been abandoned, or whether proposed improvements constitute a prohibited expansion or enlargement. The administrator's decision on these matters can be appealed to the zoning board of appeals. Occasionally, the owners of nonconforming parcels request the zoning board of appeals to grant them a use variance which legalizes the nonconforming use and can allow it to be expanded or enlarged.

Variances

1. If a proposed use of property does not conform to applicable zoning restrictions it can be authorized by a use or area variance awarded by the zoning board of appeals in certain circumstances.
 - **Use variances** are defined by state statutes as "authorization by the zoning board of appeals for the use of land in a manner or for a purpose which is otherwise not authorized or is prohibited by the applicable zoning regulations." To qualify for such a variance, the petitioning property owner must prove to the zoning board of appeals that the property cannot yield a reasonable return under any use permitted under the zoning law and meet other burdens of proof required by the state statute.
 - **Area variances** are defined as "the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations." In considering a request for an area variance, the zoning board of appeals must use several statutory factors to balance whether the detriment to the community caused by granting the variance is outweighed by the benefit to the property owner. The statutes require the zoning board of appeals to "grant the minimum variance that it shall deem necessary." The courts have held that the imposition of conditions on variances is proper because they are "corrective measures designed to protect neighboring properties against the possible adverse effects" of the use of the property benefited by the variance.

Special Use Permits

2. In addition to permitting certain land uses as-of-right in zoning districts, the zoning law can authorize other uses to be made of the land, but only if they receive a special permit issued by a local administrative agency such as the zoning board of appeals or the planning board. Typical land uses that are permitted by special permit include religious institutions, nursing homes, and day care centers. When such uses are listed as specially permitted uses in the zoning law, they are declared by the local legislature to be uses that are harmonious with as-of-right uses, in general, with the recognition that, in a specific location, they can negatively impact adjacent properties and need to be limited or conditioned to mitigate such impacts. If an applicant for a special use permit can demonstrate conclusively that no such impacts will result, or that the proposal mitigates those impacts effectively, the special use permit will usually be granted.

Rezoning

3. Finally, where a proposed use is not permitted by one of the above devices, the property owner may request that the local government rezone the property, making the proposed activity an as-of-right use under that zoning amendment. Alternatively, the local legislature, at its initiative, can rezone a parcel or area in the public interest. In most cases, the local legislature is not required to entertain a single owner's rezoning petition.

What constitutes a valid zoning regulation has been the subject of much debate. The restrictive view is that zoning is a rigid, district bound technique and that the locality is constrained by a literal reading of the enabling statutes. This view asserts, additionally, that zoning can regulate only the "use," not the "user" of property. The breadth of the statutes delegating zoning authority to local governments and the presumption of validity accorded zoning regulations by the courts have made it possible, however, for localities to create a variety of zoning mechanisms not referred to in the statutes but upheld by the courts as within the locality's implied authority to legislate to achieve the most appropriate use of the land.

The Function of the Local Boards

In most municipalities, the most critical land use decisions are made by the local legislature, which adopts the zoning law and other land use regulations, and the planning board, the zoning board of appeals and the zoning enforcement officer which are charged with reviewing development proposals and enforcing the zoning law's provisions. The procedures that must be followed by the legislature in adopting laws and by these administrative agencies in reviewing and approving project proposals are contained in specific enabling statutes adopted by the state legislature as supplemented by the provisions of local law.

When an application for a building permit is submitted to the local building inspector or zoning enforcement officer, the administrator must ascertain before issuing the permit that the proposed construction is in compliance with the zoning law and other land use regulations. If the proposed development is not in compliance with the use and dimensional requirements of the zoning law, then the permit must be denied. This denial can be appealed to the zoning board of appeals which can reverse that determination or issue a use or area variance in conformance with the standards of state law.

If, on the other hand, the proposed development complies with the zoning provisions, but requires subdivision, site plan, special permit, or other approval, the applicant will be referred to the appropriate administrative agency for its review and determination. The local legislature is authorized to designate the planning board, the zoning board of appeals or other administrative agency to hear and decide upon applications for these land use proposals. The decision-making process must follow prescribed time periods, honor requirements to provide public notice of the matter and hold public hearings, maintain a record of the agency's deliberations, and to file and circulate its final determination on the matter. State law requires that local agency meetings be open to the public and that copies of local records be provided to the public upon request.

Only if the standards of local land use regulations are met and the proposal is approved by the administrative agency can a building permit be issued. To qualify for a building permit, the property owner must honor any conditions imposed by the approving agency and construction plans for the development must conform to the requirements of the state fire protection and building code, as amended by the local legislature.

Judicial Review of Land Use Decisions

Judicial review of local land use decisions involves the doctrine of separation of powers between the judicial and legislative branches of government. It is governed by special statutory provisions that limit both actions

against governmental bodies, in general, and against local land use decisions, in particular. The applicable rules of judicial review depend on the type of local body that is involved and the type of action that is challenged.

In general, courts defer to local land use decisions, particularly those of local legislatures, declaring that those decisions are given a presumption of constitutionality and correctness. The effect of this is to place a heavy burden of proof on those who challenge such decisions to show that they are unreasonable. On the other hand, ambiguities in local land use regulations tend to be resolved in favor of property owners who challenge them. It is said that land use restrictions are in derogation of common law property rights and, therefore, should be strictly construed.

Subdivision and Site Plan Regulation: Community Development

Local governments are authorized to adopt regulations governing the subdivision of parcels of land for development, known as subdivision regulations, and the development of individual parcels of land, known as site plan regulations. They do not have to adopt zoning laws before adopting subdivision and site plan regulations, but the normal process is to adopt zoning first. In the typical community, subdivision and site plan regulations supplement the prescriptions of the zoning law by allowing administrative agencies to review and approve specific site design and features for their impact on the neighborhood and community.

According to state statutes, the authority to adopt subdivision regulations serves "the purpose of providing for the future growth and development of the municipality and affording adequate facilities for the housing, transportation, distribution, comfort, convenience, safety, health and welfare of the population." The general purposes of adopting standards and procedures for site plan review and approval are to assure that the development of individual sites does not affect surrounding properties negatively and that the community develops in an orderly and cost-effective fashion.

Local practice in governing land subdivision and site plan development varies widely. Not all subdivisions and site development proposals are required to go through an approval process. The community can limit subdivision and site plan review to major development proposals, as they are defined locally. Some communities subject subdivision proposals first to a preliminary review process and then final review and approval.

Most communities designate their planning board as the body that is authorized to receive and review applications for subdivision and site plan approval. These responsibilities can be delegated to the zoning board of appeals or other administrative agency. Occasionally, the local legislature retains some types of subdivision or site plan review responsibility.

In their applications, subdividers and site developers can be required to show the location of water, sewer, electrical, sewage, drainage, transportation, landscaping, and other site features on a plat, or map, of the parcel that they then submit for review. By carefully reviewing, modifying and conditioning the features of these plats, the locality hopes to insure that new development is cost-effective, properly designed, and has a favorable, rather than negative, impact on the neighborhood. This authority is central to the local government's ability to control and shape its community development over time.

Local Environmental Review

Most actions of local governmental agencies that affect the use of the land may not be taken officially until those agencies have conducted a thorough review of their potential environmental impact. The state legislature has declared that all state, county and local agencies "are stewards of the air, water, land and living resources"

and " have an obligation to protect the environment for the use and enjoyment of this and all future generations."

The extensive provisions setting forth the procedures and requirements for the environmental review of local land use actions are found in the Environmental Conservation Law, Article 8, which is commonly referred to as the State Environmental Quality Review Act, or SEQRA, and in the regulations of the Department of Environmental Conservation. Under SEQRA, a local agency must determine whether an action it is considering may have a significant adverse environmental impact. If an action has such potential, the agency must first prepare an Environmental Impact Statement (EIS) which forces it to consider alternatives and to avoid or mitigate the adverse environmental impacts of a proposed project.

A failure to follow the procedures required by SEQRA will render the action invalid. The procedural steps required by SEQRA and the time periods within which they must be taken have been determined to take precedence over other statutory provisions and deadlines that regulate the land use actions of local governments.

SEQRA requires local agencies to "use all practicable means to realize the policies" of the legislation and to choose alternative actions or impose mitigation conditions, where practicable to "minimize or avoid adverse environmental effects, including effects revealed in the environmental impact statement." The Court of Appeals has held that this language imposes substantive, in addition to procedural, obligations on local decision-makers that force them to take effective action to protect the environment.

TOPICS COVERED IN DEPTH

Planning and Land Use Regulation

New York statutes encourage, but do not mandate, the creation of an overall plan for land development to be put in place at the local level. This plan is called a “comprehensive plan.”

A comprehensive plan is a written document formally adopted by the local legislature that contains goals, objectives, and strategies for the future development and conservation of the community. The statutes list components that such plans “may” contain, but does not require localities to follow a fixed format in developing their plans for the future. New York statutes require that zoning, and all land use regulations, be in conformance with the comprehensive plan.

Adopting land regulations that conform with the comprehensive plan provides significant legal protection for such regulations. When a regulation is challenged, the court will inquire whether it significantly advances a legitimate public interest. When judges find that it was enacted to achieve an objective of the comprehensive plan, they generally resolve that issue in the community’s favor.

Land use regulations are not confined to zoning provisions that separate the community into zoning districts and specify the land uses and building dimensions that are permitted in each zone. They may also include regulations that protect trees, slopes, wetlands, historic districts, and viewsheds. In addition, they may include regulations that govern the subdivision of land and development of individual sites.

Zoning Law and Its Amendment

The local zoning law divides a community into land use districts and establishes building restrictions limiting the height, lot area coverage, and other dimensions of structures that are permitted to be built within each district. At the time that the local legislature adopts a zoning law, it approves a zoning map. On this map, the zoning district lines are overlaid on a street map of the community. By referring to this map, it is possible to identify the use district within which any parcel of land is located. Then, by referring to the text of the zoning law, it is possible to discover the uses that are permitted within that district and the dimensional restrictions that apply to building on that land.

There is no required format for a zoning law in New York. As a result, where municipalities have codified their laws, local codes are organized in a variety of ways and range from relatively simple to extremely complex in their provisions. Most zoning chapters of municipal codes contain several articles covering such basic topics as: the purpose of the zoning law, various definitions, the establishment of zoning districts, the uses allowed within those districts, the building and parking restrictions that apply within each district, how preexisting, nonconforming uses are to be treated, uses that are allowed as accessory uses or by special permits within certain districts, the formation and operation of the zoning board of appeals, how amendments can be adopted, and how the code is to be enforced.

A host of additional topics can also be included in the zoning law such as standards that must be considered before an owner's application for a subdivision or site plan can be approved. Zoning laws can contain provisions that protect landmarks, historic districts, wetlands, floodplains or environmentally constrained land, or that regulate the placement of mobile homes or use of commercial and political signs.

The zoning map, implemented through the text of the law, constitutes a blueprint for the development of the community over time. It is a design for the community's development that is to be created with citizen input and that, as it is built out, has far reaching consequences for the quality and cost of life of those citizens.

Zoning provisions, once adopted, can be amended by the local legislature. The courts have held that in amending the zoning law, local legislatures have a great deal of flexibility in creating mechanisms to accomplish the statutory purposes of zoning. Under their implied authority to adopt appropriate mechanisms, for example, local laws have been upheld that created floating zones that apply to individual parcels of land, allow mixed uses on parcels in single use zones, and that rezoned individual properties subject to restrictive conditions that insure the appropriate use of the land as rezoned.

The Comprehensive Plan

A comprehensive plan is a written document that identifies the goals, objectives and devices for the "immediate and long-range protection, enhancement, growth and development" of the community.

The effect of adopting a comprehensive plan is that all local land development regulations must be in conformance with its provisions. Other governmental agencies, such as state agencies, must consider the local comprehensive plan in planning their capital projects within the locality.

The New York State Court of Appeals noted in *Udell v. Haas* that "the comprehensive plan is the essence of zoning. Without it, there can be no rational allocation of land use." Indeed, the statutes require that all land use regulations must be made "in accordance with a comprehensive plan." Therefore, planning should precede any adoption or amendment of a land use regulation.

New York statutes define a comprehensive plan as the "materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, report, and other descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices, and instruments for the immediate and long-range protection, enhancement, growth, and development of the [locality]."

While there are no required components of a comprehensive plan, the statutes suggest fifteen elements for inclusion:

- a general statement of goals, objectives, and standards upon which proposals for the immediate and long-range growth and development of the municipality are based;
- consideration of the regional needs and official plans of other government units within the region;
- existing and proposed location and intensity of land uses;
- consideration of agricultural uses, historic, and cultural resources, coastal and natural resources and sensitive environmental areas;
- consideration of population, demographics and socio-economic trends, and future projections;
- the location and types of transportation facilities;
- existing and proposed location of public and private utilities and infrastructure;
- existing housing and future housing needs, including affordable housing;
- present and future location of historic sites, educational, cultural, health, and emergency services;
- existing and proposed recreational facilities and parkland;
- present and future locations of commercial and industrial facilities;
- specific policies and strategies for improving the local economy in coordination with other plan topics;

- proposed measures, programs, devices, and instruments to implement the goals of the comprehensive plan;
- all or part of the plan of another public agency; and
- any and all other items which are consistent with the orderly growth and development of the municipality.

Why have a comprehensive plan?

The comprehensive plan creates a blueprint for the future development and preservation of a community. Often referred to as the "master plan," it is the policy foundation upon which communities are built. A good comprehensive plan guides not only the physical and economic development of the municipality, but also accommodates social, environmental, and regional concerns.

Home Rule Authority

Local governments in New York have "home rule" authority to adopt local laws for a variety of purposes. Normally, zoning and land use regulations are adopted by towns, villages, and cities under the authority delegated to them by the planning and zoning enabling provisions of the Town, Village, and General Cities Law, respectively. Most of the issues in this Guide assume that local governments have enacted their zoning and other land use regulations under these specifically delegated powers. The Municipal Home Rule Law and the Statute of Local Governments are two separate bodies of law that authorize local governments to adopt regulations relating to land use control. When local legislatures adopt laws under this authority, they are said to be exercising their home rule authority.

What home rule authority encompasses in terms of land use

The planning and zoning enabling provisions of the Town, Village, and General City Law authorize local governments to promote the health, safety, morals, and general welfare of the community by regulating land development. This includes regulating the size and shape of buildings, the percentage of lots that can be covered by development and the location of buildings for various land uses. In addition, zoning districts are created within which such regulations are to be uniform. Building regulations and zoning districts may be established for a very broad range of public purposes including the encouragement of the most appropriate use of land throughout the municipality. Zoning laws can also contain provisions regulating wetlands, steep slopes, soil erosion, and tree preservation, all enacted under this same authority.

The Role of County Government in Land Use

County governments in New York serve a number of important functions. For some purposes, they are regarded as an instrument of the state and carry out a number of roles in that capacity, including the provision of social services and the protection of public health. For other purposes, counties are regarded as independent units of local government that provide directly a number of governmental functions, such as the development of hospitals, correctional facilities and county roads, police, and library services. Increasingly, counties serve to coordinate and rationalize the activities of cities, towns, and villages within their jurisdictions and to provide a range of services to them for that purpose.

In all three capacities, county governments carry out a number of activities that influence land use conservation and development. This is true despite the fact that state law delegates primary land use planning and regulatory authority to towns, villages, and cities. Counties, for example, create planning boards and adopt comprehensive

plans and official maps. They provide technical assistance to local governments in land use matters and can, upon request, serve as the administrative arm of local governments regarding land use actions.

Counties review applications for the subdivision of land and proposed municipal actions that affect intermunicipal, county or state interests. They adopt, propose, and create water, sewage, and drainage districts. These districts can finance and construct infrastructure needed to support land development. In addition, counties acquire land for and finance parks, county roads, and facilities for transit, solid waste disposal and even affordable housing. County governments create and assist independent soil and water conservation districts, agricultural districts, farmland preservation boards and environmental management councils. Counties are authorized to act directly to acquire open space and develop recreational facilities for their populations. This power enables counties to affect significantly the shape of land development patterns through the acquisition of land needed to buffer development trends in the area.

Where local governments fail to act, counties can adopt regulations to control development in wetlands, to prevent coastal erosion and to administer the Uniform Fire Prevention and Building Code. Counties can apply for and administer a variety of federal programs including community development block grants. In limited instances, counties veto local land use actions and acquire development rights to farmland. County highway commissioners can control access to county roads.

Vested Rights

The doctrine of vested rights protects property owners from changes in zoning when they have received a valid building permit and have completed substantial construction and made substantial expenditures in reliance on the permit. When a court finds that a property owner has vested rights to a validly issued permit, the effect is to immunize the approved project from all changes in zoning or other land use regulations. This judicially created doctrine is called "common law" vested rights. There is also a more limited "statutory" vested rights rule in New York, adopted by the state legislature, that immunizes approved subdivision plats from changes in the dimensional or area requirements of zoning for a period of one to three years, depending on the circumstances.

In order to vest rights to the permit, the amount spent or the construction completed must be substantial in relation to the entire project. The cost of the land, demolition of existing structures, processing and consultant fees, and excavation work in preparation for construction is not enough to vest rights. A court will not consider a particular expenditure unless there is a "special connection" between the expenditure and the approved use. For example, in considering whether there had been substantial expenditures to entitle the completion of a mall, a court would not consider the expenditure of \$120,000 to widen a road where the road would have to be constructed to serve the residential development that was allowed under the amended law.

Regulatory Takings

Occasionally, courts will find that the impact of a regulation on private property rights is so burdensome that it violates the constitutional guarantee that property shall not be taken for a public use without just compensation. What courts do not want to allow is the singling out of a few property owners to bear a burden that, in the interest of fairness and justice, the public as a whole should bear. In select situations, a land use regulation can be invalidated as a "regulatory taking," and compensation awarded to the regulated property owner for the damages caused.

Regulatory takings are sometimes referred to as inverse condemnations or de facto takings. Both these terms reference the government's power of eminent domain, the authority to condemn title to land needed for a public purpose. Under both the U.S. and New York State Constitutions, such takings are allowed but the validity of the

public purpose must be demonstrated and just compensation paid to the owner of the condemned property. When a government regulation has the practical effect of a public condemnation, the owner may allege that the regulation is a regulatory taking, a de facto taking, or the inverse condemnation of the affected parcel.

When land use regulations, like zoning provisions, are challenged as regulatory takings, the courts presume that they are constitutional. This means that challengers must carry a heavy burden of proof that the regulations violate the constitutional guarantee; all reasonable doubts are resolved in favor of the regulator. To carry their burden of proof, property owners must produce dollars and cents evidence that all but a bare residue of the property's value has been destroyed by the regulation.

Judicial Review

When zoning provisions are adopted and land use determinations made by local legislative or administrative bodies, they are subject to review by the courts. There are a variety of rules that govern access to the courts, the timing of applications for judicial review, the standards used by courts to review such actions and the remedies that courts will employ to resolve disputes brought before them.

The courts in New York, relative to courts in other states, have adopted fairly liberal rules of access, typically allowing adjacent and nearby property owners and associations of residents to challenge land use decisions that affect them in some special way. On the other hand, the courts defer to the legislative and administrative judgments of municipal bodies by presuming the validity of their actions and imposing a fairly heavy burden of proof on those who challenge them. The state legislature has further protected municipal actions by requiring that challengers bring their challenge within 30 days or four months of the municipal action in most cases.

Courts are reluctant to order local legislatures to take specific actions; they are more comfortable issuing judgments that declare legislative actions valid or invalid and simply enjoining legislatures from enforcing invalid regulations or decisions. This reluctance to order legislatures to act is part of the important doctrine of separation of powers between the judicial and legislative branches of government. The judiciary is not so inhibited, however, when reviewing the actions of a planning or zoning board of appeals which are administrative agencies or perform quasi-judicial functions for the locality. With respect to the decisions and actions of these bodies and officials, courts will require specific actions to be taken, such as the award or revocation of a building permit or subdivision approval.

Variances

A variance allows property to be used in a manner that does not comply with the literal requirements of the zoning ordinance. There are two types of variances, area and use.

- A use variance permits "a use of the land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations." For example, if a piece of land is zoned for single-family residential use and the owner wishes to operate a retail business, the owner could apply to the zoning board of appeals for a use variance.
- An area variance allows for a "use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulation." An area variance is needed when a building application does not comply with the setback, height, or area requirements of the zoning ordinance. If an owner wants to build a deck on his house that encroaches slightly into a side yard setback area, he could apply to the zoning board of appeals for an area variance.

Why are variances allowed?

Variances provide flexibility in the application of the zoning law and afford the landowner an opportunity to apply for administrative relief from certain provisions of the law. A property owner may seek a use or area variance when an application for a building permit is denied on the grounds that the proposal violates the use or dimensional requirements of the zoning ordinance. Alternatively, the property owner could request the local legislative board to rezone the property so that the requested use is allowed.

Authority to issue variances

The zoning board of appeals has been delegated the statutory authority to issue use and area variances. The jurisdiction of the zoning board of appeals is limited to reviewing the decisions of, or hearing appeals from the determination of an administrative official charged with enforcing the zoning law. In other words, a landowner may not go directly to the zoning board of appeals for an interpretation of the zoning law or for a variance. The zoning enforcement officer must rule on the matter first and that ruling be appealed to the board. In order to grant a use or area variance, a concurring vote of the majority of the board is necessary. The board is limited to granting the minimum variance necessary that addresses the need for the variance while preserving the character, health, safety, and welfare of the community.

How variances work

When an application for permission to build is made to the local building inspector or department that does not comply with the literal requirements of the zoning law, the proposal must be denied. If the reason for the denial is that the application violates the use or area provisions of the law, the applicant may apply to the zoning board of appeals for a use or area variance.

New York law provides statutory standards for the issuance of use and area variances. The statutes impose a heavy burden upon an applicant of demonstrating that a use variance should be granted, as that applicant is requesting the zoning board of appeals to alter the local legislature's determination that a specific use is not appropriate in the zoning district. The legal burden is less stringent when applying for an area variance as the potential impact on the surrounding area is significantly reduced.

Statutory Standard for Use Variance

To obtain a use variance, the applicant must demonstrate that the applicable zoning regulations cause an unnecessary hardship. To prove unnecessary hardship, the applicant must establish that the requested variance meets the following four statutory conditions.

1. The owner cannot realize a reasonable return on the property as zoned. The lack of return must be substantial and proven with competent financial evidence. It is insufficient for the applicant to show only that the desired use would be more profitable than the use permitted under the zoning. For example, the owner of residentially zoned property sought a use variance to allow him to construct offices for an insurance agency and a real estate business. The owner testified in support of the application that it would not be economical to renovate the property for residential purposes and that a greater rent could be charged to a commercial rather than residential lessee. The court held that a showing that "the permitted use may not be the most profitable use is immaterial." What must be established is that "the return from the property would not be reasonable for each and every permitted use under the ordinance."

2. The hardship must be unique to the owner's property and not applicable to a substantial portion of the zoning district. If the hardship is common to the whole neighborhood, the remedy is to seek a change in the zoning, not to apply for a use variance. In another case, the applicant had failed to establish that the hardship -- being located near a city landfill -- was unique to his property. Rather, it was held that the hardship was common to all properties in the area. Thus, the property owner should make an application for rezoning to the local legislature.

3. Granting the variance will not alter the essential character of the neighborhood. In making this determination, the court often considers the intensity of the proposed development as compared to the existing and permitted uses in the neighborhood. For example, a use variance to permit construction of an office building in a single-family neighborhood where several tall commercial structures already exist would not alter the essential character of the neighborhood. Conversely, a cemetery would alter the essential character of a district zoned for residential development, despite the fact that the land in the district was undeveloped at the time of the application.

4. The hardship is not self-created. In *Clark v. Board of Zoning Appeals of Town of Hempstead*, the Court of Appeals held that "one who ... knowingly acquires land for a prohibited use, cannot thereafter have a variance on the ground of special hardship." For example, a developer may not acquire land zoned for residential use at the time of acquisition and successfully petition for a variance to construct office buildings. Whether the purchaser actually knew about the use restriction is not relevant; it was his responsibility to discover such restrictions.

In issuing a use variance, the board may impose "such reasonable conditions and restrictions as are directly necessary to and incidental to the proposed use of the property. Such conditions shall be ... imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community."

