

An aerial photograph of a coastal town in Alaska. In the foreground, there are several small, rectangular buildings and a paved road. A river or stream flows through the middle ground. In the background, there is a large, snow-capped mountain range under a clear sky. The town is situated on a flat, grassy area near the water.

# ALASKA PLANNING COMMISSION

## HANDBOOK

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# *Alaska Planning Commission Handbook*

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# INTRODUCTION

## WELCOME TO THE PLANNING COMMISSION!

Your life is almost certain to become more interesting now that you have agreed to serve on the planning commission. You will attend regular meetings, special meetings, and work sessions. You will evaluate a diverse array of projects, plans, and proposals; grant (or deny) permits, variances and subdivision approvals; and become fully involved in the policy and regulatory issues of planning in the community. You will encounter new terms and concepts; gain knowledge and information about development, both planned and speculative; and develop a greater understanding about the workings of government and public decision-making.

A good planning commissioner takes the future seriously, works hard, exercises patience, and is willing, able, and prepared to make decisions. This handbook will help prepare you to be a commissioner and will serve as a reference during your tenure. It will help you understand the legal framework for planning in cities and boroughs, and discuss the many functions and responsibilities of the commission.

As a planning commissioner you must have some understanding of the following topics:

- Comprehensive and other types of planning
- Zoning and platting
- How a planning commission operates
- The authority and duties of the commission
- Legal aspects of commission conduct
- Standards for commission decision-making

The Alaska Planning Commission Handbook covers all of these topics. If you are new to the commission, you may want to read the sections in order. If you are an experienced commissioner, the handbook may be more useful as a reference. Although being a planning commissioner will always be challenging, reading this handbook will make the challenge a little easier.

# CHAPTER ONE | WHAT YOU NEED TO KNOW ABOUT A PLANNING COMMISSION

## WHAT IS A PLANNING COMMISSION?

The planning commission is a body of citizens that serves local government. The planning commission is both a decision making body for the community when it issues permits and variances and approves plats, and an advisory body to the council or assembly when it makes recommendations on the comprehensive plan, land use regulations and community development issues in general. The planning commission is expected to provide an informed perspective on development needs and issues in the community, and be an honest advisor to the council, assembly, and community.

## AUTHORITY FOR PLANNING IN ALASKA

Alaska state law requires that home rule, unified home rule, first-class and second-class boroughs, and first-class and home rule cities outside of boroughs provide for planning, platting and land use regulation. Second-class cities outside of boroughs may, but are not required to, exercise planning powers. For communities outside of boroughs that do not exercise planning powers, the Alaska Department of Natural Resources (DNR), Division of Mining, Land, and Water, acts as the platting authority. Depending on the form and classification of local government and a city's location either within a borough government or in the unorganized borough, the state statutes governing planning have different applications. The text that follows will help you understand where your municipality fits into this scheme.

## MUNICIPAL GOVERNMENT IN ALASKA

In Alaska there are only two forms of municipal government: cities and boroughs. The term "municipality" is the generic term that encompasses all classes and forms of cities and boroughs. There are three classes of cities: first class, second class and home rule. There are four classes of boroughs: first-class, second-class, home rule and unified home rule. The unified home rule municipality is a borough in which all cities within its boundaries have been dissolved and which has adopted a home rule charter under a special procedure in Title 29.

## What you need to know about a commission...

- What is a Planning Commission?
- Authority for Planning in Alaska
- Composition of the Planning Commission
- Duties of the Commission
- Why do Communities Need to Plan?
- A Brief History of Planning, Platting, and Zoning