Statutory Standard for Area Variances

For a zoning board of appeals to grant a variance from the dimensional and area requirements of a zoning ordinance, it must find that the benefits to the applicant of the requested variance outweigh the detriment it will cause to the health, safety, and welfare of the neighborhood. The board must weigh the benefits of the requested variance to the applicant against the five factors set forth in the statute:

1. Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of an area variance?
2. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance?
3. Is the requested area variance substantial?
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
5. Is the alleged difficulty self-created? This consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

As an example, a case involved an application for an area variance to allow the property owner to build a boat house on a lot that was smaller than the required minimum lot size. The zoning board of appeals granted the

area variance and several neighbors challenged that decision. In upholding the determination of the zoning board of appeals, the court found that the board had carefully considered the five statutory criteria and made a rational decision. The zoning board had found that construction of the boat house would not cause a change in the character of the neighborhood as adjacent properties had similar structures; no alternatives other than an area variance existed because the subject parcel was smaller than required and there was no available adjacent land to be purchased so as to meet the minimum requirements. The fact that the hardship was determined to be self-created was not fatal to the granting of the variance. Even though the owner had knowledge that the lot was substandard when purchased, the statute specifically provides that this is just one factor to be considered and "shall not preclude the granting of an area variance."

Limitations on variances

Use variances involve an inherent contradiction. It is the prerogative of the legislative body to separate one land use from another. This is the essential purpose of dividing the community into zoning districts. Allowing a quasi-judicial body, such as the zoning board of appeals, to vary the uses allowed in a district must be limited in order to avoid that body usurping this essential legislative function. At the same time, the legislature does not want property owners to be denied a reasonable return on their property because of use restrictions, where some relief from these restrictions can be afforded without altering the underlying purpose of the zoning district. For this reason, zoning boards have been authorized to grant use variances subject to the requirements of the statute. The statute imposes a burden of proving several factors on the petitioner. Area variances involve similar tensions, but to a lesser degree. There, the zoning board of appeals is charged with the task of balancing the benefit of the variance to the petitioner against its impact on the area.

Subdivision

The subdivision of land involves the legal division of a parcel into a number of lots for the purpose of development and sale.

The subdivision and development of individual parcels must conform to the provisions of local zoning, which contain use and dimensional requirements for land development. Zoning, however, does not contain specifications regulating many of the details of development that determine, for example, the precise location and specifications for streets, drainage facilities, sanitary sewers, storm drains, and water mains. Subdivision standards go beyond zoning regulations and protect neighborhoods from flooding and erosion, traffic congestion and accidents, unsightly design, noise pollution, and the erosion of neighborhood character.

Under a typical set of subdivision regulations, the landowner must submit a map called a plat, which is a map, drawing, or rendering of the subdivision which can contain narrative elements. The plat must depict the proposed subdivision layout and approximate dimensions of lots and roads, the topography and drainage, and all proposed facilities at an appropriate scale.

Local regulations require that the subdivision plat show all streets at sufficient width and suitable grade, sanitary sewers and storm drains, water mains and systems, landscaping, sidewalks, curbs and gutters, fire alarm signal devices, street lighting, signs, and trees. Additional features may be required such as the location of floodplains, wetlands, building footprints, large trees, archeological sites, and utility easements and lines. Further, the statutes authorize the planning board, under certain circumstances, to require the applicant to reserve land for a park, playground or other recreational purposes, or to require the payment of a sum of money in lieu of such a reservation.

Where a subdivision application meets the standards contained in the regulations, it must be approved. Where it does not, the planning board may impose conditions on the standards to insure that it meets the specifications. Where the subdivision cannot meet the standards, it can be rejected.

By adopting and applying subdivision regulations, the community seeks to insure that new development is cost-effective, properly designed, and has a favorable, rather than negative, impact on the neighborhood.

Site Plans

A "site plan" is defined by state law as a drawing, prepared in accordance with local specifications, that shows the "arrangement, layout, and design of the proposed use of a single parcel of land."

Local site plan regulations require the developer of an individual parcel of land to file a drawing of that parcel's planned development for review and approval by a local board. Often, site plan regulations apply only to larger-scale commercial developments such as shopping malls, industrial and office parks, or residential developments such as condominium or town house projects. Some communities, however, subject smaller parcels to site plan review.

Parcels subject to site plan review are normally owned by a single individual or entity such as a condominium association, homeowners' association, corporation, or partnership. Since such parcels are not to be subdivided, their development would escape local review if it were not for the locality's site plan regulations. When such regulations have been adopted, individual parcels subject to their terms may not be developed until a site plan has been submitted, reviewed, and approved.

Site plan regulations require that certain elements be shown on the drawing including access, parking, landscaping and buffering, drainage, utilities, roads, curbs, lighting, and the location and dimensions of the principal and accessory buildings and any other intended improvements. Some communities require site plans, particularly those of larger projects, to show adjacent land uses and to provide a narrative statement of how the site's development will avoid or mitigate adverse impacts on them.

What a site plan accomplishes

The purpose of site plan regulations is to ensure that the development of individual parcels of land do not have an adverse impact on adjacent properties or the surrounding neighborhood. Such regulations also ensure that the parcel's development fits properly into the community and conforms to its planning objectives.

The development of individual parcels must conform to the provisions of local zoning which contain use and dimensional requirements for site development. Zoning, however, does not contain specifications regulating the details of a site's development that protect, for example, the design of vehicular access to the site, the provision of needed landscape features, the location of parking areas, and the architectural features of buildings. Site plan specifications go beyond those of zoning, and protect adjacent areas and the community's residents from flooding and erosion, traffic congestion and accidents, unsightly design, noise pollution, and the erosion of neighborhood character. This is their distinct purpose.

Special Use Permits

New York statutes define a special use permit as the "authorization of a particular land use which is permitted in a zoning ordinance or local law, subject to requirements imposed by such zoning ordinance or local law to

assure that the proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if such requirements are met." An example of a special use is a church in a single-family residential neighborhood. The legislature may conclude that the church should be permitted in a residential district, subject to conditions that ensure the size and layout as well as parking and lighting are carefully designed so that the neighborhood is not adversely affected.

A variety of uses may be permitted in various zones as special uses. These include adult homes, professional offices, group homes, swimming pools, nursing homes, or day care centers in residential zones; and drive-in establishments, video arcades, marinas, shopping centers, gas stations, and convenience stores in commercial districts. Once a special permit has been issued, it is not personal to the applicant, but affixes to, and runs with, the ownership of the land.

The local legislature must adopt standards to guide the review, conditioning, and approval of special uses. These standards will include, for example, requirements that gasoline stations and drive-in establishments provide adequate traffic safety improvements, that professional home offices provide adequate parking and landscape buffering, or that a shopping center provide adequate storm drainage and lighting controls to protect surrounding areas.

Special use permits are referred to by a variety of terms in local practice and court decisions. These terms include special exception use, special permit, conditional use permits, and special exceptions. The statutory term is special use permit.

Why Allow Special Uses?

Local legislatures achieve a degree of flexibility by adding special uses to the types of land uses otherwise permitted in zoning districts. In its inception, zoning was justified on the ground that the strict separation of uses was in the public interest and promoted the public health, safety, and welfare. This alone, however, would lead to the creation of single-family districts, residential districts, and neighborhood commercial districts where relatively few uses are allowed and thereby exclude a variety of uses historically associated with one another, such as the church in a residential neighborhood, or gasoline station in a neighborhood retail district. By allowing special uses, yet subjecting them to conditions, the legislature achieves needed diversity of uses while insuring compatibility with surrounding properties.

Building Permits and Certificates of Occupancy

A building permit is a certificate issued by the official charged with the enforcement of the Uniform Fire Prevention and Building Code (Uniform Code) in the municipality. The purpose of the Uniform Code, and a building permit issued pursuant to it, is to provide a minimum level of protection from the hazards of fire and inadequate building construction. The Uniform Code contains detailed specifications regulating the design and construction of buildings in New York State. It requires the property owner to obtain a building permit for almost all new construction projects before building begins. Plans to alter existing buildings also require building permits, particularly if they involve any structural parts, safety features, or electrical work.

The building permit certifies that the plans submitted for new construction or alterations conform with the standards and specifications of the Uniform Code. After construction has been completed, before a new or rehabilitated building may be occupied, a certificate of occupancy must be obtained. A certificate of occupancy certifies that the building was completed in accordance with the approved construction plans and meets the provisions the local zoning law.

The Building Permit Application

As administered in many communities, an application for a building permit is the first step in the local land use process.

When an application is submitted, the building or zoning official charged with reviewing it determines whether the proposed project must first be reviewed and approved by another administrative body. If, for example, the proposal involves the development of an individual site that is subject to local subdivision or site plan regulations, the proposal must be submitted first to the planning board or other administrative agency charged with approving site plan and subdivision applications.

Upon the submission of an application for a building permit, the building or zoning enforcement officer must determine whether the proposal conforms with the dimensional and use provisions of the zoning law. If that officer determines that it does not, the application for a building permit must be denied. The applicant may ask the zoning board of appeals to review the building or zoning official's interpretation of the zoning provisions or, if it agrees that the proposal does not comply with zoning, the applicant may ask the zoning board for a use or area variance.

Local practice varies greatly in a state as diverse as New York regarding the above determinations. Some cities, villages, and more populous towns have a building inspector and a separate zoning enforcement officer. Most such communities require the local zoning enforcement officer to make all determinations regarding the compliance of proposed construction projects with zoning, subdivision, site plan, and special permit provisions. In these cases, it is the determination of the zoning enforcement officer that is appealed to the zoning board of appeals. Some of these communities have building or development departments within which different officials have been delegated Uniform Code and zoning enforcement responsibility. In many communities, however, the local building inspector is charged with zoning interpretation and enforcement as well as fire and building code responsibility.

A building permit may not be required for necessary repairs not affecting structural features and for alterations to existing buildings costing less than a stipulated amount if those repairs do not affect structural conditions, fire safety features, or electrical systems.

The application for a building permit must contain sufficient information to permit a determination that the intended work conforms to the requirements of the Uniform Code. Normally, this includes complete architectural drawings of all proposed building improvements. The building inspector reviews those drawings to determine if they comply with the Uniform Code. Determinations by building officials regarding submitted applications for building permits are to be made expeditiously and based solely on the legislated standards and specifications contained in the relevant codes. The building inspector is, in nearly all instances, a ministerial officer, who is not making decisions based on his discretion, but upon the specifications contained in relevant codes. In most cases, conditions are not imposed on building permits. The application either meets the provisions of the applicable codes or it does not. If it does, the permit should be issued.

Illustrations:

The zoning chapter of the municipal code of the Town of Wawayanda stipulates that it "shall be enforced by the Building Inspector, who shall be appointed by the Town Board to serve at the pleasure of the Town Board." Among the duties of the Building Inspector are "to issue...building permits and certificates of occupancy when compliance is made with the provisions of this [zoning] chapter and the New York State Uniform Fire

Prevention and Building Code. The zoning chapter also states that “where a building permit is required, no building hereafter erected... shall be used or occupied for any purpose until a certificate of occupancy... shall have been issued, stating that the building... and proposed use thereof comply with the provisions of this [zoning] chapter. (Chapter 195 Code of the Town of Wawayanda, §§ 80-82.)

In the Town of Pawling, the zoning chapter is to be enforced by the Code Enforcement Officer, who is also charged with the issuance of building permits and certificates of occupancy. (Chapter 215 Pawling Code §§ 49-50.)

Can a permit be revoked?

A building inspector should exercise extra caution in revoking a building permit. If the developer has incurred substantial expenditures and completed substantial construction, in relationship to the project as a whole, rights to the permit may have vested. In such a case, revocation can expose the municipality to significant damages for taking those vested rights without just compensation. Where the permit is revoked by the building inspector without justification, following orders from superior municipal officials, the municipality may be held liable for the inspector’s acts. If the inspector revokes the permit innocently, based on a mistake of law, or because of the inspector’s personal ill will toward the permit holder, the municipality may not be liable for damages caused by the revocation.

When a building inspector denies an application for a permit, the denial must be based on the failure of the application to meet the specific standards established in the Uniform Code or the zoning law of the community. Normally, building permit denials are not discretionary matters. The inspector may not deny a permit based on subjective considerations or fears that the building may be used illegally at some point in the future.

Municipalities are permitted to charge fees for the issuance of building permits and certificates of occupancy. The dollar amount of the fees should be reasonable. The measure of reasonableness is whether they are calculated to recover the cost to the municipality of administering the permit and certificate system. Where those fees are disproportionately large, a court may find them to be an illegal tax and declare the fee structure invalid.

Permit Conditions

Before approving an owner's application for a permit to develop land, local agencies are authorized to impose conditions that are directly related to and incidental to the proposed use of the property. Most applications for local land use approvals are discretionary in nature and conditions can be attached to any development permit to harmonize the proposed land use with surrounding properties and the community. The local agency uses the permit condition to balance the benefit to the owner of the approval against the potential adverse impact of that development on the surrounding area.

Once a condition is imposed on a local land use approval, it must be complied with before a building permit is issued by the local building inspector or department. If the condition is one that is to be met during construction, then its terms must be complied with before a certificate of occupancy is granted by local authorities.

Among the types of conditions that have been sustained by the courts in the proper circumstances are fences, safety devices, landscaping, screening, access roads, soil erosion prevention, drainage facilities, outdoor lighting, the enclosure of buildings, restrictive covenants preventing development of land in a floodplain, archeological site, or viewshed and a variety of measures to contain the emission of odors, dust, smoke, noise and vibrations.

Conditions can be imposed when the local legislature rezones a parcel as well as when local agencies approve applications for subdivision and site plan or issue special permits or variances. These local actions all involve discretionary decision-making on the part of a local agency to which permit conditions may be attached. When the agency fears that a project or proposal will negatively impact the community, it may deny the application or approve it subject to reasonable conditions that lessen or contain the negative impacts of that development.

Illustrations

The Planning Board of the Town of Greenville imposed a condition on the landowner's site plan approval for a private hunting preserve that precluded the use of any weapon other than a shotgun in the preserve. Evidence existed on the planning board's record that even the least powerful rifles are capable of firing bullets a distance that exceed the length and width of the landowner's property. The owner contended that the condition amounted to the rejection by the planning board of a use permitted by the zoning and that it lacked a rational basis. Because of the evidence on the record, the court held that the condition was justified and appropriate under the circumstances.

The Zoning Board of Appeals in the Village of Garden City granted an area variance from the minimum lot size to permit the land to be divided into two parcels. The zoning board of appeals conditioned the variance on the relocation of a brick garage on the original parcel to conform to the side yard requirement of the ordinance. At the hearing before the board, the fact that the garage encroached on the side yard set back requirement by two feet was discussed as a secondary issue. The property owners stated on the record that it would be very costly and inconvenient to move the garage as required; they indicated that they would have to destroy and rebuild it. The court held that this condition was unreasonable because its burden was simply too great in proportion to the variance granted. The court stated that "the grant of a variance may not constitutionally labor under a condition which deprives the owner of the effective enjoyment of the variance."

When the Town of Gates, as a condition to the rezoning of land to permit retail shopping use, required that the development be conducted by Wegman Enterprises, that condition was struck down. The court stated that "while it is proper for a zoning board to impose appropriate conditions and safeguards in conjunction with a change of zone or a grant of a variance or special permit, such conditions and safeguards must be reasonable and relate only to the real estate involved without regard to the person who owns or occupies it." In a separate matter, a variance for the use of a parcel as an automobile repair shop was inappropriately conditioned on the applicant discontinuing a second shop in another part of town. This condition, too, is unrelated to the impacts of the proposed land use before the zoning board of appeals.

Often, but not always, conditions that limit the details of operation of a business are set aside as not relating to the proposed use of the land. When a use variance for a real estate office in a residential district was conditioned on the requirement that it be used only in conjunction with the applicant's personal real estate business, that condition was set aside as unrelated to the impacts of the use proposed. When the details of the operation of a nursery school, including the age of students, hours of school operation and the number of hours to be worked by a caretaker, were the subjects of a condition imposed on the granting of a variance in the Village of Matinecock, the court determined that these details were unrelated to zoning matters and inappropriate. However, a condition limiting the period of operation of the school from September through June was deemed valid because the definition of a private school in the ordinance contained a similar limitation. In another case, a condition that limited an automobile repair shop from keeping more than two non-employee vehicles outside the shop during working hours was sustained as related to the use of the land proposed by the owner's application for a use variance.

Although the imposition of conditions is clearly within the authority of local governments, the conditions must comply with several standards or they can be declared invalid. Courts invalidate a condition when there is no rational basis in the record for its imposition, when the condition is unreasonable, or when it is not related to the impacts of the proposed development.

Nonconforming Uses

A nonconforming use is created when existing land uses, valid when established, are prohibited by a new or amended zoning law. Nonconforming use issues arise when the zoning law is first adopted. When a district is zoned residential, for example, all existing nonresidential uses in that district are rendered nonconforming. Later amendments to the zoning ordinance may have the same effect.

When property owners propose the improvement, expansion, rebuilding or other change in their nonconforming property use, they must be certain to comply with local regulations governing those matters. Normally, these regulations are found in a discrete article of the local zoning law, entitled Nonconforming Uses. The nonconforming use article of the zoning law will prohibit or limit changes in buildings and lot uses that are nonconforming and provide in a variety of ways for the termination of nonconforming uses, such as limiting their expansion or enlargement, prohibiting the reconstruction of damaged structures, disallowing the reestablishment of nonconforming uses after they have been discontinued for a time, or simply terminating them after the passage of a stipulated amount of time.

The policy of allowing nonconforming uses to continue originated with concerns that the application of zoning regulations to uses existing prior to the regulations' enactment might be construed as confiscatory and unconstitutional. It was assumed that, by limiting the enlargement and reconstruction of nonconforming uses, they will disappear over time. The allowance of nonconforming uses has been characterized by the courts as a "grudging tolerance" of them. The right of municipalities to adopt reasonable measures to eliminate them has been recognized. The ultimate goal of the zoning law is to achieve uniformity of property uses within each zoning district which can only be accomplished by the elimination of uses that do not conform to the specifications of district regulations.

There is obvious tension between protecting the investment of the owners of nonconforming uses and achieving uniformity of land use within zoning districts. To achieve this latter goal, a variety of provisions have been added to the typical zoning law to discourage the continuation of nonconforming uses over time. These include provisions that limit an owner's right to expand or enlarge the nonconforming use, to reconstruct such use after substantial damage, to change the property's use to different nonconforming use, or require the termination of the use after a specified period.

Reconstruction and Restoration

The local zoning ordinance may prohibit the restoration of a nonconforming structure that suffers significant physical damage and require that any such reconstruction must be for a use that conforms to the zoning law. Significant physical damage is defined usually as damage that exceeds a certain percentage of the structure's value. Typical standards range from 25 percent to 50 percent. These provisions are premised on the theory that owners do not have a right to reconstruct a nonconforming building after damage by fire, weather, natural disaster, or otherwise. In such a case, their property rights were destroyed by the disaster, rather than by the law. The owner is in a situation similar to the owner of a vacant lot, who must comply with the applicable zoning restrictions.

Enlargement, Alteration, or Extension

Similarly, local laws often prohibit the enlargement, alteration, or extension of a nonconforming use. To allow the expansion of nonconforming uses, which the zoning law wishes to eliminate over time, would defeat that underlying policy. Normally, the law allows the owners of nonconforming land uses to perform property repairs, conduct normal maintenance, and complete internal alterations that do not increase the degree of, or create any new, noncompliance with the locality's zoning regulations.

Courts have upheld prohibitions on the construction of an awning over a courtyard outside a restaurant, on the theory that it would create additional space for patrons to congregate and, in this sense, increase the degree of the nonconforming use. Similarly, the prohibition of the conversion of seasonal bungalows to year-round residences has been upheld as an acceptable method of preventing the enlargement of a nonconforming use.

Where nonconforming business operations are proposed to be expanded, the case law is somewhat less clear. Where roads and structures built on a parcel used as a gravel mining operation exhibited the owner's intention to use the entire parcel, the court held that expanding the mining operation to another location on the property was permitted. The addition of a body-toning operation to the premises containing a nonconforming beauty parlor, however, was considered a prohibited extension of the prior nonconforming use. The court's interest in protecting the owner's demonstrated investment in the gravel mining operation could explain the difference between these cases.

Nonconforming use provisions in zoning laws vary considerably from one locality to another. A municipality particularly intent on eliminating nonconforming uses may prohibit any physical expansion of a building; another may favor property use by allowing, for example, the construction of an additional story because it does not increase the footprint, or lot coverage, of the structure.

Changing to Another Nonconforming Use

The property owner's right to continue a nonconforming use does not allow the owner to change to a materially different use. The important question here is what constitutes a material change. The consequence of a finding that a material change in use has occurred, is to deem the prior nonconforming use abandoned and, therefore, terminated. The property owner could argue that the change of a nonconforming use from one commercial use to another, for example, should not be prohibited by the zoning law. The assertion is that to change a building's occupancy from a dairy plant to a business that rents machinery simply shifts the type of nonconformance from one commercial category to another. It has been held, however, that it is not only a change in the volume of business conducted but in the character of that business that determines whether one business use is a continuation of another. This is true despite the generic similarity between the old and new proposed use.

Occasionally, courts hold that changes from one use to another within the same category of use are permitted. In one case, for example, the owner was allowed to establish a storage business in a building that had been occupied as a nursery and florist enterprise. Determinations in these cases depend on the particular facts involved, the court's interpretation of how material the change will be and the specific language of the local ordinance that regulates changes in nonconforming uses.

Abandonment

A property owner's right to continue a nonconforming use may be lost by abandonment. Local zoning laws frequently stipulate that any discontinuance of the nonconforming use for a specified period constitutes

abandonment. Courts hold that such provisions are sufficient to establish the owner's intent to abandon the nonconforming use as a matter of law. Where the established period is reasonable, discontinuance of the use for that time amounts to an abandonment of the use. It has been held that local discontinuance periods apply even when the owner can prove that he did not actually intend to abandon the nonconforming use.

Amortization

Some local ordinances require certain nonconforming uses to be amortized over a specified period at the end of which they must be terminated. The term "amortization" is used to describe these provisions because they allow the owner some time during which to recoup her investment in the nonconforming use. The Court of Appeals has upheld such provisions "where the benefit to the public has been deemed of greater moment than the detriment to the property owner." The courts have said that the test for when an amortization period is reasonable is "a question that must be answered in the light of the facts of each particular case. Certainly, a critical factor is the length of the amortization period in relation to the investment. The critical question, however, is whether the public gain achieved by the exercise of the police power outweighs the private loss suffered by the owners of the nonconforming uses."

Contexts in which amortization provisions are likely to be upheld are:

1. When the common law of nuisance would allow neighboring property owners to enjoin the continuation of a nonconforming use. For example, a gravel pit, auto wrecking operation, or junkyard, harmful to children in a developing residential area, might be enjoined under a private nuisance action. Likewise, a zoning law can legally require such a nonconforming use to be terminated in an appropriate case. If an amortization provision is challenged, the municipality can show that the owner's property interest is slight because of its vulnerability to a nuisance action. In this context, however, the label "amortization" is inappropriate. The grace period, if any, allowed by the local statute is gratuitous if, in fact, the owner's use may be enjoined as a nuisance.
2. When the nonconforming use is somewhat noxious and the owner has little investment in it. For example, a provision requiring the owner to cease raising pigeons on the roof or to remove an old outdoor sign might withstand challenge because of the minimal nature of the owner's investment and the significant harm done to the zoning scheme if the owner's activity is allowed to continue. Harder cases are presented when the owner has a demonstrable investment in the use and the public interest in removing it is clear but where the threat to public health and safety is not imminent.

Limitations on the Restriction of Nonconforming Uses

The local legislature, in adopting zoning regulations, is most concerned with the separation of incompatible land uses. When a building, that preexisted the zoning requirements, is out of compliance with set-back, area, or height restrictions, it is not a nonconforming use in the technical sense; it is simply out of compliance with the dimensional requirements of zoning: a noncomplying building. Since noncomplying buildings do not offend the legislative policy of separation of incompatible uses, zoning provisions often do not so severely constrain their enlargement or reconstruction. A typical provision may require, for example, that no enlargement or reconstruction of a noncomplying building can increase the degree of noncompliance or create any new noncompliance.

A practice in some municipalities that extends the life of nonconforming uses is that of awarding use variances so that the nonconforming use can be enlarged, expanded, or reconstructed. This can occur when an owner is denied a building permit because the proposed construction would enlarge or reconstruct a nonconforming use. The owner can apply to the zoning board of appeals and, if the owner can show that the statutory criteria for a

use variance are satisfied, the board can award the requested variance. Although the board can impose reasonable conditions on the use of the property, the award of a use variance frees the property from the provisions of zoning that limit nonconforming uses. The effect of a variance is to declassify the use as nonconforming.

The property owner asking for a use variance must prove that the variance, if granted, will not alter the essential character of the neighborhood. If it does not, then and to this extent, the proposed use is compatible with the surrounding neighborhood. The property owner must also show by competent financial evidence that he cannot realize a reasonable return by using the property under any use allowed in the district or by continuing the nonconforming use in its unaltered condition. This financial requirement makes it very difficult for most owners of existing nonconforming uses to prove that they are entitled to a use variance.

Another local practice that influences the continuation of nonconforming uses is the interpretation of the building inspector as to what types of building improvements are prohibited by the language of the local zoning provisions. Usually, these provisions permit the repair and maintenance of nonconforming uses, or improvements that do not "enlarge or expand" the nonconforming use. Some building inspectors take a broad view of what repair and maintenance are and have a limited view of what constitutes an expansion or enlargement of the nonconforming use. By awarding building permits to improve nonconforming uses, the building inspector indirectly encourages their continuation.

Allowing the expansion and reconstruction of noncomplying buildings, granting variances to allow the expansion of nonconforming uses, and issuing building permits to improve nonconforming uses do not advance the policy of discontinuing nonconforming uses. They do, however, allow the municipality flexibility in accommodating the needs of property owners while mitigating the impacts of the continued presence of these uses to protect adjacent owners and surrounding neighbors.

Accessory Uses

Accessory uses are those uses of land found on the same lot as the principal use and that are subordinate, incidental to, and customarily found in connection with the principal use. For example, a garage may be accessory to a residential use of a property because it is customarily found in connection with and is incidental and subordinate to the principal residential use. Generally, zoning laws permit lot owners to use their land for a permitted principal use as well for activities that are accessory to that use.

In order to qualify as accessory, a use must also be incidental and subordinate to the principal use. To be incidental, an accessory use must be reasonably related to the principal use. For instance, a garage or recreational use are reasonably related to the principal residential use and thus, deemed incidental. To be subordinate, the accessory use must be proportionately smaller than the principal use. The garage is generally smaller than the house, for instance.

An accessory use must also be customarily found in conjunction with its principal use. A use is customary if it commonly, habitually, and by long practice has been reasonably associated with a principal use. A most common example of this is vehicle parking for a residence or business. But, a municipality need not be bound by specific uses that are customary, so long as the type of use is customary. For instance, a court upheld a zoning board of appeals determination that a skateboard ramp, which is a recreational use, was customary because recreational uses of property that serve the needs of the occupants are customary in a residential district. The test is whether the recreational use is incidental to the residential use, not whether landowners in the town are engaged in similar activities.

Why have Accessory Uses?

Accessory use provisions in zoning laws allow a range of incidental uses of property that owners expect to engage in when they purchase their property for its principal use. By permitting uses customarily incidental and subordinate to the principal activity, zoning ordinances allow property owners additional beneficial use of their property. Regulations which limit the accessory uses allowed in a district also recognize that some neighborhoods should be protected from accessory uses that are not consistent with the expectations of the property owners. This separation of inconsistent uses into zoning districts is part of the original purpose of zoning.

Illustrations

The Town of Southeast's zoning ordinance provides an example of how an accessory use may be defined. It provides that an accessory use is:

A use incidental to the principal use and located on the same lot. In buildings restricted to residential use, the office of a professional, customary home occupations and woodworking and similar workshops not conducted for compensation shall be deemed 'accessory uses.' There may be no uses accessory to an accessory use.

Greenburgh, in Westchester County, has taken the approach of listing permitted accessory uses and prohibiting all others. The zoning ordinance lists the allowed accessory uses in each zoning district. For instance, § 285-10, the section which regulates the R-40, One-Family Residence zone, states:

A. Permitted Uses. No building or premises shall be used and no building shall be erected, altered or added to unless otherwise provided in this chapter, except for the following uses: (1) Permitted uses . . . (2) Special permit uses . . . (3) Accessory Uses (a) Off-street parking, . . . (e) private swimming pools and tennis courts, (f) domestic gardens, . . . (i) the keeping of dogs and cats, (j) private garages

Home Occupations

Historically, single-family homes have been used by their occupants for a variety of occupational uses such as beauty parlors, dressmaking, laundries, and day care. Zoning limits single-family homes to residential uses and to those uses that are customarily associated with residential use and incidental and subordinate to that residential use. Does this mean that a single-family homeowner can conduct a particular business in a particular neighborhood, as an accessory use, or is the occupational use prohibited?

In some communities, this question is answered on a case-by-case basis without benefit of any special regulations. The zoning authorities examine the proposed occupational use and determine whether it is customary, incidental, and subordinate to the residential use. Other municipalities define "home occupations" more specifically in their zoning laws, requiring homeowners to conform their occupational uses to those definitions. Some adopt a list of permitted occupational uses of homes while others prohibit a specific list of occupations.

Why are there limitations on home occupations?

Permitting occupations to be conducted in single-family zoned neighborhoods honors expectations of homeowners that such uses have been permitted historically and are within the bundle of rights purchased with the single-family home. Zoning restrictions limiting the occupational use of homes recognize that residential districts must be protected from home occupations that are out of character with the neighborhood and are not uses that homeowners expect to be affected by when they purchase a home in a single-family area. One of the original purposes of zoning is to separate uses that are inconsistent with one another into distinct zoning districts.

The Village of Brewster defines a permitted “home occupation” as:

An occupation, profession, activity or use that is clearly a customary, incidental and secondary use of a residential dwelling unit and which does not alter the exterior of the property or affect the residential character of the neighborhood.

Illustrations

A broad definition of a home occupation is found in the Village of Brewster zoning law: “An occupation, profession, activity or use that is clearly a customary, incidental and secondary use of a residential dwelling unit and which does not alter the exterior of the property or affect the residential character of the neighborhood.” Art. IV, §170-3B.

A more specific definition of a home occupation, containing a list of excluded uses, was adopted by the Village of Hastings-on-Hudson: “Any use customarily conducted entirely within a dwelling . . . , which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes The conducting of a clinic, hospital, barber shop, beauty parlor, tea room, tourist home, animal hospital, or raising of animals, or any similar use shall not be deemed to be a home occupation.” Art. I, § 132.

The Town of Carmel’s zoning law contains a definition of home occupation listing both included and excluded occupations: “An activity conducted within a dwelling and carried on by an inhabitant thereof, which use is secondary to the use of the dwelling for dwelling purposes as customarily found in the home, and does not change the character thereof. Individuals engaged in music instruction, including voice and instrument lessons, were limited to a single pupil at a time, and the occupations of dressmaker, milliner or seamstress are deemed to be “home occupations.” Dance instruction, band instrument instruction in groups, tearooms, beauty parlors, barber shops, real estate offices or insurance offices shall not be deemed “home occupations.” Art. III, § 63-7B.

A specific definition of a “home professional office” permitted as a home occupation is contained in the zoning ordinance of the Town of Harrison: “The office or studio of a resident physician, surgeon, dentist, or other person licensed by the State of New York to practice a healing art, lawyer, architect, artist, engineer, real estate broker or salesman, insurance broker or agent or teacher.” Art. I, § 235-4.

Exclusionary Zoning and Affordable Housing

When local zoning laws prevent lower income households from living in the community, those laws are called exclusionary zoning and can be declared unconstitutional by the courts. Zoning laws and other municipal actions that are aimed at providing housing for persons of limited income are called inclusionary zoning. State

statutes provide municipalities with a variety of mechanisms that can be used to encourage and provide desired affordable housing. The topic of affordable housing covers both exclusionary and inclusionary zoning.

1. Exclusionary zoning

In New York, the obligation not to exclude households in need of affordable housing means that communities may not exclude from their residential zoning districts types of accommodations, such as multi-family housing, that generally are more affordable than single-family homes on individual lots. Developers are given standing to challenge zoning laws that exclude more affordable types of housing since their rights cannot “realistically be separated from the rights of . . . nonresidents, in search of a comfortable place to live.” A locality that has been found zoned in an exclusionary fashion can be required by the court to amend its zoning laws to accommodate more affordable types of housing. This is one of the few instances in New York when the courts will direct a local legislature to take a particular action such as rezoning to accommodate a specific amount of affordable housing.

2. Inclusionary zoning

State statutes encourage local governments to adopt inclusionary programs regarding affordable housing. Localities have specific authority to provide zoning incentives, such as additional development density, to encourage private developers to set aside a percentage of residential units in a proposed development for affordable housing. Municipalities may abate local taxes, provide mortgage financing, acquire and dispose of property, and subsidize and provide infrastructure for affordable housing built by private and non-profit corporations organized under state housing laws. Cities, towns, and villages are authorized to establish municipal housing authorities that can issue bonds and make land available, provide infrastructure, and subsidize the costs of operating the projects of their municipal housing authorities.

Most discussions of affordable housing refer to state and federal subsidy programs that define affordable housing as synonymous with “low-income housing.” The public housing programs and housing subsidy programs administered by the U.S. Department of Housing and Development and various state agencies have largely defined affordable housing in the public mind as high-rise rental housing for low-income families or publicly subsidized rural housing of a particular architectural design. There is, however, no standard definition of affordable housing that directs or binds a municipality that wishes to establish an inclusionary program or avoid a successful exclusionary zoning challenge. Localities may wish to encourage or assist either rental housing or housing that is for sale. Municipally encouraged or assisted affordable housing may be multi-family townhouses, garden apartments, attached low-rise units, single-family modular units, or any other housing type that can be affordably constructed. Local affordable housing initiatives can aim to serve any income group that is priced out of the local housing market.

Why encourage affordable housing at all?

The purpose of encouraging housing for those in need of affordable homes is to provide housing for individuals and families that the community wishes to accommodate to create a more efficient, workable, and equitable community. Local governments in New York have used their zoning authority to encourage the development of housing for all types of households: senior citizens, middle-income families, homeless families, employees of the municipality, volunteer firemen, farm workers, and first-time homebuyers.

When local legislators discover that municipal employees or volunteers, senior citizens, young families or other groups of households are having trouble locating affordable housing in the community, they may wish to take some action to encourage its development. Localities may want teachers in the local school system, municipal

employees, police officers, and fire fighters to live in the community for a variety of reasons related to the public interest. In high cost areas, older residents who have lived in the community for decades and young adults who grew up in the community may not be able to locate affordable housing there and may be forced to move elsewhere. When communities in a region do not zone to include affordable housing, businesses can suffer from a lack of workers or be required to pay higher salaries to subsidize their commuting costs.

Group Homes, Disabilities and Zoning

Group homes include residences for a variety of special populations groups in need of supervised living facilities. Individuals residing in group homes may be mentally or physically disabled, recovering substance abusers, teenaged mothers, or victims of domestic violence. Able-bodied elderly persons, college students, young professionals and other people not related by blood, marriage, or adoption also form groups that wish to live together. When such groups of unrelated persons seek housing in a single-family home, the question arises as to whether they are a “family” entitled to live in a residential unit in a single-family zoning district.

Some local governments have prevented such groups from living in single-family districts by narrowly defining the “family” permitted to live in a single-family home. A typical provision defines a family as comprising any number of persons related by blood, marriage, adoption, or a fixed number of persons not so related. These definitions have raised questions about whether treating “traditional” families differently from “nontraditional families” is legal, particularly where the nontraditional group functions like a traditional household.

Local zoning laws may accommodate residential facilities for nontraditional groups of people by allowing them upon the issuance of a special permit. In some communities, such groups are effectively excluded due to a restrictive definition of family and the absence of a special use provision.

Why regulate the number of people living in a home?

There are many legitimate purposes for limiting the number of individuals that may occupy single-family homes. These purposes may include controlling municipal services needed, limiting congestion and overcrowding, and preventing noise, traffic, and parking problems. In addition, some local governments have limited the number of nontraditional household members permitted in single-family zoning districts to preserve “family, youth or property values.”

These municipal purposes may conflict with the overriding legal purposes of the state constitution or statutes adopted by the state legislature. For example, one purpose of the due process clause in the Constitution of the State of New York is to insure that zoning provisions are designed to accomplish legitimate public purposes and that the means chosen are rationally related to the achievement of those purposes. The equal protection clause of the Constitution of the United States insures that regulations treating groups of people differently are justified by legitimate public objectives. Some legal definitions of family for zoning purposes have been invalidated for violating these constitutional norms.

The Padavan Act limits the ability of municipalities to define who constitutes a family for zoning purposes. Its purpose is to promote and encourage the placement of mentally disabled individuals in community settings to provide the least restrictive environment consistent with the needs of such individuals. This law allows mentally disabled individuals to live in single-family homes and enable them to be as fully integrated and productive as possible. Local zoning provisions that frustrate the purpose of the Padavan Act are seldom upheld.

The federal Fair Housing Act and Amendments prohibits housing discrimination on the basis of color, race, religion, national origin, gender, and handicap including physical or mental impairment. The federal Americans with Disabilities Act implements a comprehensive approach to eliminating discrimination against the disabled. Local zoning provisions that violate these protections risk invalidation.

Environmental Review

The State Environmental Quality Review Act (SEQRA) applies to all agencies and instrumentalities of the state, which includes local agencies such as legislatures, planning boards and zoning boards of appeals. Local agency decisions on applications for site plan or subdivision approval or the issuance of variances and special permits must be preceded by an assessment of the environmental impact of the proposed project. The adoption of comprehensive plans and zoning ordinances, and their amendment, must also be accompanied by a review of their impact on the environment. SEQRA also applies to proposed plans of local governments to build capital projects or to provide funding for projects of any kind. The essence of SEQRA is the requirement that the impact of all such local actions on the environment be considered in the planning process and that local agencies act effectively to avoid any possible adverse environmental impacts.

SEQRA gives local land use agencies independent authority to impose conditions on land use approvals to mitigate the potential negative impacts of proposed projects on the environment. Since the environment is defined very broadly, SEQRA extends local agency authority to impose conditions on land use approvals for the protection of any aspect of the environment. Both with regard to these substantive conditions and to the procedures that proposals must follow, SEQRA amounts to a regulatory overlay on the process of reviewing and approving all other applications for land use approvals.

SEQRA also gives local governments additional authority to study and adopt plans for areas of environmental significance. In certain instances, localities may designate critical environmental areas, conduct cumulative impact analyses, and perform generic environmental impact statements. These environmental review tools expand the techniques available to villages, towns, and cities to anticipate and review future land use impacts in a more comprehensive manner.

Environmental Review Techniques

New York's State Environmental Quality Review Act, known as SEQRA, requires local agencies, when reviewing development projects, adopting plans, and establishing programs, to prepare an environmental impact statement for actions that may have a significant adverse impact on the environment. SEQRA requires such agencies to use all practicable means to minimize or avoid adverse environmental effects.

In SEQRA terms, the local land use review and approval agency is called the "lead agency" and a development approval, the adoption of a plan or enactment of land use regulations, are called "actions." When any local agency is about to undertake an action that is not exempt from review, it must consider the environmental impacts of that action and go through the procedures required by SEQRA.

When does Environmental Review come into play?

SEQRA applies to local land use actions such as approving applications for rezoning, subdivision and site plan review, the issuance of special permits and variances and the adoption of comprehensive plans and capital projects. Regulations issued under SEQRA list certain actions as Type II actions where no environmental review is required. The Type II list includes, for example, area variances for one, two, and three family houses,

the construction of noncommercial structures of less than 4,000 square feet and the construction or expansion of one, two, or three family homes on improved lots. Ministerial actions, such as the issuance of building permits where no discretion is exercised, are not subject to SEQRA.

With respect to other actions, the local lead agency must take a hard look at the potential environmental impacts and, where there may be a significant adverse impact on the environment, prepare an Environmental Impact Statement (EIS) on the proposal or project before granting, conditioning, or denying it. The regulations list certain actions as Type I which are deemed "more likely to require the preparation of an Environmental Impact Statement" than Unlisted Actions, which are simply not listed in the regulations, as either Type I or Type II actions. Some examples of Type I actions are the adoption of a comprehensive plan or zoning law, changes in allowable uses in any zoning district affecting 25 acres or more and the construction of 50 or more homes not to be connected to public water and sewerage systems.

Limitations on environmental review

The degree of detail required in an environmental review varies with the circumstances and nature of the proposal. Upon review, the court will look to see if the determination of the lead agency was reasonable. With regard to issuing a negative declaration and adopting a findings statement on a Final Environmental Impact Statement (FEIS), the court looks to see whether the agency took a hard look at the environmental concerns and made a reasoned elaboration of the basis for its determinations. These standards are hard to quantify, but they mean, at the least, that local land use agencies must take their environmental review responsibilities seriously and justify their conclusions.

Since the penalty for failure to comply with SEQRA is the invalidation of the action taken by a local land use agency, the procedural requirements of the statute are often followed literally. SEQRA, however, also requires lead agencies to use all practicable means to protect the environment. They must balance environmental ends with economic and social considerations and the court will not second guess mitigation measures or alternatives chosen, so long as the agency made a reasonable attempt to identify and mitigate the adverse environmental consequences of the action.

Resource Protection

Local governments have extensive authority to protect their natural resources. The protection of open vistas, viewsheds and view corridors, and the prevention of visually blighting developments advance aesthetic objectives, an important aspect of the public welfare. State law authorizes localities to establish Conservation Advisory Councils and Architectural Review Boards as the stewards of these important matters. State law also encourages historic and landmark preservation by empowering localities to establish commissions or boards dedicated to the preservation of the community's cultural and historical heritage. Local waterfront management and agricultural land protection are encouraged by a variety of additional state statutes adopted to pursue important economic objectives while preserving and enhancing the existing character of the community.

Local Natural Resource Protection

Local legislatures frequently adopt regulations to minimize the adverse environmental impacts of new development and to protect and enhance the positive environmental features of the community. In fact, basic zoning provisions such as the creation of use districts and set back, minimum lot area, and height requirements serve environmental, among other, purposes. They set a context for future development by defining the community's environment and then providing for that environment to be altered by land uses permitted under

the zoning law. By designating zoning districts and specifying the land uses, densities, and dimensions of construction permitted in each one, zoning both permits and limits land development. To a degree, natural resources are permitted to be used and are protected from development by the typical zoning law.

Communities can go further and protect particular environmental resources that they fear will be affected negatively by the development that is permitted under zoning. They can regulate development to protect aquifers, woodlands, wetlands, watersheds, watercourses, lakes, ponds, habitats, floodplains, and open spaces. They can protect steep slopes and woodlands, prevent soil erosion and sedimentation, mitigate pollution from non-point sources, control chemical applications, and determine the location of solid waste facilities, junkyards, mines, and quarries. The local laws and ordinances that accomplish these objectives constitute the core of a community's environmental law.

There are five separate sources of authority that local governments in New York use to adopt regulations that protect natural resources. Their delegated zoning power enables localities to use zoning provisions to provide for the most appropriate use of the land, in accordance with the comprehensive plan, which may accommodate the preservation of natural resources. Under their home rule authority, localities can provide for the protection and enhancement of their physical and visual environment. Special state laws provide localities with authority to preserve trees and wetlands and provide for solid waste management. State laws delegating authority to local governments to adopt regulations for approving site plans, subdivisions, variances, and special use permits authorize land use agencies to impose conditions on approvals to protect the environment. Finally, the State Environmental Quality Review Act requires local land use agencies to use all practicable means to mitigate any adverse environmental impacts of projects that they review and approve.

Conservation Advisory Councils and Open Space Preservation

Conservation Advisory Councils (CACs) are created by local legislatures to advise on the development, management, and protection of local natural resources. The CAC is to cooperate with other official municipal bodies active in the area of community planning and development approvals.

CACs are created to study and protect local open areas including those areas characterized by natural scenic beauty which, if preserved, would enhance the value of surrounding development, establish a desirable pattern of development, achieve objectives of the comprehensive plan, or enhance the conservation of natural or scenic resources. CACs are directed to keep an inventory and map of all local open areas and obtain information pertinent to their proper utilization. The inventory should identify open areas and list them in priority order for acquisition or preservation. The map is to identify open areas designated for preservation including those having conservation, historical or scenic significance.

Once the local legislative body has received and approved the CAC's open area inventory and map, it may redesignate the CAC as a Conservation Board. At this juncture, the inventory and map become the official open space index of the municipality and the Conservation Board can be assigned additional duties to assist the community with its open area planning and to assure the preservation of its natural and scenic resources. These duties include:

- the review of applications made to other local bodies that seek approval to use or develop any area on the open space index; and
- the submission of a report on such requests for approval regarding the impact of the proposal on the listed open area and on the open area objectives of the locality.

Both CACs and Conservation Boards are authorized to perform other duties assigned to them by resolution of the local legislative body as long as they are consistent with their general statutory advisory role regarding the development, management, and protection of local natural resources.

The formation of a Conservation Advisory Council provides an opportunity for the legislature to appoint local experts in this subject matter to an official advisory body that can assist, guide, and encourage other local bodies in protecting and preserving open areas and natural resources. The work of an effective CAC accomplishes the purpose of identifying and collecting needed data regarding the community's natural resources, open areas, and historic and scenic assets. Once accepted by the local legislature, a CAC's open area inventory and map becomes the official index of these assets and expresses the community's commitment to their responsible management and protection.

CACs and Conservation Boards may also assist the planning board, special board or local legislature in preparing or amending the comprehensive plan with respect to open area information, policy, and protection. CACs and Conservation Boards can help prioritize the importance of open areas and advise their legislatures regarding effective strategies for protecting open areas including acquisition, cluster development, overlay zoning, and critical environmental area designation, among others. They can also assist local lead agencies when assessing and mitigating the adverse environmental impacts of development approvals and other local actions.

The Benefits of an Effective Conservation Advisory Councils

Most communities can benefit from the work of an effective Conservation Advisory Council. In rural areas where development pressure is less, advance planning can help preserve agricultural lands, maintain scenic beauty, and protect priority natural areas from the impacts of development. In developed communities, the conservation, enhancement, and increase of available open space and natural features can be a significant method of maintaining the quality of life and property values of local residents. The Conservation Board can also assist with the review and modification of development proposals that might affect priority open areas.

Conservation Easements and Land Trusts

A conservation easement is a voluntary agreement between a private landowner and a municipal agency or qualified not-for-profit corporation to restrict the development, management, or use of the land. The owner of the real property deeds an interest in the land, called a conservation easement, to a qualified public or private agency. That agency holds the interest and enforces its restrictions against the transferring owner and all subsequent owners of the land.

The conservation easement restricts the use of the property in such a way that its natural or man-made features are not altered or developed in a manner that is inconsistent with their conservation or preservation. Existing uses on the property and expansions of uses not inconsistent with the preservation or conservation of these features are allowed on the restricted parcel.

Conservation easements may be donated, sold at full-market value, or sold at below-market value by the owner of the land. If donated, or sold at below-market value, the landowner may qualify for an income tax deduction in the year of the donation or bargain sale. Subject to a conservation easement, the land may qualify for a lower estate tax valuation on the death of the owner, thereby reducing the tax burden on the beneficiaries of the owner's estate. Similarly, the local property tax assessments may be lowered, benefiting the landowner on an annual basis thereafter.

A land trust is a local or regional not-for-profit organization, private in nature, organized to preserve and protect the natural and man-made environment by, among other techniques, holding conservation easements that restrict the use of real property. Land trusts usually pursue their own organizational agendas. However, under contract with a local government, a land trust may agree to serve as a vehicle for the negotiation, acquisition, holding, and enforcement of conservation easements agreed to by, or imposed on, landowners as part of the local development review and approval process.

What conservation easements and land trusts accomplish

The purpose of a conservation easement is to preserve or conserve the scenic, open, historic, archaeological, architectural, or natural condition of real property. The easement is used to preserve scenic viewsheds, wildlife habitats, ecosystems, forest land or farmland, historic buildings or districts and open space as such. In addition to restricting land use, conservation easements may permit public access, such as hiking over a trail on the property or biking along a designated path.

The purpose of involving a private land trust in a municipal conservation program is to save the local government the expense and inconvenience of holding, monitoring, and enforcing conservation easements and to take advantage of the land trust's expertise in these matters.

Watershed Protection/New York City Watershed Protection

Watershed management is much like the traditional planning and regulating that is done within a municipality, except that, rather than being confined to a locality's borders, the plans and regulations are applicable to an area defined by an aquatic resource. It is a broad concept that incorporates all currently available programs, resources, and regulatory tools to protect aquatic ecosystems and human health.

A watershed management program involves several phases. These include:

- identifying a stream, river, lake, or other water body in need of protection;
- drawing the boundaries of the land that drains into that water body;
- knowing the agency or agencies that will assume responsibility for the quality of water in that land area;
- understanding the causes of the deterioration of the quality of that water; and
- developing an effective plan of action to preserve and enhance the quality of the water.

A typical watershed management plan will include a physical description of the watershed area and a clear description of the land uses that threaten its future quality. It will also prioritize the features and areas of the watershed that must be preserved and improved to insure its vitality as a habitat, source of drinking water, or recreational resource.

Regulations to Protect the New York City Watershed

One example of blanket regulations used to protect a watershed are the New York City Department of Environmental Protection (DEP) Watershed Regulations which were enacted May 1, 1997. To call it the New York City Watershed is a misnomer, because it is really a collection of watersheds, from which New York City draws its drinking water. The boundaries of the watershed encompass areas east of the Hudson in Westchester, Putnam, and Dutchess Counties and west of the Hudson in Delaware, Schoharie, Green, Sullivan and Ulster Counties. The Regulations were promulgated by New York City to avoid filtration of and to prevent the contamination, degradation, and pollution of the City's water supply.

These Regulations were developed at the initiative of one municipality, New York City, which worked in conjunction with the affected communities. What developed was a Memorandum of Agreement (MOA) under which participating municipalities agreed to act in good faith to effect and comply with the watershed regulations. In return, the City agreed to make funds available to assist local governments in complying with many of the provisions of the Regulations.

While protecting the drinking water for the City, the Regulations impose significant limitations on local land use control because they prohibit and restrict activities necessary for development within the watershed. Three provisions in particular limit a municipality's ability to choose where and how to develop in its jurisdiction.

Protecting Aesthetic and Scenic Resources

Local legislatures frequently adopt regulations to minimize the negative aesthetic impacts of new development and to protect and enhance the positive aesthetic features of the community. In fact, basic zoning provisions such as set back, minimum lot area, and height requirements serve aesthetic, among other, purposes. They set a context for future development by defining the neighborhood environment and establishing scenic quality. The same can be said of the separation of land uses into zoning districts, which creates a physical environment that enhances the quality of life and property values. These zoning provisions protect and enhance community appearance as well as advance a variety of public health and safety objectives.

Communities protect local aesthetics and scenic resources in a variety of ways in addition to these basic zoning provisions. They regulate the size and placement of signs, limit the location - or require the removal - of billboards, and establish architectural review boards to enforce design standards in new construction. In addition, they adopt tree preservation ordinances and other natural resource protection laws, protect historic districts and landmarks, and impose conditions on subdivision, site plan, special permit, and rezoning approvals, and variances to protect the aesthetic quality of the affected neighborhood or of an identified viewshed or view corridor.

What is the legal justification for aesthetic regulations?

All land use regulations must protect the public health, safety, welfare, or morals. Aesthetic regulations are justified principally as a method of protecting the public welfare. They do so by stabilizing and enhancing the aesthetic values of the community. This enhances civic pride, protects property values, and promotes economic development. Vibrant communities generally contain natural and man-made features that provide visual quality and distinction that, in turn, enhance the reputation of the community as a desirable place to work, visit, and live. Regulations that protect important visual features from erosion and that prevent visual blight further the public welfare and constitute a valid exercise of the police power.

Agricultural Land Protection

The law of the State of New York provides dozens of mechanisms to protect agricultural land. These include authorizing and funding county Agricultural and Farmland Protection Boards and funding for the purchase of development rights on agricultural land. Within agricultural districts established by such Boards, state law provides property tax relief, freedom from nuisance suits and protection from public actions, including those of local governments that might threaten the viability of farming. In addition, state law offers an income tax credit to some farmers, provides some relief from wetlands regulation for farm operations, and helps farmers comply with other environmental regulations.

Although these provisions reflect the strong commitment of the State to protect agricultural land, the land use decisions of local governments greatly influence whether farmland in any community will remain viable. State law provides a number of tools to local officials who wish to protect their working farms and viable agricultural soils. These include providing for agricultural land protection in comprehensive planning, the power to adopt zoning provisions that allow, encourage, and protect farming, and authority to condition non-farm development projects so that they can co-exist with nearby farming. State law authorizes local governments to use transfer of development rights programs, incentive zoning, conservation easements, and land acquisition programs for the specific purpose of protecting existing farm areas and operations.

Other than requiring the consideration of the impact of certain local land use actions on agricultural lands and operations, however, New York State law does not mandate that local governments act effectively to protect agriculture. For this to happen requires interest, willingness, and effective initiative on the part of locally elected and appointed land use officials.

When are regulations to protect agricultural lands necessary?

Effective local action to protect farmland is needed in at least two instances.

First, farming in some communities struggles to compete and survive when property taxes are uncompetitively high or when the costs of doing business are increased by the demands of neighbors inconvenienced by farm operations. Since farmers in any given community compete with farmers in a much larger region, local competitive disadvantages can lead to the disappearance of economically and environmentally valuable farmland. Local action can lower or stabilize property taxes assessed against farmland and immunize farmers from the demands of their neighbors.

Second, farmland in developing communities can be lost to residential subdivision or other land uses that could be located in other parts of the community where they would be more cost-effective to service and profitable to their developers. When market forces demand land for development, localities may want to channel that demand into zoning districts where development can be more cost-effective and where viable agricultural lands do not exist.

Agricultural Zoning

Agricultural zoning designates a portion of the municipality as an agricultural district subject to specific regulation under the locality's zoning law. In an agricultural district, agricultural uses are permitted as-of-right and non-farmland uses are either prohibited or allowed subject to limitations or conditions. Permitted uses in an agricultural zone typically include all forms of agriculture, forestry, nurseries, and fisheries, among others. Various accessory uses may also be permitted as-of-right such as garages, machine sheds, barns and other farm buildings, beekeeping, and composting.

The purpose of agricultural zoning is to protect and promote the continuation of farming in areas with prime soils and where farming is a viable component of the local economy. The advantages of agricultural zoning are that it preserves large tracts of land for farming purposes, creates stability within the district, thereby promoting investment in farmland and farm facilities, prevents the pressures that threaten farming in developing regions and limits local property tax assessments by establishing agriculture as the primary and permitted use of land in the zoning district.

Freshwater Wetlands Regulation

Nearly all types of construction and development activities that are regulated by local land use laws may also be regulated under applicable federal, state, or municipal wetlands laws. There are a number of land use activities that may not proceed unless the landowner receives a wetlands permit if the activity affects a regulated wetland or buffer area. These include the construction of a home or residential subdivision, development of a commercial store or strip mall, extension of a driveway or road, the addition of a room, garage or tennis court, or the placing of any impervious surface on the land. In addition to this permit, the landowner must also receive approval under any applicable local regulations such as those governing land subdivision, site plan development, and the award of special permits or variances.

Other activities not typically regulated by local land use laws may be governed by wetlands laws. These include agricultural activities such as animal grazing, harvesting wetlands vegetation, draining or filling of any wetland, fence construction, fertilizer and chemical applications, and other personal or business activity on the land that could pollute a wetland or diminish its viability.

Wetlands laws typically contain a list of activities that are exempt from wetlands regulation. Examples of exempt activities include certain agricultural operations such as irrigation ditch construction and non-intensive recreational uses. Particularly harmful activities, such as the deposit of hazardous chemicals, may be prohibited altogether. Generally, landowners who propose to conduct regulated activities must apply to the designated administrative agency for a permit. Where certain standards and conditions can be met, a permit may be granted allowing the regulated activity to proceed. Conditions may be placed on the permit to avoid, minimize or mitigate the loss or degradation of wetlands.

Why do wetlands regulations exist?

The New York Freshwater Wetlands Act lists the critical public benefits that wetlands provide. These include flood and storm water control, aquifer protection, groundwater recharge, maintaining stream flow, pollution elimination, erosion control, and the provision of recreational opportunity, open space and habitat for wildlife, including threatened, rare, and endangered species. The purpose of adopting a wetlands law is to preserve these benefits for the public.

The federal and state legislatures passed wetlands laws when they concluded that wetlands provide important benefits to the public and were rapidly disappearing or deteriorating because of land use activities on or near them. Land development activities cause the loss of wetlands at a current national rate of around 100,000 acres annually. The federal and state governments adopted wetlands protections beginning in the 1970s to fight the even more rapid disappearance of wetlands that was occurring then.

Links for more or related information:

- Land Use Leaders
 - (<http://landuseleaders.com>)
 - An in-depth learning tool for those seeking a deeper understanding of Zoning
- The New York City Department of City Planning's Land Use home page:
 - <http://home2.nyc.gov/html/dcp/html/landusefacts/landusefactshome.shtml>
- New York State Geographic Information page
 - <http://www.nysgis.state.ny.us>
- Cornell University Geospatial Information Repository
 - <http://cugir.mannlib.cornell.edu>
- Multi-Resolution Land Characteristics Consortium (MRLC)
 - <http://www.mrlc.gov>

APPENDIX A: GLOSSARY OF TERMS AND PHRASES

Accessory Apartment. A second residential unit that may be contained within an existing single-family home, garage, or carriage house. An accessory apartment is usually required to be a complete housekeeping unit that can function independently, with separate access, kitchen, bedroom, and sanitary facilities.

Accessory Use. The use of land that is subordinate, incidental to, and customarily found in connection with the principal use allowed on a lot by the zoning law. A garage is incidental to the principal use of a lot as a single-family residence and is customarily found on a single-family parcel.

Action. Under the State Environmental Quality Review Act, any project or physical activity that is directly undertaken, funded, or approved by a state or local agency that may affect the environment. Actions include planning and policy-making activities and the adoption of rules and regulations that may affect the environment.

Administrative Body. A body created by local legislatures to undertake administrative functions such as the review of applications for site plans, subdivisions, and special use permits. See “Reviewing Board.”

Adult Use. A business that provides sexual entertainment or services to customers. Adult uses include: X-rated video shops and bookstores, live or video peep shows, topless or fully nude dancing establishments, combination book/video and “marital aid” stores, non-medical massage parlors, hot oil salons, nude modeling studios, hourly motels, body painting studios, swingers clubs, X-rated movie theaters, escort service clubs, and combinations thereof.

Advisory Opinion. A report by a local administrative body, which does not have the authority to issue permits or adopt laws and regulations, prepared for the consideration by a local body that does.

Aesthetic Resources. Natural resources such as open vistas, woods, scenic viewsheds, and attractive man-made settings whose appearance is an important ingredient in the quality of life of a community.

Affordable Housing. Housing developed through some combination of zoning incentives, cost-effective construction techniques, and governmental subsidies which can be rented or purchased by households who cannot afford market-rate housing in the community.

Agency. Under the State Environmental Quality Review Act (SEQRA), any state or local agency – including zoning boards of appeals, local legislatures, planning boards, and, under certain circumstances, even building inspectors – that makes discretionary decisions that may affect the environment. These agencies are subject to SEQRA regulations whenever taking an “action.”

Aggrieved Party. Only aggrieved parties may appeal a reviewing body or local legislature’s land use decision to the courts. The decision must result in some demonstrable harm to the party that is different from the impact of the decision on the community as a whole.

Agricultural Land Protection. Any law, regulation, board, or process that has as its objective the preservation of farming on land dedicated to agricultural use. Examples include agricultural zoning, farmland preservation boards, property tax relief for farmers, and anti-nuisance laws.

Agricultural Zoning District. A designated portion of the municipality where agricultural uses are permitted as-of-right and non-farm land uses either are prohibited or are allowed subject to limitations or conditions imposed to protect the business of agriculture.

Amortization of Nonconforming Uses. Nonconforming uses that are particularly inconsistent with zoning districts within which they exist and are not immediately dangerous to public health or safety may be terminated or amortized within a prescribed number of years. This amortization period allows the landowner to recoup some or all of his investment in the offensive nonconforming use.

Appellate Jurisdiction. A zoning board of appeals has appellate jurisdiction to review determinations of the zoning enforcement officer. Denials of building permits and determinations that proposed land uses do not meet the zoning law's standards may be appealed to the zoning board of appeals. Land use decisions of the zoning board of appeals, planning board, and local legislature may be appealed to the courts, which exercise appellate jurisdiction over them.

Approval. A discretionary decision made by a local agency to issue a permit, certificate, license, lease, or other entitlement or to otherwise authorize a proposed project or activity.

Architectural Review Board. A body that reviews proposed developments for their architectural congruity with surrounding developments and either renders an advisory opinion on the matter or is authorized to issue or deny a permit. Its review is based upon design criteria or standards adopted by the local legislature.

Area Variance. A variance that allows for the use of land in a way that is not permitted by the dimensional or physical requirements of the zoning law. This type of variance is needed when a building application does not comply with the setback, height, lot, or area requirements of the zoning law. For example, if an owner wants to build an addition to a house that encroaches into the side-yard setback area, that owner must apply to the zoning board of appeals for an area variance.

Article 78 Proceeding. Article 78 of the Civil Practice Law and Rules allows aggrieved persons to bring an action against a government body or officer. This device allows review of state and local administrative proceedings in court.

As-of-Right Use. A use of land that is permitted as a principal use in a zoning district. In a single-family district, the construction of a single-family home is an as-of-right use of the lot.

Buffer. A designated area of land that is controlled by local regulations to protect an adjacent area from the impacts of development.

Building Area. The total square footage of a parcel of land which is allowed by the regulations to be covered by buildings and other physical improvements.

Building Code. The Uniform Fire Prevention and Building Code, as modified by local amendments. This code governs the construction details of buildings and other structures in the interests of the safety of the occupants and the public. A local building inspector may not issue a building permit unless the applicant's construction drawings comply with the provisions of the building code.

Building Height. The vertical distance from the average elevation of the proposed finished grade along the wall of a building or structure to the highest point of the roof, for flat roofs, or to the mean height between eaves and ridge, for gable, hip, and gambrel roofs.

Building Inspector. The local administrative official charged with the responsibility of administering and enforcing the provisions of the building code. In some communities, the building inspector may also be the zoning enforcement officer.

Building Permit. A permit that must be issued by a municipal agency or officer before activities such as construction, alteration, or expansion of buildings or improvements on the land may legally commence.

Bulk Regulations. The controls in a zoning district governing the size, location, and dimensions of buildings and improvements on a parcel of land.

Bulk Variance. See “Area Variance.”

Capital Budget. The municipal budget that provides for the construction of capital projects in the community.

Capital Project. Construction projects including public buildings, roads, street improvements, lighting, parks, and their improvement or rehabilitation paid for under the community’s capital budget.

Cellular Facility. An individual cell of a cellular transmission system that includes a base station, antennae, and associated electronic equipment that sends to and receives signals from mobile phones.

Central Business District (CBD). The traditional business core of a community, characterized by a relatively high concentration of business activity within a relatively small area. The CBD is usually the retail and service center of a community. Because of its compactness, there is usually an emphasis on pedestrian traffic in the CBD.

Certificate of Occupancy. A permit that allows a building to be occupied after its construction or improvement. It certifies that the construction conforms to the building code and is satisfactory for occupancy.

City Council. See “Local Legislature.”

Cluster Subdivision. The modification of the arrangement of lots, buildings, and infrastructure permitted by the zoning law to be placed on a parcel of land to be subdivided. This modification results in the placement of buildings and improvements on a part of the land to be subdivided in order to preserve the natural and scenic quality of the remainder of the land.

Components. Elements of a comprehensive plan that are suggested by state law.

Comprehensive Plan. A written document that identifies the goals, objectives, principles, guidelines, policies, standards, and strategies for the growth and development of the community.

Condition. A requirement or qualification that is attached to a reviewing board’s approval of a proposed development project. A condition must be complied with before the local building inspector or department can issue a building permit or certificate of occupancy.

Conditional Use Permit. See “Special Use Permit.”

Conditioned Negative Declaration (CND). Under the State Environmental Quality Review Act, a CND is a negative declaration issued by a “lead agency” for an “unlisted action.” This involves an action that, as initially

proposed, may result in one or more significant adverse environmental impacts but that, when modified by mitigation measures required by the lead agency, will result in no significant adverse environmental impacts.

Conservation Advisory Council (CAC). A body created by the local legislature to advise in the development, management, and protection of the community's natural resources and to prepare an inventory and map of open spaces.

Conservation Board. Once the local legislature has reviewed and approved an open-space inventory and map, it may designate the conservation advisory council as a conservation board and authorize it to review and comment on land use applications that affect community open space.

Conservation Easement. A voluntary agreement between a private landowner and a municipal agency or qualified not-for-profit corporation to restrict the development, management, or use of the land. The agency holds the interest and is empowered to enforce its restrictions against the current landowner and all subsequent owners of the land.

Conservation Overlay Zones. In conservation overlay zones, the legislature adopts more stringent standards than those contained in the underlying zoning districts as necessary to preserve identified resources and features in need of conservation or preservation.

Critical Environmental Area (CEA). A specific geographic area designated by a state or local agency as having exceptional or unique environmental characteristics. In establishing a CEA, the fragile or threatened environmental conditions in the area are identified so that they will be taken into consideration in the site-specific environmental review under the State Environmental Quality Review Act.

Cumulative Impact Analysis. In conducting an environmental review of a proposed project, its negative impacts on the environment may be considered in conjunction with those of nearby or related projects to determine whether, cumulatively, the adverse impacts are significant and require the preparation of an environmental impact statement.

Decision. The final determination of a local reviewing body or administrative agency or officer regarding an application for a permit or approval.

Deed Restrictions. A covenant or restriction placed in a deed that restricts the use of the land in some way. These are often used to insure that the owner complies with a condition imposed by a land use body.

Density Bonus. See "Incentive Zoning."

Density. The amount of development permitted per acre on a parcel under the zoning law. The density allowed could be, for example, four dwelling units per acre or 40,000 square feet of commercial building floor per acre.

Determination. A decision rendered by an officer or administrative body on an application or a request for a ruling.

Development Overlay Zones. In development overlay zones, the legislature may provide incentives, such as density bonuses or waivers of certain zoning requirements, for developers who build the type of development desired.

District. A portion of a community identified on the locality's zoning map within which one or more principal land uses are permitted along with their accessory uses and any special land uses permitted by the zoning provisions for the district.

Dwelling Unit. A unit of housing with full housekeeping facilities for a family.

Easement. An easement involves the right to use a parcel of land to benefit an adjacent parcel of land, such as to provide vehicular or pedestrian access to a road or sidewalk. Technically known as an easement appurtenant.

Eminent Domain. The government's right to take title to private property for a public use upon the payment of just compensation to the landowner.

Enabling Act. Legislation passed by the New York State Legislature authorizing counties, cities, towns, and villages to carry out functions in the public interest. The power to adopt comprehensive plans, zoning ordinances, and land use regulations is delegated to towns, villages, and cities under the Town Law, Village Law, General City Law, and Municipal Home Rule Law.

Environment. The environment is defined broadly under the State Environmental Quality Review Act to include the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archeological, historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, existing community or neighborhood character, and human health.

Environmental Assessment Form (EAF). As used in the State Environmental Quality Review Act process, this is a form completed by an applicant to assist an agency in determining the environmental significance of a proposed action. A properly completed EAF must contain enough information to describe the proposed action and its location, purpose, and potential impacts on the environment.

Environmental Impact Statements (EIS). A written "draft" or "final" document prepared in accordance with the State Environmental Quality Review Act. An EIS provides a means for agencies, project sponsors, and the public to systematically consider significant adverse environmental impacts, alternatives, and mitigation strategies. An EIS facilitates the weighing of social, economic, and environmental factors in the planning and decision-making process. A draft EIS (DEIS) is the initial statement prepared by either the project sponsor or the lead agency and circulated for review and comment before a final EIS (FEIS) is prepared.

Environmental Quality Review. The process that reviewing boards must conduct to determine whether proposed projects may have a significant adverse impact on the environment and, if they do, to study these impacts and identify alternatives and mitigation conditions that protect the environment to the maximum extent practicable.

Environmental Review. The State Environmental Quality Review Act requires local agencies that review applications for land use approvals to take a hard look at the environmental impact of proposed projects. Where the proposed project may have a significant adverse impact on the environment, the agency must prepare an environmental impact statement before approving the project. The adoption of comprehensive plans, zoning amendments, and other land use regulations is also subject to environmental review.

Exclusionary Zoning. When a community fails to accommodate, through its zoning law, the provision of affordable types of housing to meet proven regional housing needs, that community is said to practice exclusionary zoning.

Executive Session. A meeting, or part of a meeting, that is closed to the public because the topics to be discussed involve real estate, litigation, or sensitive personnel matters.

Facilitation. A process of decision-making guided by a facilitator who insures that all affected individuals and groups are involved in a meaningful way and that the decisions are based on their input and made to achieve their mutual interests. Facilitators may be neutral outside third parties or community leaders trained or experienced in the process.

Family. One or more persons occupying a dwelling as a single housekeeping unit.

Final Plat Approval. The approval by the authorized local reviewing body of a final subdivision drawing or plat that shows the subdivision, proposed improvements, and conditions as specified in the locality's subdivision regulations and as required by that body in its approval of the preliminary plat.

Floating Zone. A zoning district that is added to the zoning law but "floats" until an application is made to apply the new district to a certain parcel. Upon the approval of the application, the zoning map is amended to apply the floating district to that parcel of land.

Floodplain. The area on the sides of a stream, river, or watercourse that is subject to periodic flooding. The extent of the floodplain is dependent on soil type, topography, and water flow characteristics.

Floor Area Ratio (FAR). The gross floor area of all buildings permitted on a lot divided by the area of the lot. In zoning, the permitted building floor area is calculated by multiplying the maximum FAR specified for the zoning district by the total area of the parcel. A permitted FAR of 2 would allow the construction of 80,000 square feet of floor space on 40,000 square feet of land ($40,000 \times 2 = 80,000$).

Freedom of Information Law. The Freedom of Information Law requires that the public be provided access to governmental records, including local land use documents, such as photos, maps, designs, drawings, rules, regulations, codes, manuals, reports, files, and opinions. Public access may be denied if it would constitute an invasion of privacy.

Freshwater Wetlands Regulation. Laws passed by federal, state, and local governments to protect wetlands by limiting the types and extent of activities permitted within wetlands. These laws require landowners to secure permits before conducting many activities, such as draining, filling, or constructing buildings.

Frontage. Zoning laws typically require that developable lots have a specified number of linear feet that front on a dedicated street. A 100-foot frontage requirement means that a lot must have 100 linear feet on the side of the parcel that fronts on a street.

Goals. Broad statements of ideal future conditions that are desired by the community and that are contained in the comprehensive plan. For example, a community may have a goal of "providing an ample stock of affordable housing."

Group Home. Residences for a variety of special populations in need of supervised living facilities. Individuals residing in group homes may be mentally or physically disabled, recovering substance abusers, teenaged mothers, or victims of domestic violence. Able-bodied elderly persons, college students, young professionals, and other people not related by blood, marriage, or adoption might also form groups that wish to

live together. When such groups of unrelated persons seek housing in a single-family home, the question arises as to whether they are a “family” entitled to live in a residential unit in a single-family zoning district.

Historic District. A regulatory overlay zone within which new developments must be compatible with the architecture of the district’s historic structures. Alterations and improvements of historic structures must involve minimum interference with the historic features of the buildings. The local legislature establishes standards that a historic preservation commission uses to permit, condition, or deny projects proposed in historic districts.

Historic Preservation Commission. A commission established to review proposed projects within historic districts for compliance with standards established for new development or alteration or improvement of historic buildings and landmarks.

Home Occupation. A business conducted in a residential dwelling unit that is incidental and subordinate to the primary residential use. Regulations of home occupations usually restrict the percentage of the unit that can be used for the occupation, the exterior evidence of the business, and the amount of parking allowed and traffic generated.

Home Rule Authority. Home rule authority gives local governments the power to adopt laws relating to their local property, affairs, and government, in addition to the powers specifically delegated to them by the legislature. The Municipal Home Rule Law gives a municipality the authority to regulate for the “protection and enhancement of its physical and visual environment” as well as for the “government, protection, order, conduct, safety, health, and well being of persons or property therein.” Zoning laws may also be adopted under home rule authority.

Implementation Plan or Measures. Implementation plans coordinate all the related strategies that are to be carried out to achieve the objectives contained in the comprehensive plan. An implementation plan answers the questions: who, what, where, and how.

Incentive Zoning. A system by which zoning incentives are provided to developers on the condition that specific physical, social, or cultural benefits are provided to the community. Incentives include increases in the permissible number of residential units or gross square footage of development, or waivers of the height, setback, use, or area provisions of the zoning ordinance. The benefits to be provided in exchange may include affordable housing, recreational facilities, open space, day-care facilities, infrastructure, or cash in lieu thereof.

Infrastructure. Infrastructure includes utilities and improvements needed to support development in a community. Among these are water and sewage systems, lighting, drainage, parks, public buildings, roads and transportation facilities, and utilities.

Intermunicipal Agreements. Compacts among municipalities to perform functions together that they are authorized to perform independently. In the land use area, localities may agree to adopt compatible comprehensive plans and ordinances, as well as other land use regulations, and to establish joint planning, zoning, historic preservation, and conservation advisory boards or to hire joint inspection and enforcement officers.

Involved Agency. An agency that has jurisdiction by law to fund, approve, or directly undertake an action, but does not have the primary responsibility for the action as does the lead agency under the State Quality Environmental Review Act.

Judicial Review. The oversight by the courts of the decisions and processes of local land use agencies. It is governed by special statutory provisions that limit both actions against governmental bodies in general and actions against local land use decisions in particular. The applicable rules of judicial review depend on the type of local body that is involved and the type of action that is challenged. The courts in New York have adopted fairly liberal rules of access, typically allowing adjacent and nearby property owners and associations of residents to challenge land use decisions that affect them in some special way.

Jurisdictional Defect. When a legislative action or a land use determination is taken without following a mandated procedure, such as referral to a county planning agency or the conduct of environmental review, the action or determination suffers from a jurisdictional defect and is void. Without following mandated procedures, public bodies do not have jurisdiction to act.

Land Trust. A not-for-profit organization, private in nature, organized to preserve and protect the natural and man-made environment by, among other techniques, holding conservation easements that restrict the use of real property.

Land Use Law. Land use law encompasses the full range of laws and regulations that influence or affect the development and conservation of the land. This law is intensely intergovernmental and interdisciplinary. In land use law there are countless intersections among federal, state, regional, and local statutes. It is significantly influenced by other legal regimes such as environmental, administrative, and municipal law.

Land Use Regulation [Local]. Laws enacted by the local legislature for the regulation of any aspect of land use and community resource protection, including zoning, subdivision, special use permit or site plan regulation, or any other regulation that prescribes the appropriate use of property or the scale, location, or intensity of development.

Landmark Preservation Law. A law designating individual historic or cultural landmarks and sites for protection. It controls the alteration of landmarks and regulates some aspects of adjacent development to preserve the landmarks' integrity.

Lead Agency. The "involved agency" under the State Environmental Quality Review Act that is principally responsible for undertaking, funding, or approving an action. The lead agency is responsible for determining whether an environmental impact statement is required in connection with the action and for the preparation and filing of the statement if one is required.

Local Board. See "Reviewing Body."

Local Law. The highest form of local legislation. The power to enact local laws is granted by the state constitution to local governments. Local laws, in this sense, have the same quality as acts of the state legislature, both being authorized by the constitution. They must be adopted by the formalities required for the adoption of local laws.

Local Legislature. The local legislature adopts and amends the comprehensive plan, zoning, and land use regulations, and sometimes retains the authority to issue certain permits or perform other administrative functions. The local legislature of a city is typically called the city council; of a village, the village board of trustees; and of a town, the town board.

Lot Area. The total square footage of horizontal area included within the property lines. Zoning laws typically set a minimum required lot area for building in each zoning district.

Lot. A portion of a subdivision, plat, tract, or other parcel of land considered as a unit for the purpose of transferring legal title from one person or entity to another.

Master Plan. A term used synonymously by many to refer to the comprehensive plan. The statutory, official name for the community's written plan for the future is the comprehensive plan.

Mediation. A voluntary process of negotiation, conducted by a trained mediator who works with all involved parties to identify their true interests and to achieve a resolution that responds effectively and fully to those interests.

Minutes. The minutes typically cover the important discussions, facts found, and actions taken at a meeting. The Open Meetings Law requires that the minutes provide a record of motions, proposals, and actions.

Mitigation Conditions. Conditions imposed by a reviewing body on a proposed development project or other action to mitigate its adverse impact on the environment.

Mixed Use. In some zoning districts, multiple principal uses are permitted to coexist on a single parcel of land. Such uses may be permitted, for example, in neighborhood commercial districts, where apartments may be developed over retail space.

Moratorium. A moratorium suspends the right of property owners to obtain development approvals while the local legislature takes time to consider, draft, and adopt land use regulations or rules to respond to new or changing circumstances not adequately dealt with by its current laws. A moratorium is sometimes used by a community just prior to adopting a comprehensive plan or zoning law, or a major amendment thereto.

Multi-Family Housing. Most zoning maps contain districts where multi-family housing is permitted by the zoning law. Under the district regulations, buildings with three or more dwelling units are permitted to be constructed, such as garden apartments or multi-story apartment buildings.

Municipal Clerk. The public official authorized by the local legislature to keep official records of the legislative and administrative bodies of the locality. Final determinations of reviewing boards ordinarily must be filed with the municipal clerk.

Negative Declaration ("neg dec"). A written determination by a lead agency, under the State Environmental Quality Review Act, that the implementation of the action as proposed will not result in any significant adverse environmental impacts. A "neg dec" concludes the environmental review process for an action.

Nonconforming Building. A building constructed prior to the adoption of the zoning law or zoning amendment which is not in accordance with the dimensional provisions, such as building height or setback requirements, of that law or amendment.

Nonconforming Use. A land use that is not permitted by a zoning law but that already existed at the time the zoning law or its amendment was enacted. Most nonconforming uses are allowed to continue but may not be expanded or enlarged.

Notice. Notice requirements are contained in state and local statutes. They spell out the number of days in advance of a public hearing that public notice must be given and the precise means that must be used. These

means may include publication in the official local newspaper and mailing or posting notices in prescribed ways. Failure to provide public notice is a jurisdictional defect and may nullify the proceedings.

Objectives. Statements of attainable, quantifiable, intermediate-term achievements that help accomplish goals contained in the comprehensive plan. For example, an objective would be to achieve “the construction of 50 units of affordable housing annually until the year ____.”

Official Map. The adopted map of a municipality showing streets, highways, parks, drainage, and other physical features. The official map is final and conclusive with respect to the location and width of streets, highways, drainage systems, and parks shown thereon and is established to conserve and protect the public health, safety, and welfare.

Open Meetings Law. The Town, Village, and General City Law requires local legislative, administrative, and quasi-judicial bodies to open all their meetings to members of the public. This law applies to all meetings where a majority of the board members are present, except those meetings that are held as executive sessions.

Ordinance. An act of a local legislature taken pursuant to authority specifically delegated to local governments by the state legislature. The power of villages to adopt ordinances was eliminated in 1974. Technically, therefore, villages do not adopt, amend, or enforce zoning ordinances. Zoning provisions in villages are properly called zoning laws.

Original Jurisdiction. When an aggrieved party must appeal a determination to a quasi-judicial or judicial body in the first instance, that body has original jurisdiction over that matter. The zoning board of appeals, for example, has original jurisdiction to hear appeals of the determinations of the zoning enforcement officer.

Overlay Zone. A zone or district created by the local legislature for the purpose of conserving natural resources or promoting certain types of development. Overlay zones are imposed over existing zoning districts and contain provisions that are applicable in addition to those contained in the zoning law.

Parcel. A piece of property. See “Lot.”

Planned Unit Development. An overlay zoning district that permits land developments on several parcels to be planned as single units and to contain both residential dwellings and commercial uses. It is usually available to landowners as a mixed-use option to single uses permitted as-of-right by the zoning ordinance.

Planning Board/Commission. Planning boards must consist of five to seven members. Planning boards may be delegated reviewing board functions and a variety of advisory functions, including the preparation of the comprehensive plan, drafting zoning provisions, or suggesting site plan and subdivision regulations, in addition to other functions. One important purpose of the planning board’s advisory role is to provide an impartial and professional perspective on land use issues based on the long-range needs of the community contained in the comprehensive plan or other local policy documents.

Plat. A site plan or subdivision map that depicts the arrangements of buildings, roads, and other services for a development.

Police Power. The power that is held by the state to legislate for the purpose of preserving the public health, safety, morals, and general welfare of the people of the state. The authority that localities have to adopt comprehensive plans and zoning and land use regulations is derived from the state’s police power and is delegated by the state legislature to its towns, villages, and cities.

Positive Declaration (“pos dec”). A written determination by a lead agency, under the State Environmental Quality Review Act, that the implementation of the action as proposed is likely to have a significant adverse impact on the environment and that an environmental impact statement will be required.

Preliminary Plat Approval. The approval by the authorized local administrative body of a preliminary subdivision drawing or plat that shows the site conditions, subdivision lines, and proposed improvements as specified in the locality’s subdivision regulations.

Principal Use. The primary use of a lot that is permitted under the district regulations in a zoning law. These regulations may allow one or more principal uses in any given district. Unless the district regulations allow mixed uses, only one principal use may be made of a single lot, along with uses that are accessory to that principal use.

Public Hearing. A hearing that affords citizens affected by a reviewing board’s decision an opportunity to have their views heard before decisions are made. State statutes require that public hearings be held regarding the application for a variance or a subdivision approval. Public hearings regarding site plan applications and draft environmental impact statements may be required as a matter of local practice.

Public Services. Services provided by the municipal government for the benefit of the community, such as fire and police protection, education, solid waste disposal, street cleaning, and snow removal.

Quasi-Judicial. A term applied to some local administrative bodies that have the power to investigate facts, hold hearings, weigh evidence, draw conclusions, and use this information as a basis for their official decisions. These bodies adjudicate the rights of the parties appearing before the body. The zoning board of appeals serves in a quasi-judicial capacity when it hears appeals from the determination of the local zoning enforcement officer.

Record. Local boards must keep a detailed record of their deliberations in making decisions on site plan and subdivision applications and the issuance of variances and special permits. These records may be kept in narrative form rather than in verbatim transcript form. A clerk or secretary hired by the municipality often manages these records. The records should include the application and reports, studies, documents, and minutes of the board meetings.

Recreational Zoning. The establishment of a zoning district in which private recreational uses are the principal permitted uses. The types of recreational uses permitted include swimming, horseback riding, golf, tennis, and exercise clubs open to private members who pay dues and user fees or to the public on a fee basis.

Recusal. A term used when a board member has a conflict of interest and must abstain from voting on any issues relating to that private interest. The board member is said to be recusing himself from all deliberations on the matter.

Redaction. The practice of striking or otherwise taking out of a public record sensitive, private, or confidential information, in a way that does not disturb the meaning of the record.

Regulatory Taking. A regulation that is so intrusive that it is found to take private property for a public purpose without providing the landowner with just compensation.

Resolution. A means by which a local legislature or other board expresses its policy or position on a subject.

Restrictive Covenant. An agreement in writing and signed by the owner of a parcel of land that restricts the use of the parcel in a way that benefits the owners of adjacent or nearby parcels. See “Conservation Easement.”

Reviewing Board. The administrative body charged with responsibility for reviewing, approving, conditioning, or denying applications for a specific type of land use such as a variance, special use permit, or site plan or subdivision approval.

Rezoning. An act of the local legislature that changes the principal uses permitted on one or more parcels of land or throughout one or more zoning districts. Rezoning includes the amendment of the zoning map, and of the use provisions in the district regulations applicable to the land that is rezoned.

Role of County Government. Functions carried out by county government that affect land use include the adoption of land use plans, public health reviews of plans for water supply and sewage disposal, planning reviews of certain local land use decisions, the development of county roads and projects including parks, the creation of environmental management councils, farmland protection boards, soil and water district boards, and other entities, and the provision of technical and coordination sources in the land use area.

Scoping. A process under the State Quality Environmental Review Act by which the lead agency identifies the potentially significant adverse impacts related to a proposed use and how they are to be addressed in an environmental impact statement (EIS). This process defines the scope of issues to be addressed in the draft EIS, including the content and level of detail of the analysis, the range of alternatives, and the mitigation measures needed, as well as issues that do not need to be studied. Scoping provides a project sponsor with guidance on matters that must be considered and provides an opportunity for early participation by involved agencies and the public in the review of the proposal.

Screening. The act of placing landscape features, such as trees, and shrubs, or man-made screens, such as fences or berms, to reduce the impact of development on nearby properties.

SEQRA. The State Environmental Quality Review Act requires local legislatures and land use agencies to consider, avoid, and mitigate significant environmental impacts of the projects that they approve, the plans or regulations they adopt, and the projects they undertake directly.

Setback. A setback restriction requires that no building or structure be located within a specified number of feet from a front, side, or rear lot line.

Sign Regulation. Local laws that regulate the erection and maintenance of signs and outdoor advertising with respect to their size, color, appearance, movement, and illumination, and their placement on structures or their location on the ground.

Site Plan. A site plan, consisting of a map and all necessary supporting material, shows the proposed development and use of a single parcel of land.

Special Exception Permit. See “Special Use Permit.”

Special Use Permit. Special uses are allowed in zoning districts, but only upon the issuance of a special use permit subject to conditions designed to protect surrounding properties and the neighborhood from the negative impacts of the permitted use. Also called conditional use permit, special exception permit, and special permit.

Spot Zoning. The rezoning of a single parcel or a small area to benefit one or more property owners rather than to carry out an objective of the comprehensive plan.

Statute of Limitations. A law that requires that an aggrieved party file a legal action in a quasi-judicial or judicial forum within a specified period or lose the right to file that action. Regarding many land use determinations, the period begins from the date the determination is filed with the municipal clerk.

Strategies. A set of actions to be undertaken to accomplish each objective contained in a comprehensive plan. To obtain the objective of “50 units of affordable housing” the plan may include as strategies: (1) Form a housing trust fund, and (2) Allow for accessory apartments in residential units.

Subdivision Plat. See “Plat.”

Subdivision. The subdivision of land involves the legal division of a parcel into a number of lots for the purpose of development and sale. The subdivision and development of individual parcels must conform to the provisions of local zoning which contain use and dimensional requirements for land development.

Taking. See “Regulatory Taking.”

Town Board. See “Local Legislature.”

Transfer of Development Rights. Provisions in a zoning law that allow for the purchase of the right to develop land located in a sending area and the transfer of those rights to land located in a receiving area.

Type I Action. Under the State Environmental Quality Review Act, an action that is more likely to have a significant adverse impact on the environment than unlisted actions. Type I Actions are listed in the regulations of the DEC commissioner. See also “Action.”

Type II Action. An action that is not subject to environmental review under the State Environmental Quality Review Act. Type II Actions are listed in the regulations of the DEC commissioner. These actions have been determined not to have a significant impact on the environment or to be exempt from environmental review for other reasons. See also “Action.”

Unlisted Actions. These are all of the actions that are not listed as Type I or Type II actions for the purposes of the State Environmental Quality Review Act process. These actions are subject to review by the lead agency to determine whether they may cause significant adverse environmental impacts.

Use District. See “Zoning District.”

Use Variance. A variance that allows a landowner to put his land to a use that is not permitted under the zoning law. For example, if a parcel of land is zoned for single-family residential use and the owner wishes to operate a retail business, the owner must apply to the zoning board of appeals for a use variance. A use variance may be granted only in cases of unnecessary hardship. To prove unnecessary hardship, the owner must establish that the requested variance meets four statutorily prescribed conditions.

Variance. This is a form of administrative relief that allows property to be used in a way that does not comply with the literal requirements of the zoning ordinance. There are two basic types of variances: use variances and area variances.

Vested Rights. Vested rights are found when a landowner has received approval of a project and has undertaken substantial construction and made substantial expenditures in reliance on that approval. If the landowner's right to develop has vested, it cannot be taken away by a zoning change by the legislature.

Village Board of Trustees. See "Local Legislature."

Watershed. A geographical area within which rainwater and other liquid effluents seep and run into common surface or subsurface water bodies such as streams, rivers, lakes, or aquifers.

Wetlands. Wetlands may be either freshwater or tidal. They are typically marked by waterlogged or submerged soils or support a range of vegetation peculiar to wetlands. They provide numerous benefits for human health and property as well as critical habitat for wildlife, and are generally regulated by either federal, state, or local laws.

Zoning Board of Appeals. Under state statutes, a zoning board of appeals must be formed when a local legislature adopts its zoning law. It must consist of three to five members. The essential function of the zoning board of appeals is to grant variances. In this capacity, it protects landowners from the unfair application of the laws in particular circumstances. The zoning board of appeals also hears appeals from the decisions of the zoning enforcement officer or building inspector when interpretations of the zoning ordinance are involved.

Zoning District. A part of the community designated by the local zoning law for certain kinds of land uses, such as for single-family homes on lots no smaller than one acre or for neighborhood commercial uses. Only these primary permitted land uses, their accessory uses, and any special uses permitted in the zoning district may be placed on the land in that part of the community.

Zoning Enforcement Officer. The local administrative official who is responsible for enforcing and interpreting the zoning law. The local building inspector may be designated as the zoning enforcement officer. Land use applications are submitted to the zoning enforcement officer, who determines whether proposals are in conformance with the use and dimensional requirements of the zoning law.

Zoning Law or Ordinance. State law allows city councils and town boards to adopt zoning regulations by local law or ordinance. Since 1974, village boards of trustees have not had the authority to adopt legislation by ordinance; they may adopt legislation only by local law. Technically, zoning regulations adopted by villages are zoning laws. Only city and town legislatures may adopt zoning ordinances. Zoning regulations, however, are often referred to as zoning ordinances regardless of these technical distinctions.

Zoning Map. This map is approved at the time that the local legislature adopts a zoning ordinance. On this map, the zoning district lines are overlaid on a street map of the community. The map divides the community into districts. Each district will carry a designation that refers to the zoning code regulations for that district. By referring to the map, it is possible to identify the use district within which any parcel of land is located. Then, by referring to the text of the zoning code, it is possible to discover the uses that are permitted within that district and the dimensional restrictions that apply to building on that land. The zoning map, implemented through the text of the zoning law, constitutes a blueprint for the development of the community over time.

ARE YOU A LEGAL PROFESSIONAL?

Visit Our Professional Site
(<http://p.findlaw.com/>)

Learn About the Law (<http://public.findlaw.com>)

Find a Lawyer (<http://lawyers.findlaw.com>)

FindLaw Answers (<http://answers.findlaw.com>)

FindLaw (<http://www.findlaw.com>) » Learn About The Law (<http://public.findlaw.com/>) » Real Estate Law (<http://realestate.findlaw.com/>) » Land Use Laws (<http://realestate.findlaw.com/land-use-laws.html>) » Land Use and Zoning Basics

Ask an Online Lawyer here...

Get an Answer

Land Use and Zoning Basics

Download article as a PDF (<http://files.findlaw.com/pdf/realestate/realestate.findlaw.com/land-use-laws/land-use-and-zoning-basics.pdf>)

Land use and zoning involves the regulation of the use and development of real estate. The most common form of land-use regulation is zoning. Zoning regulations and restrictions are used by municipalities to control and direct the development of property within their borders. Since New York City adopted the first zoning ordinance in 1916, zoning regulations have been adopted by virtually every major urban area in the United States.

What are Zoning Regulations?

The basic purpose and function of zoning is to divide a municipality into residential, commercial, and industrial districts (or zones), that are for the most part separate from one another, with the use of property within each district being reasonably uniform. Within these three main types of districts there generally will be additional restrictions that can be quite detailed -- including specific requirements as to the type of buildings allowed, location of utility lines, restrictions on accessory buildings, building setbacks from the streets and other boundaries, size and height of buildings, number of rooms, floor space or area and cubic feet, and minimum cost of buildings. These restrictions may also cover frontage of lots; minimum lot area; front, rear, and side yards; off-street parking; the number of buildings on a lot; and the number of dwelling units in a certain area. Regulations may restrict areas to single-family homes or to multi-family dwellings or townhouses. In areas of historic or cultural significance, zoning regulations may require that those features be preserved.

Regulation of Development

Land-use regulation is not restricted to controlling existing buildings and uses; in large part, it is designed to guide future development. Municipalities commonly follow a planning process that ultimately results in a comprehensive or master plan, and in some states the creation of an official map for a municipality. The master plan is then put into effect by ordinances controlling zoning, regulation of subdivision developments, street plans, plans for public facilities, and building regulations. Future developers must plan their subdivisions in accordance with the official map or plan. In recent years, an increasing emphasis has been placed on regional and statewide planning. Recognizing that the actions of one municipality will strongly affect neighboring cities, occasionally in conflicting and contradictory ways, these planning initiatives allow the creation of a regional plan that offers one comprehensive vision and one set of regulations.

Limits on Zoning Regulation

Since land-use and zoning regulations restrict the rights of owners to use their property as they otherwise could (and often want to), they are at times controversial. Additionally, the scope and limits of governments' ability to regulate land

Law Practice Success

Grow Your Law Practice,
Streamline Operations, and
Increase Profits.



Find Real Estate Lawyers Near You

Legal Issue:

(<http://lawyers.findlaw.com/lawyer/practice.jsp>)

Zoning

Location:

(<http://lawyers.findlaw.com/lawyer/state.jsp>)

Find Lawyers

Popular Directory Searches

- Foreclosure Lawyers (<http://lawyers.findlaw.com/lawyer/practice/Foreclosure-&-Alternatives>)
- Landlord-Tenant Lawyers (<http://lawyers.findlaw.com/lawyer/practice/Landlord->
- Housing & Construction Defect Attorneys (<http://lawyers.findlaw.com/lawyer/practice/Housing-&-Construction-Defects>)

Land Use Laws

Easements (<http://realestate.findlaw.com/land-use-laws/easements.html>)

Eminent Domain (<http://realestate.findlaw.com/land-use-laws/eminent-domain.html>)

Trespassing (<http://realestate.findlaw.com/land-use-laws/trespassing.html>)

Zoning (<http://realestate.findlaw.com/land-use-laws/zoning.html>)

Ask an Estate Lawyer

6 Lawyers are online now.

Ask a question, get an answer ASAP!

Type your question here...

Ask a Lawyer >

FindLaw Answers

Recent Real Estate Discussions

Re-Evict

(<http://boards.answers.findlaw.com/index.php/topic-re-evict/>)

12/5/2015 Hello, I am a question need answer asap. We...

use is hard to define with specificity. Courts have held that a zoning regulation is permissible if it is reasonable and not arbitrary; if it bears a reasonable and substantial relation to the public health, safety, comfort, morals, and general welfare; and if the means employed are reasonably necessary for the accomplishment of its purpose. Given the subjective nature of these factors, there is obviously a lot of room for disagreement, and on occasion litigation.

One extremely difficult question presented in this area of law is how far land-use regulations may go without running into the constitutional prohibition against taking private property for public use without just compensation. Recent court decisions have made it more difficult for municipalities to require that land developers give up part of their property for public purposes, such as access to lakeshores, sidewalks, access roads, and parks through the use of statutory regulation. These cases serve to define the point at which government demands for control over the land become such that it must compensate the owner by exercising its power of eminent domain and condemning the property.

Challenges to Zoning Regulations

There are numerous other restrictions on the power of government to regulate land use, any of which may provide a basis upon which such regulations can be challenged. Zoning ordinances must be reasonable based on all factors involved, such as the need of the municipality; the purpose of the restriction; the location, size, and physical characteristics of the land; the character of the neighborhood; and its effect on the value of property involved. The rationale behind zoning is that it promotes the good of the entire community in accordance with a comprehensive plan. *Spot zoning* of individual parcels of property in a manner different from that of surrounding property, primarily for the private interests of the owner of the property so zoned, is subject to challenge unless there is a reasonable basis for distinguishing the parcel from surrounding parcels. Restrictions based solely on race or occupancy of property are not permitted, and a classification that discriminates against a racial or religious group can only be upheld if the state demonstrates an overwhelming interest that can be served no other way.

In many jurisdictions, states have created boards of zoning appeals to handle these issues. These are quasi-judicial bodies that can conduct hearings with sworn testimony by witnesses and whose decisions are subject to court review. Given both the complexity of zoning law and the specialized nature of zoning appeals boards, an owner who contests a zoning requirement is ill advised to try to argue his or her case without legal assistance. The members of the board, the municipal attorney, and the planning official involved in the process have substantial experience, knowledge of the law, and a tendency to favor their interpretations of the ordinances, and an owner who cannot bring equivalent legal experience to bear on the problem will be at a substantial disadvantage.

Non-Government Restrictions: Restrictive Covenants and Easements

Not all land use restrictions are created by governments. Land developers may also incorporate restrictions in their developments, most commonly through the use of restrictive covenants and easements. *Restrictive covenants* are provisions in a deed limiting the use of the property and prohibiting certain uses. Restrictive covenants are typically used by land developers to establish minimum house sizes, setback lines, and aesthetic requirements thought to enhance the neighborhood. *Easements* are rights to use the property of another for particular purposes. Easements also are now used for public objectives, such as the preservation of open space and conservation. For example, an easement might preclude someone from building on a parcel of land, which leaves the property open and thereby preserves an open green space for the benefit of the public as a whole.

Next Steps

Contact a qualified real estate to help you navigate land use issues including zoning, easements and eminent domain.

(<http://lawyers.findlaw.com/lawyer/state.jsp>) (e.g., Chicago, IL or 60611)

[Saving my home](http://boards.answers.findlaw.com/index.php/topic/2?saving-my-home/)
(<http://boards.answers.findlaw.com/index.php/topic/2?saving-my-home/>)
12/3/2015 Hi, I am desperately seeking a way to save...

[landlord selling house that i rent](http://boards.answers.findlaw.com/index.php/topic/2?landlord-selling-house-that-i-rent/)
(<http://boards.answers.findlaw.com/index.php/topic/2?landlord-selling-house-that-i-rent/>)
12/3/2015 i have been renting a house in LA. co....

[liens](http://boards.answers.findlaw.com/index.php/topic/2?liens/)
(<http://boards.answers.findlaw.com/index.php/topic/2?liens/>)
12/2/2015 I'm looking to buy a house that is going...

[SHOULD I APPEAL AGAINST MY FORMER LANDLORD?](http://boards.answers.findlaw.com/index.php/topic/2?should-i-appeal-against-my-former-landlord/)
(<http://boards.answers.findlaw.com/index.php/topic/2?should-i-appeal-against-my-former-landlord/>)
12/2/2015 HI I AM PAM FROM WARREN, MI I WANT...

FindLaw Blogs

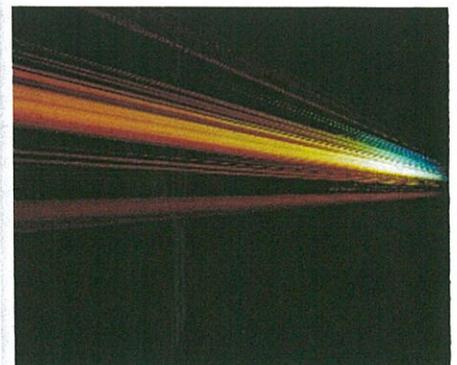
[Is It Legal to Sleep in Your Car at a Rest Area?](http://blogs.findlaw.com/blotter/2015/12/is-it-legal-to-sleep-in-your-car-at-a-rest-area/)
(<http://blogs.findlaw.com/blotter/2015/12/is-it-legal-to-sleep-in-your-car-at-a-rest-area.html>)
12/4/2015 Many of us have been a little too tired to...

[Can My Lawyer Testify Against Me?](http://blogs.findlaw.com/law_and_life/2015/12/can-my-lawyer-testify-against-me/)
(http://blogs.findlaw.com/law_and_life/2015/12/can-my-lawyer-testify-against-me.html)
12/4/2015 Your attorney can testify against you in extremely limited circumstances....

[Top Celebrities Accused of Animal Abuse](http://blogs.findlaw.com/celebrity_justice/2015/12/top-celebrities-accused-of-animal-abuse/)
(http://blogs.findlaw.com/celebrity_justice/2015/12/top-celebrities-accused-of-animal-abuse.html)
12/3/2015 Celebrities face critiques for nearly everything -- from their fashion...

[What to Do After a Divorce Is Final](http://blogs.findlaw.com/law_and_life/2015/12/what-to-do-after-a-divorce-is-final/)
(http://blogs.findlaw.com/law_and_life/2015/12/what-to-do-after-a-divorce-is-final.html)
12/3/2015 Now that the papers have been filed and the divorce...

[Driving While Taking Pictures Is a Traffic Offense](http://blogs.findlaw.com/blotter/2015/12/driving-while-taking-pictures-is-a-traffic-offense/)
(<http://blogs.findlaw.com/blotter/2015/12/driving-while-taking-pictures-is-a-traffic-offense.html>)
12/3/2015 Now that so many of us have camera phones, we...



Help Me Find a Do-it-Yourself Solution

- [Easement Forms \(http://www.uslegalforms.com/findlaw/realestate/easements/\)](http://www.uslegalforms.com/findlaw/realestate/easements/)
- [Eminent Domain Forms and Samples](#)
- [Zoning Forms and Samples](#)

LEARN MORE ABOUT [Legal Topics \(http://public.findlaw.com/moretopics.html\)](http://public.findlaw.com/moretopics.html) / [State Laws \(http://statelaws.findlaw.com/\)](http://statelaws.findlaw.com/) / [Bookshelf \(http://public.findlaw.com/bookshelf/\)](http://public.findlaw.com/bookshelf/) / [Blogs \(http://legalblogs.findlaw.com/\)](http://legalblogs.findlaw.com/) / [FindLaw RSS](#)

[Feeds \(http://findlaw.com/rss-index/\)](http://findlaw.com/rss-index/) / [Sitemap \(http://www.findlaw.com/toc.html\)](http://www.findlaw.com/toc.html) / [Geography Sitemap \(http://company.findlaw.com/geo.html\)](http://company.findlaw.com/geo.html) / [FindLaw En Español \(http://espanol.findlaw.com\)](http://espanol.findlaw.com) / [LawBrain \(http://www.lawbrain.com\)](http://www.lawbrain.com) / [FindLaw UK \(http://findlaw.co.uk\)](http://findlaw.co.uk) / [LawInfo \(http://www.lawinfo.com\)](http://www.lawinfo.com)

FIND A LAWYER [Browse by Location \(http://lawyers.findlaw.com/lawyer/state.jsp\)](http://lawyers.findlaw.com/lawyer/state.jsp) / [Browse by Legal Issue \(http://lawyers.findlaw.com/lawyer/practice.jsp\)](http://lawyers.findlaw.com/lawyer/practice.jsp) / [Browse by Law Firm & Lawyer Profile \(http://pview.findlaw.com\)](http://pview.findlaw.com)

FIND ANSWERS [FindLaw Answers \(http://answers.findlaw.com\)](http://answers.findlaw.com) / [Community Guidelines \(http://company.findlaw.com/community-guidelines.html\)](http://company.findlaw.com/community-guidelines.html)

GET LEGAL FORMS [Visit our Legal Forms site \(http://forms.findlaw.com\)](http://forms.findlaw.com)

FOR LAWYERS [Visit our professional site \(http://p.findlaw.com\)](http://p.findlaw.com) / [Edit your legal profile \(http://pu.findlaw.com\)](http://pu.findlaw.com) / [Website development \(http://www.lawyermarketing.com/services/websites/\)](http://www.lawyermarketing.com/services/websites/) / [Advertise on our site \(http://www.lawyermarketing.com/\)](#)

ABOUT US [Company History \(http://company.findlaw.com/company_info.html\)](http://company.findlaw.com/company_info.html) / [Media \(http://company.findlaw.com/media_relations.html\)](http://company.findlaw.com/media_relations.html) / [Contact Us \(http://company.findlaw.com/contacts.html\)](http://company.findlaw.com/contacts.html) / [Privacy \(http://www.findlaw.com/privacy/\)](http://www.findlaw.com/privacy/) / [Terms \(http://company.findlaw.com/terms.html\)](http://company.findlaw.com/terms.html) / [Disclaimer \(http://findlaw.com/info/disclaimer.html\)](http://findlaw.com/info/disclaimer.html) / [Advertising \(http://company.findlaw.com/adkit/index.html\)](http://company.findlaw.com/adkit/index.html) / [Jobs \(http://company.findlaw.com/jobs/\)](http://company.findlaw.com/jobs/)

FIND US ON

Zoning

From Wikipedia, the free encyclopedia

Zoning describes the control by authority of the use of land, and of the buildings thereon. Areas of land are divided by appropriate authorities into zones within which various uses are permitted.^[1] Thus, zoning is a technique of land-use planning as a tool of urban planning used by local governments in most developed countries.^{[2][3][4]} The word is derived from the practice of designating mapped zones which regulate the use, form, design and compatibility of development. **Legally, a zoning plan is usually enacted as a by-law with the respective procedures.** In some countries, e. g. Canada (Ontario) or Germany, zoning plans must comply with upper-tier (regional, state, provincial) planning and policy statements.

There are a great variety of zoning types, some of which focus on regulating building form and the relation of buildings to the street with mixed-uses, known as form-based, others with separating land uses, known as use-based or a combination thereof.

Similar urban planning methods have dictated the use of various areas for particular purposes in many cities from ancient times.



The Zoning Scheme of the General Spatial Plan for the City of Skopje, Macedonia. Different urban zoning areas are represented by different colors.

Contents

- 1 Scope
- 2 Functional zoning - categories
- 3 Density zoning - background
 - 3.1 Economic explanation of population density regulations
- 4 United States
 - 4.1 Scale
 - 4.2 Zoning types in the United States
 - 4.3 Criticism of zoning laws in the United States
- 5 Canada
- 6 United Kingdom
-

7 Australia

■
8 New Zealand

■
9 Singapore

■
10 See also

■
11 References

■
12 Further reading

■
13 External links

Scope

The primary purpose of zoning is to segregate uses that are thought to be incompatible. In practice, zoning also is used to prevent new development from interfering with existing uses and/or to preserve the "character" of a community. However, it has not always been an effective method for achieving this goal.^[5] Zoning is commonly controlled by local governments such as counties or municipalities, though the nature of the zoning regime may be determined or limited by state or national planning authorities or through enabling legislation.^[6] In Australia, land under the control of the Commonwealth (federal) government is not subject to state planning controls. The United States and other federal countries are similar. Zoning and urban planning in France and Germany are regulated by national or federal codes. In the case of Germany this code includes contents of zoning plans as well as the legal procedure.

Zoning may include regulation of the kinds of activities which will be acceptable on particular lots (such as open space, residential, agricultural, commercial or industrial), the densities at which those activities can be performed (from low-density housing such as single family homes to high-density such as high-rise apartment buildings), the height of buildings, the amount of space structures may occupy, the location of a building on the lot (setbacks), the proportions of the types of space on a lot, such as how much landscaped space, impervious surface, traffic lanes, and whether or not parking is provided. In Germany, zoning includes an impact assessment with very specific greenspace and compensation regulations and may include regulations for building design. The details of how individual planning systems incorporate zoning into their regulatory regimes varies though the intention is always similar. For example, in the state of Victoria, Australia, land use zones are combined with a system of planning scheme overlays to account for the multiplicity of factors that impact on desirable urban outcomes in any location.

Most zoning systems have a procedure for granting variances (exceptions to the zoning rules), usually because of some perceived hardship caused by the particular nature of the property in question.

Functional zoning - categories

Basically, urban zones fall into one of five major categories: residential, mixed residential-commercial, commercial, industrial and spatial (e. g. power plants, sports complexes, airports, shopping malls etc.). Each category can have a number of sub-categories, for example, within the commercial category there may be

separate zones for small-retail, large retail, office use, lodging and others, while industrial may be subdivided into heavy manufacturing, light assembly and warehouse uses. In Germany, each category has a designated limit for noise emissions (not part of the building code, but federal emissions code).

In the United States or Canada, for example, residential zones can have the following sub-categories:

1. Residential occupancies containing sleeping units where the occupants are primarily transient in nature, including: boarding houses, hotels, motels
2. Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, including: apartment houses, boarding houses, convents, dormitories.
3. Residential occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4 or I, including: buildings that do not contain more than two dwelling units, adult care facilities for five or fewer persons for less than 24 hours.
4. Residential occupancies where the buildings are arranged for occupancy as residential care/assisted living facilities including more than five but not more than 16 occupants.

Conditional zoning allows for increased flexibility and permits municipalities to respond to the unique features of a particular land use application. Uses which might be disallowed under current zoning, such as a school or community center can be permitted via conditional use zoning.

Density zoning - background

Economic explanation of population density regulations

Rothwell and Massey suggests homeowners and business interests are the two key players in density regulation that emerge from a political economy.^[7] They propose that in older states where rural jurisdictions are primary composed of homeowners, it is the narrow interests of homeowner to block development because tax rates are lower in rural areas, and taxation is more likely to fall on the median homeowner. Business interests are unable to counteract the homeowners interests in rural areas because business interests are weaker and business ownership is rarely controlled by people living outside the community. This translates into rural communities that have a tendency to resist development by using density regulations to make business opportunities less attractive.

United States

Under the police power rights, state governments may exercise over private real property. With this power, special laws and regulations have long been made restricting the places where particular types of business can be carried on. In 1916, New York City adopted the first zoning regulations to apply city-wide as a reaction to The Equitable Building which towered over the neighboring residences, diminishing the availability of sunshine. These laws set the pattern for zoning in the rest of the country. New York City went on to develop ever more complex regulations, including floor-area ratio regulations, air rights and others for specific neighborhoods.

The constitutionality of zoning ordinances was upheld by the U.S. Supreme Court in the 1926 case Village of Euclid, Ohio v. Ambler Realty Co..

Among large populated cities in the United States, Houston is unique in having no zoning ordinances.^[8] Rather, land use is regulated by other means.^[9]

Scale

Early zoning practices were subtle and often debated. Some claim the practices started in the 1920s^[10] while others suggest the birth of zoning occurred in New York in 1916.^[11] Both of these examples for the start of zoning, however, were urban cases. Zoning becomes an increasing legal force as it continues to expand in its geographical range through its introduction in other urban centres and use in larger political and geographical boundaries. Regional zoning was the next step in increased geographical size of areas under zoning laws.^[12] A major difference between urban zoning and regional zoning was that "regional areas consequently seldom bear direct relationship to arbitrary political boundaries".^[12] This form of zoning also included rural areas which was counter-intuitive to the theory that zoning was a result of population density.^[12] Finally, zoning also expanded again but back to a political boundary again with state zoning.^[12]

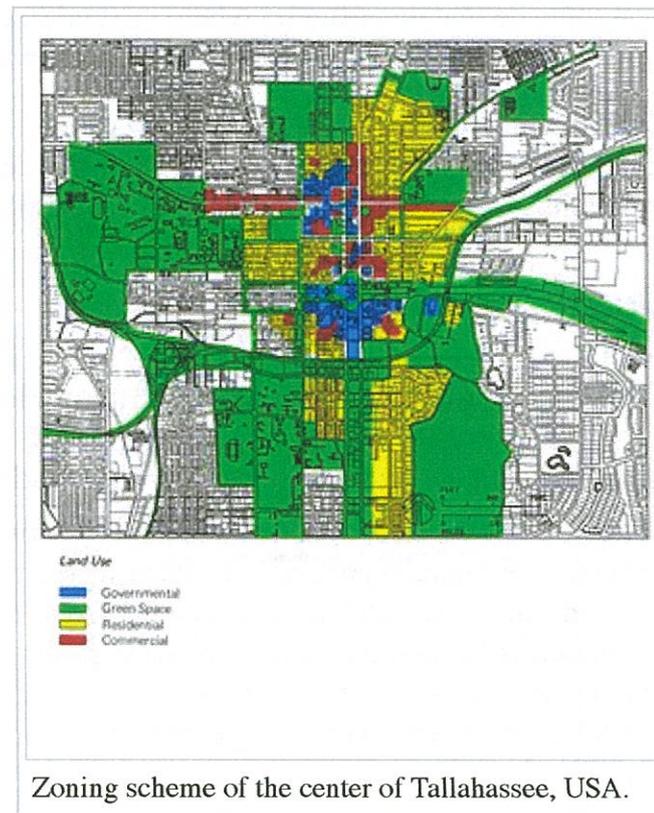
Zoning types in the United States

Zoning codes have evolved over the years as urban planning theory has changed, legal constraints have fluctuated, and political priorities have shifted. The various approaches to zoning can be divided into four broad categories: Euclidean, Performance, Incentive, and form-based.

Named for the type of zoning code adopted in the town of Euclid, Ohio, and approved in a landmark decision of the U.S. Supreme Court, *Village of Euclid, Ohio v. Ambler Realty Co.*^[13] **Euclidean zoning** codes are the most prevalent in the United States. Euclidean zoning is

characterized by the segregation of land uses into specified geographic districts and dimensional standards stipulating limitations on development activity within each type of district. Advantages include relative effectiveness, ease of implementation, long-established legal precedent, and familiarity. However, Euclidean zoning has received criticism for its lack of flexibility and institutionalization of now-outdated planning theory.

Also known as "effects-based planning", **performance zoning** uses performance-based or goal-oriented criteria to establish review parameters for proposed development projects. Performance zoning is intended to provide flexibility, rationality, transparency and accountability, avoiding the arbitrariness of the Euclidean approach and better accommodating market principles and private property rights with environmental protection. Difficulties included a requirement for a high level of discretionary activity on the part of the supervising authority. Performance zoning has not been widely adopted in the USA.



First implemented in Chicago and New York City, **incentive zoning** is intended to provide a reward-based system to encourage development that meets established urban development goals.^[14] Typically, the method establishes a base level of limitations and a reward scale to entice developers to incorporate the desired development criteria. Incentive zoning allows a high degree of flexibility, but can be complex to administer.

Form-based codes offer considerably more governmental latitude in building uses and form than do Euclidean codes. Form-based zoning regulates not the type of land use, but the form that land use may take. For instance, form-based zoning in a dense area may insist on low setbacks, high density, and pedestrian accessibility. FBCs are designed to directly respond to the physical structure of a community in order to create more walkable and adaptable environments.

Criticism of zoning laws in the United States

Much criticism of zoning laws comes from those who see the restrictions as a violation of property rights. It has been argued that zoning boards and city councils can too easily strip property owners of their right to unencumbered use of their land.

Along with potential property right infringements, zoning has also been criticized as a means to promote social and economic segregation through exclusion. These exclusionary zoning measures artificially maintain high housing costs through various land-use regulations such as maximum density requirements. Thus, lower income groups deemed undesirable are effectively excluded from the given community. "Although markets allocate people to housing based on income and price, political decisions allocate housing of different prices to different neighbourhoods and thereby turn the market into a mechanism for class segregation." (Rothwell and Massey 2010, p. 1141)

In the American South, zoning was introduced as an explicit mechanism for enforcing racial segregation of communities. Southern planners coordinated with Northern experts in crafting racial zoning laws that would fit within the emerging judicial precedent. Racial zoning laws followed the migration of Southern blacks northward and westward.^[15]

Examples of class or income segregation in the United States can be seen by comparing poverty rates in the central city and the suburbs in the West, the South, the Northeast, and the Midwest. The Northeast and the Midwest have more restrictive anti-density regulations and thus have higher poverty in the city than the suburbs. On the other hand, the West and the South have more relaxed anti-density regulations and thus have higher poverty in the suburbs than the central city.^[10]

Jonathan Rothwell has argued that zoning encourages racial segregation.^[7] He claims a strong relationship exists between an area's allowance of building housing at higher density and racial integration between blacks and whites in the United States.^[7] The relationship between segregation and density is explained by Rothwell and Massey as the restrictive density zoning producing higher housing prices in white areas and limiting opportunities for people with modest incomes to leave segregated areas.^[7] Between 1980 to 2000, racial integration occurred faster in areas that did not have strict density regulations than those that did.^[7]

It has also been argued that zoning laws work against economic efficiency and hinder development in a free economy. Poor zoning restrictions are claimed to hinder the optimal efficient usage of a given area. Even without zoning restrictions, a landfill, for example, would likely gravitate to cheaper land and not a residential area.

Also, strict zoning laws can get in the way of creative developments like mixed-use buildings and can even stop harmless activities like yard sales.^[16]

In France, zoning by income instead of with mixed occupation is called "zonage à l'américaine."^[17]

Canada

In Canada, land-use control is a provincial responsibility deriving from the constitutional authority over property and civil rights. This authority had been granted to the provinces under the British North America Acts of 1867 and was carried forward in the Constitution Act, 1982. The zoning power relates to *real property*, or land and the improvements constructed thereon that become part of the land itself (in Québec, *immeubles*). The provinces empowered the municipalities and regions to control the use of land within their boundaries. There are provisions for control of land use in unorganized areas of the provinces. Provincial tribunals are the ultimate authority for appeals and reviews.^[1]

United Kingdom

Development control or planning control is the element of the United Kingdom's system of town and country planning through which local government regulates land use and new building. It relies on the "plan-led system" whereby development plans are formed and the public consulted. Subsequent development requires planning permission, which will be granted or refused with reference to the development plan as a material consideration.

There are 421 Local Planning Authorities (LPAs) in the United Kingdom. Generally they are the local borough or district council or a unitary authority. Development involving mining, minerals or waste disposal matters is dealt with by county councils in non-metropolitan areas. Within national parks, it is the national park authority that determines planning applications.

Australia

The legal framework for land use zoning in Australia is established by States and Territories, hence each State or Territory has different zoning rules. Land use zones are generally defined at local government level, and most often called Planning Schemes. In reality, however in all cases the state governments have an absolute ability to overrule the local decision-making. There are administrative appeal processes such as VCAT to challenge decisions.

State / Territory	Planning framework	Land use regulation
ACT	Territory Plan 2008 (http://www.legislation.act.gov.au/ni/2008-27/20110415-47623/default.asp)	Land Use Policy
NT	Planning Act	Planning Scheme
NSW	Environmental Planning and Assessment Act 1979	Local Environmental Plans (LEP)
QLD	Sustainable Planning Act 2009	Planning Schemes
SA	Development Act 1993	Development Plan
TAS	Land Use Planning and Approvals Act 1993	Planning Schemes
VIC	Planning and Environment Act 1987	Planning Schemes
WA	Planning and Development Act 2005	Planning Schemes

Statutory planning otherwise known as town planning, development control or development management, refer to the part of the planning process that is concerned with the regulation and management of changes to land use and development.^[18] Planning and zoning have a great political dimension, with governments often criticized for favouring developers; also nimbyism is very prevalent.

New Zealand

New Zealand's planning system is grounded in effects-based Performance Zoning under the Resource Management Act.

Singapore

The framework for governing land uses in Singapore is administered by the Urban Redevelopment Authority (URA) through the Master Plan.^[19] The Master Plan is a statutory document divided into two sections: the plans and the Written Statement. The plans show the land use zoning allowed across Singapore, while the Written Statement provides a written explanation of the zones available and their allowed uses.

See also

- Activity centre
- Context theory
- Ecistics
- Exclusionary zoning
- Form-based codes
- Greenspace
- Inclusionary zoning
- Open space reserve
- Urban open space
- Principles of Intelligent Urbanism
- Reverse sensitivity
- Road
- Spot zoning
- Statutory planning
- Subdivision (land)
- Traffic
- Variance (land use)
- NIMBY

- Mixed use development
- New urbanism
- Non-conforming use
- Planning permission
- Police power

References

1. Thomas, Eileen Mitchell (February 7, 2006). "Zoning". *The Canadian Encyclopedia*. Canada. Retrieved 30 October 2015.
2. E.g., Lefcoe, George, "The Regulation of Superstores: The Legality of Zoning Ordinances Emerging from the Skirmishes between Wal-Mart and the United Food and Commercial Workers Union" (April 2005). USC Law, Legal Studies Research Paper No. 05-12; and USC Law and Economics Research Paper No. 05-12. Available at SSRN (<http://ssrn.com/abstract=712801>) or [10.2139/ssrn.10.2139/ssrn.712801 DOI]
3. Town and Country Planning Act 1990
4. (German) BMVBS - Startseite (<http://www.bmvbs.de/>). Bmvbs.de. Retrieved on 2013-07-19.
5. Sharifi, Ayyoob; Chiba, Yoshihiro; Okamoto, Kohei; Yokoyama, Satoshi; Murayama, Akito. "Can master planning control and regulate urban growth in Vientiane, Laos?". *Landscape and Urban Planning* **131**: 1–13. doi:10.1016/j.landurbplan.2014.07.014.
6. E.g., Maryland Code Article 66B, § 2.01(b) grants zoning powers to the City of Baltimore, while § 2.01(c) limits the grant of powers. By contrast, the New Jersey Municipal Land Use Law grants uniform zoning powers (with uniform limitations) to all municipalities in that state.
7. Rothwell, Jonathan T. and Massey, Douglas S. (2009) "The Effect of Density Zoning on Racial Segregation in U.S. Urban Areas" *Urban Affairs Review*. Volume 4, Number 6, pp. 779-806
8. Houston Chronicle, 12-10, 2007 (http://www.chron.com/CDA/archives/archive.mpl?id=2007_4475351)
9. Planetizen (<http://www.planetizen.com/node/109>)
10. Rothwell, Jonathan T. and Massey, Douglas S. (2010) "Density Zoning and Class Segregation in U.S. Metropolitan Areas" *Social Science Quarterly*. Volume 91, Issue 5, pp.1123-1141
11. Natoli, Salvatore J. (1971) "Zoning and the Development of Urban Land Use Patterns" *Economic Geography*. Volume 47, Number 2, pp. 171-184
12. Whitnall, Gordon (1931) "History of Zoning" *Annals of the American Academy of Political and Social Science*. Volume 155, Part 2, pp.1-14
13. 272 U.S. 365, 71 L.Ed. 303, 47 S.Ct. 114 (1926).
14. Residential Investment Property Term - Zoning | Commercial Real Estate Loan (http://www.webvest.info/glossary/dictionary_zone.php). Webvest.info. Retrieved on 2013-07-19.
15. Thomas Manning, June and Marsha Ritzdorf, eds. (1997) "Urban Planning and the African American Community: In the Shadows. (<http://racialequitytools.org/resourcefiles/silverracialoriginsofzoning.pdf>)" Thousand Oaks, CA: Sage Publications, 1997.
16. Zoning is Theft - Jim Fedako - Mises Daily (<https://mises.org/daily/2077>). Mises.org. Retrieved on 2013-07-19.
17. In Search of Lost Paris (<http://www.nybooks.com/articles/archives/2010/dec/23/search-lost-paris/?page=2>), Luc Sante, *New York Review of Books*, December 23, 2010
18. Gleeson B. and Low N., *Australian Urban Planning: New Challenges, New Agendas*, Allen & Unwin, St Leonards, 2000.
19. URA Master Plan 2008 website (<http://www.ura.gov.sg/MP08>)

Planning Zoning (<http://www.faulkandfoster.com/services/real-estate-zoning-compliance/>)

Further reading

- Bassett, E.M. *The master plan, with a discussion of the theory of community land planning legislation*.

New York: Russell Sage foundation, 1938.

- Bassett, E. M. *Zoning*. New York: Russell Sage Foundation, 1940
- Hirt, Sonia. *Zoned in the USA: The Origins and Implications of American Land-Use Regulation* (Cornell University Press, 2014) 245 pp. online review (<https://www.h-net.org/reviews/showrev.php?id=43221>)
- Stephani, Carl J. and Marilyn C. *ZONING 101, originally published in 1993 by the National League of Cities, now available in a Third Edition, 2012.*

External links

- Crenex – Zoning Maps (<http://www.crenex.com/zoningmaps>) – Links to zoning maps and planning commissions of 50 most populous cities in the US.
- New York City Department of City Planning – Zoning History (<http://www.nyc.gov/html/dcp/html/zone/zonehis.shtml>)
- Schindler's Land Use Page (Michigan State University Extension Land Use Team) (<http://web1.msue.msu.edu/wexford/LU/index.html>)
- Land Policy Institute at Michigan State University (<http://www.landpolicy.msu.edu/>)
- Zoning: A Reply To The Critics (<http://www.law.fsu.edu/journals/landuse/Vol101/karkkain.html>)

Retrieved from "<https://en.wikipedia.org/w/index.php?title=Zoning&oldid=693868460>"

Categories: Real estate | Real property law | Zoning | Urban studies and planning

- This page was last modified on 5 December 2015, at 13:44.
- Text is available under the Creative Commons Attribution-ShareAlike License; additional terms may apply. By using this site, you agree to the Terms of Use and Privacy Policy. Wikipedia® is a registered trademark of the Wikimedia Foundation, Inc., a non-profit organization.

Land-use planning

From Wikipedia, the free encyclopedia

Land-use planning is the general term used for a branch of urban planning encompassing various disciplines which seek to order and regulate land use in an efficient and ethical way, thus preventing land-use conflicts. Governments use land-use planning to manage the development of land within their jurisdictions. In doing so, the governmental unit can plan for the needs of the community while safeguarding natural resources. To this end, it is the systematic assessment of land and water potential, alternatives for land use, and economic and social conditions in order to select and adopt the best land-use options.^[1] Often one element of a comprehensive plan, a land-use plan provides a vision for the future possibilities of development in neighborhoods, districts, cities, or any defined planning area.

In the United States, the terms land-use planning, regional planning, urban planning, and urban design are often used interchangeably, and will depend on the state, county, and/or project in question. Despite confusing nomenclature, the essential function of land-use planning remains the same whatever term is applied. The Canadian Institute of Planners offers a definition that land-use planning means the scientific, aesthetic, and orderly disposition of land, resources, facilities and services with a view to securing the physical, economic and social efficiency, health and well-being of urban and rural communities.^[2] The American Planning Association states that the goal of land-use planning is to further the welfare of people and their communities by creating convenient, equitable, healthful, efficient, and attractive environments for present and future generations.^[3]

Contents

- 1 History
- 2 Types of planning
- 3 Methods
- 4 Basis of United States Land Use Planning Authority
- 5 See also
- 6 Academic journals
- 7 References
 - - 7.1 Notes
 - 7.2 Bibliography
- 8 External links

History

Land-use planning often leads to land-use regulation, which typically encompasses zoning. Zoning regulates the types of activities that can be accommodated on a given piece of land, as well as the amount of space devoted to those activities, and the ways that buildings may be situated and shaped.^[4]

The ambiguous nature of the term “planning”, as it relates to land use, is historically tied to the practice of zoning. Zoning in the US came about in the late 19th and early 20th centuries to protect the interests of property owners. The practice was found to be constitutionally sound by the Supreme Court decision of *Village of Euclid v. Ambler Realty Co.* in 1926.^[3] Soon after, the Standard State Zoning Enabling Act gave authority to the states to regulate land use. Even so, the practice remains controversial today.

The “taking clause” of the Fifth Amendment to the United States Constitution prohibits the government from taking private property for public use without just compensation. The case of *Dolan v. City of Tigard* demonstrated the criteria that determine the threshold of what is considered taking.^[5] One interpretation of the taking clause is that any restriction on the development potential of land through zoning regulation is a “taking”. A deep-rooted anti-zoning sentiment exists in America, that no one has the right to tell another what he can or cannot do with his land. Ironically, although people are often averse to being told how to develop their own land, they tend to expect the government to intervene when a proposed land use is undesirable.

Conventional zoning has not typically regarded the manner in which buildings relate to one another or the public spaces around them, but rather has provided a pragmatic system for mapping jurisdictions according to permitted land use. This system, combined with the interstate highway system, widespread availability of mortgage loans, growth in the automobile industry, and the over-all post-World War II economic expansion, destroyed most of the character that gave distinctiveness to American cities. The urban sprawl that most US cities began to experience in the mid-twentieth century was, in part, created by a flat approach to land-use regulations. Zoning without planning created unnecessarily exclusive zones. Thoughtless mapping of these zones over large areas was a big part of the recipe for suburban sprawl.^[4] It was from the deficiencies of this practice that land-use planning developed, to envision the changes that development would cause and mitigate the negative effects of such change.

As America grew and sprawl was rampant, the much-loved America of the older towns, cities, or streetcar suburbs essentially became illegal through zoning.^[6] Unparalleled growth and unregulated development changed the look and feel of landscapes and communities. They strained commercial corridors and affected housing prices, causing citizens to fear a decline in the social, economic and environmental attributes that defined their quality of life.^[7] Zoning regulations became politically contentious as developers, legislators, and citizens struggled over altering zoning maps in a way that was acceptable to all parties. Land use planning practices evolved as an attempt to overcome these challenges. It engages citizens and policy-makers to plan for development with more intention, foresight, and community focus than had been previously used.



Suburban development near Colorado Springs, Colorado, United States

Types of planning

Various types of planning have emerged over the course of the 20th century. Below are the six main typologies of planning, as defined by David Walters in his book, *Designing Communities* (2007):

- *Traditional or comprehensive planning*: Common in the US after WWII, characterized by politically neutral experts with a rational view of the new urban development. Focused on producing clear statements about the form and content of new development.
- *Systems planning*: 1950s–1970s, resulting from the failure of comprehensive planning to deal with the unforeseen growth of post WWII America. More analytical view of the planning area as a set of complex processes, less interested in a physical plan.
- *Democratic planning*: 1960s. Result of societal loosening of class and race barriers. Gave more citizens a voice in planning for future of community.
- *Advocacy and equity planning*: 1960s & 70s. Strands of democratic planning that sought specifically to address social issues of inequality and injustice in community planning.
- *Strategic planning*: 1960s–present. Recognizes small-scale objectives and pragmatic real-world constraints.
- *Environmental planning*: 1960s–present. Developed as many of the ecological and social implications of global development were first widely understood.^[6]

Today, successful planning involves a balanced mix of analysis of the existing conditions and constraints; extensive public engagement; practical planning and design; and financially and politically feasible strategies for implementation.^[7]

Current processes include a combination of strategic and environmental planning. It is becoming more widely understood that any sector of land has a certain capacity for supporting human, animal, and vegetative life in harmony, and that upsetting this balance has dire consequences on the environment. Planners and citizens often take on an advocacy role during the planning process in an attempt to influence public policy.^[6] Due to a host of political and economic factors, governments are slow to adopt land use policies that are congruent with scientific data supporting more environmentally sensitive regulations.

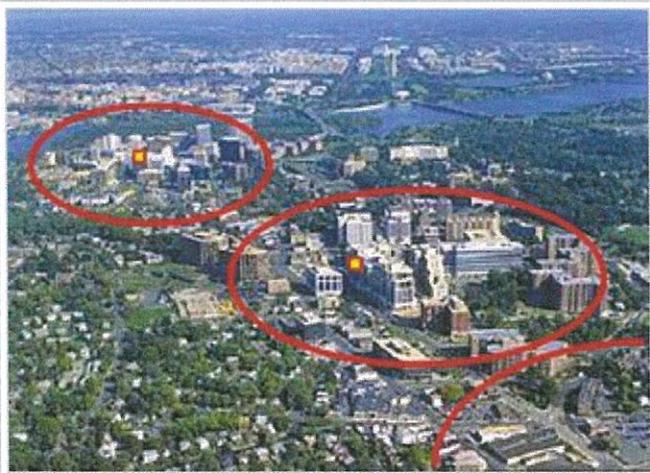
Smart Growth: Since the 1990s, the activist/environmentalist approach to planning has grown into the Smart Growth movement, characterized by the focus on more sustainable and less environmentally damaging forms of development.^[6]

Smart growth supports the integration of mixed land uses into communities as a critical component of achieving better places to live. Putting uses in close proximity to one another has benefits for transportation alternatives, driving, security, community cohesiveness, local economies, and general quality of life issues. Smart growth strives to provide a means for communities to alter the planning context which currently renders mixed land uses illegal in most of the country.^[9]

Methods

Professional planners work in the public sector for governmental and non-profit agencies, and in the private sector for businesses related to land, community, and economic development. Through research, design, and analysis of data, a planner's work is to create a plan for some aspect of a community. This process typically involves gathering public input to develop the vision and goals for the community.

A charrette is a facilitated planning workshop often used by professional planners to gather information from their clients and the public about the project at hand. Charettes involve a diverse set of stakeholders in the planning process, to ensure that the final plan comprehensively addresses the study area.



Aerial view of Rosslyn-Ballston corridor in Arlington, Virginia. High density, mixed use development is concentrated within $\frac{1}{4}$ – $\frac{1}{2}$ mile from the Rosslyn, Court House and Clarendon Washington Metro stations (shown in red), with limited density outside that area. This photograph is taken from the United States Environmental Protection Agency ^[8] website describing Arlington's award for overall excellence in smart growth in 2002 — the first ever granted by the agency.

Geographic Information Systems, or GIS, is a very useful and important tool in land-use planning. It uses aerial photography to show land parcels, topography, street names and other pertinent information. GIS systems contain layers of graphic information and their relational databases that may be projected into maps that allow the user to view a composite of a specific area, adding an array of graphically oriented decision making tools to the planning process.^[7]

A transect, as used in planning, is a hierarchical scale of environmental zones that define a land area by its character, ranging from rural, preserved land to urban centers. As a planning methodology, the transect is used as a tool for managing growth and sustainability by planning land use around the physical character of the land. This allows a community to plan for growth while preserving the natural and historical nature of their environment.^[7]

Basis of United States Land Use Planning Authority

The police power is the basis for land use planning authority in the United States. This authority is usually delegated by state governments to local governments, including counties and cities. It is these local governments that most frequently exercise police power in land use planning matters. The regulation of land use based on police power is distinct from the taking of private property by the government through the power of eminent domain. If the regulation of land use is done under the authority of the police power, the private property owner isn't typically entitled to compensation as they would be if property was taken under the power of eminent domain. The court decision in the case *Commonwealth v. Alger* was related to land use planning and dealt with the construction of a wharf on privately owned tidelands around Boston Harbor.^[10]

See also

- Environmental planning
- Federal Land Use Policy Act of 1976
- Geographic Information Systems
- Inter-municipal land use planning

- Landscape architecture
- Landscape planning
- Regional planning
- Smart growth
- Spatial planning
- Sustainable development
- Transportation planning
- Urban design
- Urban planning
- Village Development Committee (India)

Academic journals

- *Environment and Planning*
- *Land Use Policy*
- *Journal of Land Use and Environmental Law*
- *Journal of the American Planning Association*
- *Planning Theory*

References

Notes

1. Young, A., 2003
2. Canadian Institute of Planners, 2011
3. American Planning Association, 2011
4. Barnett, J., 2004
5. Martha Derthick. *Dilemmas of Scale in America's Federal Democracy*. p. 257.
6. Walters, D., 2007
7. Southwestern NC Planning and Economic Development Commission, Community Foundation of WNC, & the Lawrence Group Architects of NC, Inc., 2009
8. "Arlington County, Virginia - National Award for Smart Growth Achievement - 2002 Winners Presentation | Smart Growth | US EPA". Epa.gov. 2006-06-28. Retrieved 2012-12-30.
9. Smart Growth Network, 2011
10. Understanding the Law of Zoning and Land Use Controls, Barlow Burke, Lexisnexis, Chapter 1, Published 2002

Bibliography

- Barnett, J. (2004). *Codifying New Urbanism: How to Reform Municipal Land Development Regulations*, Chicago, IL.
- Southwestern NC Planning and Economic Development Commission, Community Foundation of WNC & the Lawrence Group Architects of NC, Inc. (2009). *Region A Toolbox, A Pilot of the Mountain Landscapes Initiative*, Sylva, NC.
- Walters, David. (2007). *Designing Community, Charrettes, Master plans and Form-based Codes*, Oxford UK.
- Young, Anthony. (1993). *Guidelines for Land Use Planning*, Food and Agriculture Organization of the United Nations, Rome, Italy.

External links

- American Planning Association (<http://www.planning.org/>), Chicago, IL
- "Planning Is ...", Canadian Institute of Planners (<http://www.cip-icu.ca/web/la/en/pa/3FC2AFA9F72245C4B8D2E709990D58C3/template.asp>), Ottawa, ON
- Smart Growth Online (<http://www.smartgrowth.org/>), National Center for Appropriate Technology, Butte MT
- "Arlington County, Virginia" (<http://www.epa.gov/smartgrowth/arlington.htm>), U.S. Environmental Protection Agency, Washington, DC
- "An overview of spatial policy in Asian and European countries" (http://www.mlit.go.jp/kokudokeikaku/international/spw/index_e.html), Ministry of Land, Infrastructure, Transport and Tourism (MLIT), Japan

Retrieved from "https://en.wikipedia.org/w/index.php?title=Land-use_planning&oldid=683633684"

Categories: Land use

-
- This page was last modified on 1 October 2015, at 14:47.
 - Text is available under the Creative Commons Attribution-ShareAlike License; additional terms may apply. By using this site, you agree to the Terms of Use and Privacy Policy. Wikipedia® is a registered trademark of the Wikimedia Foundation, Inc., a non-profit organization.



100 East Santa Fe Olathe, KS 66051-0768 (913) 971-8600

*Setting the Standard for Excellence
in Public Service*

[Home](#)

Frequently Asked Questions (FAQs)

Planning FAQs:

- [What does Long Range Planning do? What information is available through Long Range Planning?](#)
- [What does Current Planning do?](#)
- [What is the Planning Commission and what function does it perform?](#)
- [What is a Comprehensive Plan?](#)
- [How do area and corridor plans relate to the Comprehensive Plan?](#)
- [How is the Comprehensive Plan updated?](#)
- [What is the Johnson County Rural Comprehensive Plan?](#)
- [What is the difference between a land use plan and a zoning map?](#)
- [What is an overlay district?](#)
- [What is a planned zoning district?](#)
- [What do I do if I want to annex into the City?](#)
- [What is an inter-local annexation agreement?](#)
- [Where is development occurring in Olathe? What are the major ongoing projects?](#)
- [How many people/homes/businesses are in Olathe? What was the change over the past year?](#)
- [What is the zoning for a particular property?](#)
- [What is the Unified Development Ordinance \(UDO\)?](#)
- [What are the steps in the development process? How long do they take? How much do they cost?](#)
- [When should I schedule a pre-application meeting?](#)
- [When are public hearings required? What are the procedures for formal input or protest?](#)
- [Does the City have architectural requirements for new commercial building?](#)
- [Who pays excise taxes, and why?](#)
- [Who participates in a benefit district, and why?](#)
- [What is a TDD?](#)
- [What is the Johnson County 100 year floodplain? How does the floodplain affect my property?](#)

Signs FAQs:

- [How do I obtain a sign permit?](#)
- [How many garage sales can I have?](#)
- [Where can I place garage sale signs?](#)
- [Can I have my garage sale on another owner's property?](#)
- [Where can I place political signs?](#)
- [Can I place pointer signs or other real estate signs at the corners of busy streets?](#)
- [Can I have a sign advertising my home-based business?](#)
- [Can I remove signs that I think are in violation of the sign ordinance?](#)
- [My sign is gone. Can I get it back?](#)

Zoning Enforcement FAQs:

- [Can I run my business from home?](#)
- [Can I run my business from my garage?](#)
- [Can my employees come to my home?](#)
- [Can my customers come to my home?](#)
- [What types of home-based businesses are permitted?](#)
- [What are the child care operations requirements?](#)
- [How do I report a violation?](#)
- [How long does it take to resolve a violation?](#)
- [Where can I get more information?](#)
- [How many pets are permitted in my home?](#)

Codes FAQs:

- [What does Code Enforcement do?](#)

[What does Building Inspection do?](#)
[What Building Codes does the City of Olathe enforce?](#)
[What building inspections are required?](#)
[How do I schedule an inspection?](#)
[What is the fee for a building permit?](#)
[When is a building permit needed for a deck?](#)
[When is a building permit needed for a pool?](#)

Planning Questions:

What does Long Range Planning do? What information is available through Long Range Planning?

[Long Range Planning](#) responsibilities include implementing the goals and policies of the City's Comprehensive Plan and the preparation of future land use plans, corridor plans, and neighborhood action plans. The staff also creates and maintains community profile information to assist in the planning efforts of various City departments.

Long Range Planning has information available on the City's [Comprehensive Plan](#), area and corridor plans, building permits, population, housing trends, commercial activity, and other information that helps guide the future development of the City.

[Back to Top](#)

What does Current Planning do?

[Current Planning](#) responsibilities include review of applications and plans regarding land use matters. Recommendations are made to the [City Council](#), [Planning Commission](#), and [Board of Zoning Appeals](#), as well as other committees and advisory boards formed by the City Council. The staff provides information to citizens, businesses, contractors, developers, and landowners regarding land use issues. Current Planning is also responsible for enforcing the Unified Development Ordinance and conducting inspections to ensure that development complies with approved plans.

[Back to Top](#)

What is the Planning Commission and what function does it perform?

The [Planning Commission](#) is a nine member volunteer board appointed by the Mayor with the consent of the Governing Body. The Planning Commission's action is regulated by Kansas State law and it is the body that administers provisions of the [Unified Development Ordinance](#) (UDO). The Planning Commission holds public hearings and provides a recommendation to the City Council.

[Back to Top](#)

What is a Comprehensive Plan?

The [Comprehensive Plan](#) is the adopted official statement of a legislative body of a local government that sets forth (in words, maps, illustrations, and/or tables) goals, policies, and guidelines intended to direct the present and future physical, social, and economic development that occurs within its planning jurisdiction including a unified physical design for the public and private development of land and water.

[Back to Top](#)

How do area and corridor plans relate to the Comprehensive Plan?

[Area and corridor plans](#) are land use plans that supplement information contained in the City's Comprehensive Plan. Area and corridor plans are adopted into the City's Comprehensive Plan by the Planning Commission and City Council. While the [Comprehensive Plan](#) takes a global view of future land use patterns in Olathe, area and corridor plans take a much more detailed look into future growth patterns of specific areas in and around Olathe.

[Back to Top](#)

How is the Comprehensive Plan updated?

The [Comprehensive Plan](#) is reviewed annually. The purpose of the review is to identify recommended plan amendments that allow the Comprehensive Plan to reflect the changing land use characteristics of the City. The City boundary is also amended to include areas that have been annexed into the City of Olathe. Major updates to the Comprehensive Plan, including up-to-date analysis of population, housing, market, and other trends, and a re-examination of the Plan's goals and objectives, occur on an "as-needed" basis, as directed by the City Council and Planning Commission. The last major update to the Comprehensive Plan occurred in 2010.

[Back to Top](#)

What is the Johnson County Rural Comprehensive Plan?

The [Johnson County Rural Comprehensive Plan](#) guides land use and development policies and decisions for unincorporated areas of Johnson County, including the City of Olathe's Future Growth Area. Land use recommendations within the Rural Comprehensive Plan are closely tied with municipal land use plans, several of which have been specifically adopted into the Rural Comprehensive Plan. For those portions of Olathe's Future Growth Area that remain in unincorporated Johnson County, the Rural Comprehensive Plan remains the guiding land use document.

[Back to Top](#)

What is the difference between a land use plan and a zoning map?

A land use plan provides general guidance for future land uses as well as goals and policy statements to help direct development and infrastructure improvements for the public good. Zoning refers to binding land use requirements that regulate appropriate use, bulk, height, density, and other characteristics appropriate for a site. Specific zoning regulations derive from the general recommendations of a land use plan.

[Back to Top](#)

What is an overlay district?

An **overlay district** provides for the possibility of superimposing certain additional requirements upon a basic use zoning district without disturbing the requirements of the basic use district. In the instance of conflicting requirements, the stricter of the conflicting requirements apply.

[Back to Top](#)

What is a planned zoning district?

A **planned zoning district** is an area of land zoned and improved as a development for which the otherwise applicable bulk, use, and other requirements may be modified in order to allow for more flexible planning in conformance with the development approval process and developed in accordance with the provisions of the relevant zoning ordinance.

[Back to Top](#)

What do I do if I want to annex into the City?

Annexation of property into the City requires approval of the City Council and, in specific situations, the approval of the Johnson County Board of County Commissioners. In order for a property to be annexed into the City, the property owner must request via written petition that the City Council annex the property. A copy of the petition form is available here. The petition must be accompanied by the property legal description and a map showing the location of the property. If the property does not have a boundary that is contiguous with the City boundary, then the Johnson County Board of County Commissioners will also have to approve the annexation of the property.

For more information please contact Amy Kynard at 913.971.8917 [Back to Top](#)

*What is an inter-local **annexation** agreement?*

The City of Olathe has written agreements with its surrounding cities (DeSoto, Gardner, Lenexa, Overland Park, and Spring Hill). These agreements establish the City's "planning area," which is the City's ultimate boundary limit. A map of the City's planning area can be viewed [here](#). The inter-local agreement states that the City of Olathe will not accept annexation petitions from owners of property outside of the City's planning area and that neighboring cities will not accept annexation petitions from the owners of property within the City's planning area.

The cities can, and do, renegotiate the boundary lines established by the inter-local annexation agreements.

[Back to Top](#)

Where is development occurring in Olathe? What are the major ongoing projects?

The Major Development Projects [map](#) provides a good picture of current development in the city, including project name, type, and number of units.

[Back to Top](#)

How many people/homes/businesses are in Olathe? What was the change over the past year?

Each year, Long Range Planning staff produces a "**Development and Demographics**" report that provides a summary of area growth, development activity, and population trends. The "Year in Review" and quarterly reports provide detailed statistics on permitting and development activity. All of these reports are available through the City's website.

[Back to Top](#)

What is the zoning for a particular property?

The zoning for any address or parcel ID can be found through the City's interactive **GIS** mapping service. Select the "Find Address" icon and enter the location. The map will zoom to the site and display the zoning. Detailed regulations for each zoning district can be found in the City's [Unified Development Ordinance](#).

[Back to Top](#)

What is the Unified Development Ordinance (UDO)?

The **Unified Development Ordinance** combines development regulation and procedures, including but not limited to zoning and subdivision codes, sign regulations, administrative and hearings procedures, and commission bylaws, into a single unified code.

[Back to Top](#)

What are the steps in the development process? How long do they take? How much do they cost?

A complete description of the Development Process can be found [here](#).

[Back to Top](#)

When should I schedule a pre-application meeting?

A **pre-application meeting** should be scheduled once a site is located, a conceptual plan for the site is completed and the following can be provided:

1. One page summary of the project. Summary will generally address sewer, water, detention, off-site improvements and land use.
2. A concept/sketch plan of the project site, with dimensions.
3. Location map.

Contact the Planning Division at 913-971-8750 to schedule the pre-application meeting.

[Back to Top](#)

When are public hearings required? What are the procedures for formal input or protest?

Public hearings are required for rezoning, special use permit and vacation applications.

The applicant is required to send out public notices at least twenty (20) days prior to the hearing to all owners of record of lands located within at least two hundred (200) feet of the area proposed to be altered. Such mailed notice shall be given by certified mail, return receipt requested, and shall be in letter form stating the time and place of the hearing, a general description of the proposal, the legal description and general street location of the property subject to the proposed change, and a statement explaining that the public may be heard at the public hearing.

Public hearings are held at the Planning Commission meeting. Staff gives a presentation to the Planning Commission describing the proposed project. The applicant is given seven minutes to speak in favor of the project. Each additional person speaking in favor receives three minutes. Next, the first person to speak in opposition of the project is given seven minutes. Three minutes is given to each additional person speaking in opposition. The applicant is typically given two minutes to answer any questions or concerns presented by those speaking in opposition.

The Planning Commission closes the public hearing and provides a recommendation to the City Council by vote. A protest petition against any rezoning or special use permit application may be made up to 14 days (including weekends and holidays) after the Planning Commission meeting.

In order to be considered a "valid" protest, a protest petition must be timely filed and duly signed and verified by the owners of record of twenty (20) percent of the total area required to be notified by state statutes, excepting public streets and ways, located within or without the corporate limits of the City, in accordance with Section 18.12.080 of the UDO.

Where a valid protest petition has been filed, an ordinance approving the rezoning or a resolution approving a special use permit application shall not be passed except by the affirmative vote of at least three-quarters (3/4) of the members of the Governing Body.

[Back to Top](#)

Does the City have architectural requirements for new commercial building?

Yes. The **Unified Development Ordinance** (UDO) and adopted design guidelines contain architectural requirements for new commercial buildings.

[Back to Top](#)

Who pays excise taxes, and why?

Excise taxes are paid by a property owner when a property is platted for development or when applying for a building permit. Revenue from excise taxes is used to fund the infrastructure and other improvements (streets, transportation improvements, parks) that make development possible in new areas. Excise taxes help to defray the public costs of new growth from existing taxpayers in already developed areas.

[Back to Top](#)

Who participates in a benefit district, and why?

Property owners seeking to develop may petition the City for creation of a special **benefit district** to fund street, sewer, water, and other infrastructure improvements. Participants in a benefit district are assessed a fee to pay the costs associated with a specific infrastructure improvement. Typically, benefit districts allow for infrastructure improvements to be completed more quickly than would otherwise be possible.

[Back to Top](#)

What is a TDD?

A **Transportation Development District (TDD)** is a special taxing district whereby a petitioner of 100% of the landowners in an area request either the levy of special assessments or the imposition of a sales tax of up to 1% on goods and services sold within a given area. Upon creation of a TDD by a municipality, the revenue generated by TDD special assessments or sales tax under Kansas law may pay the costs of transportation infrastructure improvements in and around the new development.

[Back to Top](#)

What is the Johnson County 100 year floodplain? How does the floodplain affect my property?

The federal government requires mapping floodplains in counties nationwide to designate "100-year floodplains." These are areas that have a one percent risk

of flooding in any given year. The current FEMA regulatory maps were initially defined nearly 30 years ago and have had limited updating. Johnson County and its municipalities are working together to update FEMA regulatory floodplain maps throughout the County. These maps identify areas of risk where stormwater may create problems for the health and safety of residents and their properties today and in the future.

The only completely accurate method of determining if your property is in the floodplain is to have a licensed land surveyor or engineer survey the property and compare the elevations with the existing defined flood elevations. The City's Planning Services and Public Works departments can only help identify whether or not a floodplain exists in the area.

[Back to Top](#)

Signs Questions:

How do I obtain a sign permit?

A [sign permit](#) may be obtained from the Planning Services Department. An application and required submittal information is available on the web site.

[Back to Top](#)

How many garage sales can I have?

Up to six (6) garage sales may be conducted on a single property in a calendar year. Items not sold during the garage sale must be removed or stored inside the end of each day during the sale. Garage sales are normally three days in length.

[Back to Top](#)

Where can I place garage sale signs?

Garage sale signs may be placed on the property where the sale is held or on other private properties. Garage sale signs may not be placed on the street right-of-way, medians or utility poles and must be removed immediately after the end of the sale.

[Back to Top](#)

Can I have my garage sale on someone else's property?

Garage sales may be held on private property. No sales or signs are permitted on public property (street medians, right of way, parks, trails, etc.)

[Back to Top](#)

Where can I place political signs?

Political signs may be placed only on private property. The signs may not be placed between the sidewalk and curb, on medians, utility poles or closer than ten (10) feet to the curb where there is no sidewalk.

[Back to Top](#)

Can I place pointer signs or other real estate signs at the corners of streets?

Real estate signs may only be placed on private property. Such signs may not be placed between sidewalks and curbs, on medians, utility poles or closer than ten (10) feet to the curb where there is no sidewalk.

[Back to Top](#)

Can I have a sign advertising my home-based business?

Home-based businesses are allowed to have a sign advertising the business that does not exceed one (1) square foot in area and must be attached to the residence. Such signs may not be attached to the fence, placed in yards or on public property.

[Back to Top](#)

Can I remove signs that I think are in violation of the sign ordinance?

City Staff are available to investigate and remove illegal signs. If you think a sign is in violation, contact the Zoning Enforcement Officer with your concerns.

[Back to Top](#)

My sign is gone. Can I get it back?

Any signs removed by City Staff are properly disposed of on the day that they are removed. Please be aware that your sign could have been removed by someone other than City Staff.

[Back to Top](#)

Zoning Enforcement Questions:

Can I run my business from home?

Home-based businesses are permitted with some restrictions. The intent of the ordinance is to protect the integrity of the neighborhood as residential rather than commercial.

[Back to Top](#)

Can I run my business from my garage?

The [Unified Development Ordinance](#) requires that the entire business be contained inside the residence. Accessory buildings are not to be used to store materials, merchandise or work areas for the business.

[Back to Top](#)

Can my employees come to my home?

The [Unified Development Ordinance](#) requires that no employees come to the home other than family members residing on the premises.

[Back to Top](#)

Can my customers come to my home?

Yes, by appointment only.

[Back to Top](#)

What types of home-based businesses are permitted?

The [Unified Development Ordinance](#) lists the approved home based businesses. Any business that is not listed is not approved. If you have any questions, please contact the Zoning Enforcement Officer for additional information.

[Back to Top](#)

How do I report a violation?

To report a zoning violation, please contact the Olathe Planning Office at (913) 971-8750. Include the location (address) where the violation is occurring, details of the violation, such as what the violation is, when it occurs, who is involved (homeowner, tenants, employees, etc).

[Back to Top](#)

How long does it take to resolve a violation?

After receiving notification of a violation, the property owner and if necessary, the tenant of the property in violation are notified by certified letter and when possible, a personal visit by the Zoning Officer. After notification, the violation is required to be abated in a reasonable amount of time. Due to the different violations, time limits may be extended to allow for abatement. If compliance is not achieved, the property owner and possibly the tenant can be cited in Olathe Municipal court. The process can be one day or longer, depending on when compliance is actually achieved.

[Back to Top](#)

Where can I get more information?

The [Unified Development Ordinance](#) can be found at www.olatheks.org or at the Olathe Public Library. If you need further information, you can contact the Zoning Enforcement Officer at (913) 971-8750.

[Back to Top](#)

Codes - Building Permits and Inspections Questions:

What does Code Enforcement do?

Code Enforcement responsibilities include enforcing building codes to ensure safety and quality of construction. The staff reviews construction documents and issues building permits. Fees for building permits, street excise and park excise are collected through this division at the time building permits are issued.

[Back to Top](#)

What does Building Inspection do?

Building Inspection responsibilities include ensuring consistent, quality building construction is completed in order to protect the health, safety and welfare of occupants and provide long-term value to property owners.

[Back to Top](#)

What Building Codes does the City of Olathe enforce?

- 2012 International Building Code

- 2012 International Residential Code for One & Two Family Dwelling
- 2012 International Existing Building Code
- 2012 International Plumbing Code
- 2012 International Mechanical Code
- 2012 International Fuel Gas Code
- 2011 National Electric Code
- 2012 International Energy Conservation Code
- 2009 Accessible and Usable Buildings and Facilities ICC/ANSI A117.1
- 2012 International Swimming Pool and Spa Code
- 2012 International Property Maintenance Code
- 2012 International Fire Code
- [Olathe Municipal Code Title 15 - Buildings and Construction](#) (local code amendments)

[Back to Top](#)

What building inspections are required?

Building inspections are required for the following improvements:

- Footing
 - Foundation
 - Backfill
 - Plumbing/Electrical/Mechanical Underslabs
 - Engineered Floor Slabs
 - Sewer Service Line—From Building to Main Tap (Call Utilities: 971-9311)
 - Electrical (Temporary Service for Construction Trailer/Site) – separate application of the building permit – misc electrical application needed.
 - Above ceiling
 - Complete Gas Pressure
 - Rough In (All framing, concealed plumbing, electrical, HVAC)
 - Permanent Electrical Service
 - Final Approval – All Departments in Review Process to obtain Certificate of Occupancy or Temporary Certificate of Occupancy.
- Special inspections or third party inspections are acceptable, check with staff on specific allowable categories.

[Back to Top](#)

How do I schedule an inspection?

[Building inspections](#) are scheduled by calling 913-971-8574. Inspections for that afternoon must be received prior to 11:30 am. Inspection calls received between 11:30 am and 4:00 pm will be scheduled for the next morning. Rough Ins, Re-Rough Ins, Finals and Re-finals have to be scheduled by 4:00 pm the day before.

[Back to Top](#)

What is the fee for a building permit?

Please refer to [fees and schedules](#) for this information.

[Back to Top](#)

When is a building permit needed for a deck?

A [Residential Building Permit](#) is needed for any deck over 30" in height. Deck Guidelines are also located on the [forms](#) page.

[Back to Top](#)

When is a building permit needed for a pool?

A building permit is needed for any pool with over 24" of water.

[Back to Top](#)



Compose

Delete Move Spam More

Up Down Close

Inbox (780)

Drafts (117)

Sent

Spam (156)

Trash

Smart Views

Folders (25)

109 Corinne Dr Sale

777 Rome

Abruzzio, Italy

Art Quilt Tahoe

Art reminders

Bishop Quilters

Calico Quilters

Computer Repair

Continuing ED-2015

Deepak Chopra

Edward Jones

Enphase Enlighten

EQ Show (23)

Equity Line on Trust

Family (1)

Fidelity forms-inheri...

Finances

Franklin Templeton

Fraudulent Paypal c...

Gambling Addiction

Hawaii Show Sept ...

Jobs

Kingston subdivisio...

Laina

mail

Mancuso Show

Medicare

Meditations

Nikon help

NIKON TIPS

Notes

Oil and Gas

Patent-Tactile Station

quilters (1)

Quilting Arts Mags

Rassouli

Revocable Trust 2003

Sales Tax Clarified

Santa Fe Bead Expo

SDA Northern CA

Seth godin

Tactile Station

FW: Bishop Home Street Nursery;

Terry Tye <tyet47@hotmail.com> To christnerpamela@yahoo.com, Terry Tye

Today at 3:18 PM

From: mmoskowitz@inyocounty.us To: tyet47@hotmail.com CC: JTatum@CityofBishop.com; GarySchley@ca-bishop.us; davegrah@ca-bishop.us Subject: Bishop Home Street Nursery; Date: Thu, 1 Oct 2015 20:59:11 +0000

Mr. Tye,

Per your request, presented below is a copy of the email I sent to LADWP as a follow-up to the Bishop Home Street Nursery site visit and sampling event of August 19, 2015. The landowner has designated the lessee to conduct the cleanup. We have been in touch and the cleanup will begin shortly.

Good Afternoon Scott;

I believe we have both seen the sampling results and follow-up letter from Lahontan regarding the Home Street Nursery site visit conducted on August 19, 2015. This office agrees with the conclusions reached by the Lahontan staff in that, while there was no indication of any significant contamination of groundwaters or surface waters, there are two areas of localized soil contamination that require remediation at this time.

As the Los Angeles Dept. of Water & Power is the landowner, I am requesting that a plan and time schedule be submitted to me for the remediation. This should be a fairly straightforward project, as contamination was localized and very near the surface. The two areas where we excavated and sampled during the site visit need to be deepened and expanded to allow removal of all contaminated soils. In my estimation, a hole two feet deep, and two feet in diameter may be sufficient at each of the two sites. When excavation is completed, one soil sample from each site should be collected and analyzed for the constituents of concern. The excavated soils from the first site appeared to be impacted only by diesel fuel, and as such, this soil could be taken to the Bishop-Sunland landfarm/landfill for treatment and ultimate disposal. The soil from the second site shows contamination from organics other than gasoline and diesel fuels and, as such, may not be taken to the Bishop-Sunland landfarm/landfill. This soil will need to be taken to an appropriate landfill facility. After it is determined that no further contamination exists, the holes may be backfilled with clean soil.

Please submit a workplan and time schedule within the next two weeks.

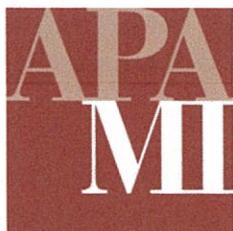
Thanks,

Marvin Moskowitz

Reply Reply to All Forward More

Subject: Bishop Home Street Nursery;





**Michigan Association of Planning
A Chapter of the American Planning Association**

Planning and Zoning Officials Academy Vol. 11, No. 5

The following text is excerpted from the *Basic Training* supplemental materials accompanying the 2007 Regional Workshop series "Basic Training." Basic Training will be offered at several locations throughout the state in February 2007. For more information on attending a workshop near you, see pages 2 and 3.

Relationship between the Comprehensive Plan and the Zoning Ordinance

The comprehensive plan provides the planning commission with the opportunity to look beyond the day-to-day zoning issues and provide guidance for the future use of land and development in the community. A properly developed, well thought-out comprehensive plan can be of great value to a community in its efforts to improve quality of life, make more efficient use of financial and other resources, provide a cleaner environment, and build an economically healthy community.

However, the value of any comprehensive plan is directly related to the community's willingness to follow the plan, and its diligence in keeping the plan current and relevant to today's conditions. **Once adopted the plan must be implemented through appropriate zoning regulations, and changes to the zoning districts or map.** This must be followed by consistent use of the plan. Failure to do so consistently will discredit any attempt to use the plan as a defense for actions challenged by property owners or developers.

Likewise, prompt implementation and consistent and vigorous use of the plan will lend credibility to the community's decisions on rezonings or other zoning actions. While the courts of the State of Michigan do not recognize the absolute authority of the comprehensive plan, they do lend much more credibility to actions supported by careful planning than those which appear to be taken arbitrarily against an individual property owner.

The relationship between the comprehensive plan and the zoning ordinance is often misunderstood, but there are clear legal and administrative differences. For example, while the comprehensive plan is a guide for the future use of land, the zoning

**Michigan Association of Planning
219 South Main Street, Suite 300 Ann Arbor, Michigan 48104
Phone: 734.913.2000 Fax: 734.913.2061 web: planningmi.org**

ordinance regulates the use of land in the present. As a guide, the plan is not a binding, legal document, but is useful to support the legal strength of the zoning ordinance.

A key difference between a comprehensive plan and the zoning ordinance is timing. The comprehensive plan is intended to show the future use of land at some point during the planning period, which could project as far ahead as 20 years or more. The zoning ordinance, on the other hand, is immediate, regulating land use today.

Since the comprehensive plan determines the future use of land, rezonings, a change in the zoning ordinance that changes a described parcel of land from one zoning district to another should generally be consistent with the plan. This is not to say that all rezonings that are consistent with the plan should automatically be approved. Nor does it mean that a request that is not consistent with the plan should automatically be denied.

Rather, it is necessary for the planning commission to examine the conditions that were present when the plan was adopted and determine if those conditions are still present or true. If the conditions originally present when the plan was adopted have changed significantly, the plan may warrant reconsideration. If no changes have occurred, the plan should be given strong deference.

For those instances where the request is inconsistent with the plan, it is appropriate to require an amendment to the plan prior to acting on the rezoning request. This affords the planning commission the opportunity to consider the long range implications of their actions, rather than being driven by a specific rezoning request.

Highlighted box, on page 1,
Updating the Zoning Ordinance

QUIZ: *When is the best time to update your Zoning ordinance?*

- A. Whenever we get sued and lose...**
- B. When our attorney or planner tells us**
- C. Whenever something comes up we hadn't thought of**
- D. After the comprehensive plan is completed**
- E. Minimum once a year**
- F. All of the above**

See page 4 for the answer.

Highlighted box, on page 4
Updating the Zoning Ordinance

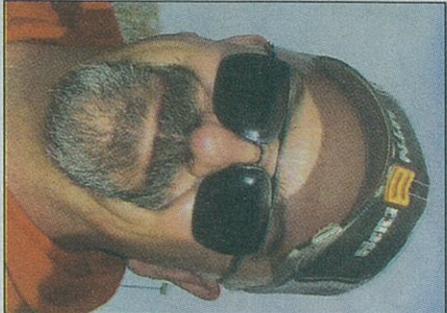
Which answer did you choose? There is some truth in all of these responses; any number of events may create the need to update the zoning ordinance. However, one of the appropriate times for a thorough review and update is after the comprehensive plan has been completed, or updated.



MAN ON THE STREET

What should the city do to fix the traffic problem on Home Street before school?

By Seth Connors



"An increased police presence could help."

-Justin Campbell, Chalfant



"If they had more crossing guards or had a police presence things would run a lot smoother."

- Scott Bayhurst, Rovana



"People are inconsiderate. Signs might slow people down but it won't completely solve the problem."

- Fredrick Thompson, Bishop



"Maybe they could stagger the in-times for the different grades or maybe they need a police man there."

-Jyoti Nieman, Bishop



"If they had a traffic cop it might help or maybe a traffic light."

- Phil Lesslie, Bishop



"They could reroute the traffic - it's a mess."

- Andrea Kramer, Big Pine

MAN ON THE STREET

What should the city do to fix the traffic problem on Home Street before school?

By Seth Conners



"They should develop a separate route for buses to use."

- Maria Gomez, Bishop



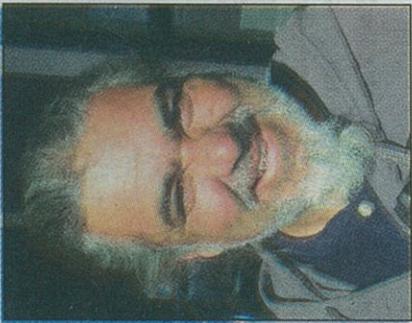
"There's always gonna be someone not abiding by the traffic laws. It would work if they had a police officer directing traffic. That would keep it safe."

- Eric Eddy, Bishop



"I think people should leave a little bit earlier."

-Katie Murphy, Bishop



"People could drop off their kids on Line Street and have them walk the rest of the way. I grew up walking and riding my bike to school. More kids should do that."

-Cain Quezada, Los Angeles



"They should fix the bike lanes so more kids can ride their bikes to school."

Leigh Parmenter, Bishop



"I don't experience it very often but adding additional route would help."

- Dawn Pilsof, Paradise

BADGE BYLINE

The following is a compilation of information taken from the daily activities logs at the Bishop Police Department and the Bishop and Lone Pine Inyo County Sheriff's departments. Since most cases have yet to be adjudicated, all charges should be considered allegations.

Nov. 11

4:04 a.m. - Deputy requested in Bishop for a female locked in a restroom, not responding, possibly passed out.

7:49 a.m. - Suspicious circumstances in Big Pine reported to sheriff's department. Old Bronco fenders and bumpers found on property, unknown owner. Options explained to reporting party.

8:16 a.m. - Hit and run in Lone Pine reported to sheriff's department. Call referred to other agency.

11:43 a.m. - Abandoned car in the area of Baker Creek reported to sheriff's department. Deputy was unable to locate vehicle.

10:42 a.m. - Suspicious circumstances reported to PD. Caller on N. Main Street said that small yellow and red markings were placed on a tire, unknown when or where it happened.

11:09 a.m. - Caller reported to PD that a parked vehicle in Vons parking lot rolled into another vehicle, no drivers or own-

ers present.

8:35 p.m. - Burglary in Big Pine reported to sheriff's department. Male subject arrested by deputy for burglary.

Nov. 12

7:44 a.m. - Vehicle cited by PD officer on Short Street for parking in front of fire hydrant.

11:13 a.m. - Disturbance in Lone Pine reported to sheriff's department.

11:26 a.m. - Vehicle with expired tags reported parked for eight days at Clarke and Sneden streets.

1:57 p.m. - Civil issue reported to sheriff's department. Caller said that a cover valued at \$1,500 was taken off his truck at an unknown time on an unknown day in Bishop. Deputy contacted reporting party and determined the problem was a civil issue between two parties over property.

3:06 p.m. - Suspicious circumstances reported to PD. Caller said a subject that had been drinking was en route to pick up kids from Bishop Elementary driving a green KIA Sportage.

3:27 p.m. - Drunk subject refusing to leave business on S. Main Street in Lone Pine reported to sheriff's department. Deputy arrested a male subject for drunk in public.

4:58 p.m. - Cattle in the roadway causing a traffic hazard in

Lone Pine reported to sheriff's department.

5:06 p.m. - Suspicious circumstances at city parking lot on Church Street reported to PD. Caller said they found the gas cap of their vehicle tampered with and valve broken.

7:05 p.m. - Possible brush fire by a canal in Big Pine reported to sheriff's department. Called referred to fire department.

9:29 p.m. - Deputy arrested subject on N. Barlow Lane in Bishop on an Inyo County warrant.

9:53 p.m. - Francis Stone Jr. arrested by a deputy on N. Barlow Lane in Bishop on a felony warrant.

Nov. 13

00:21 a.m. - Caller reported to PD that a drunk male subject was inside a business on N. Main Street waving a knife around. The subject was arrested by an officer for drunk in public, urinating in public, and resisting arrest.

7:39 a.m. - Reckless driver on U.S. 6 reported to PD. Caller said that a vehicle was doing more than 100 mph and tailgating. Officer reported vehicle was gone when they arrived in the area.

12:14 p.m. - Telephone scam reported to PD. Reporting party said that they received a call on See Vee Lane from a subject that

left a message saying that "so and so" had an arrest warrant and that person needed to come into the Bishop Police Department.

1:13 p.m. - Personal locator activation reported to sheriff's department. "OES" advised that a SPO1 personal locator activated twice by a family group on motorcycles in riparian area of sand dunes north of Highway 190 near mile marker 87-89. Call was referred to other agency.

1:32 p.m. - Suspicious subject in Lone Pine reported to sheriff's department. Caller said that a subject in a blue Toyota Corolla tried to approach their 15-year-old grandson, then started following him. Caller advised that the Toyota was found at Spahnower Park, where the male subject was seen changing into a yellow jumpsuit or running suit before disappearing from sight. Deputy was unable to locate subject.

2:17 p.m. - Caller requested PD to assist in locating persons responsible for a fuel spill on N. Main Street.

2:18 p.m. - Vehicle parked too close to intersection at N. Second and Willow streets reported to PD. Warning issued by officer.

2:56 p.m. - Panic alarm on W. Line Street reported to PD. Officer reported situation was OK.

3:09 p.m. - Large traffic jam

in front of school on Home Street reported to PD.

3:31 p.m. - A couple of subjects in city hall reported to PD as appearing agitated. Officer reported that situation was OK.

5:42 p.m. - PD officer requested on S. Warren Street. Caller said that step daughter was agitated. Officer assisted caller at the location.

6:45 p.m. - Possible prowler on Short Street reported to PD. Officer reported situation was OK.

9:06 p.m. - Deputy arrested a suspected drunk driver on Cottonwood in Lone Pine.

11:52 p.m. - PD officer issued a warning/citation to a vehicle parked in turn lane on N. Main Street.

Nov. 14

12:23 a.m. - Vandalism on N. Main Street reported to PD. Caller said that two females broke out a bathroom window. Subjects were gone when officer arrived at location.

1:19 a.m. - Caller reported items without monetary value were taken from inside of a unlocked vehicle on Pioneer Lane.

2:11 a.m. - Male subject, angry and yelling in city parking lot on N. Warren Street held for detox and released by PD.

7:46 a.m. - Caller in Bishop reported to sheriff's department

that their neighbor had cut down tree limbs and placed cameras 12 feet up on their residence to watch them. Deputy explained options to caller.

9:59 a.m. - Report made to PD of a vehicle parked for three days in parking lot of Vons on N. Main Street.

10:35 a.m. - Caller advised PD of a disabled vehicle with broken axle blocking both lanes at N. Main and May streets.

11:17 a.m. - Caller on Short Street requested PD to contact mental health for prescription refill. Call was referred to other agency.

11:17 a.m. - Subject arrested by deputy on Zucco Lane in Lone Pine on an Inyo County warrant.

3:23 p.m. - Caller requesting PD to mark tires of parked vehicles in city parking lot on Church Street.

6:13 p.m. - Report made to PD of a male and female screaming at each other near the picnic area in the city park on N. Main Street. Subjects were gone on officer's arrival.

4:51 p.m. - PD officer requested to check the welfare of a female with a bad cough sleeping on a bench on N. Main Street. Officer reported subject was OK.

19:10 p.m. - Residential alarm reported to sheriff's office at a residence in Bishop. Deputy found house secure.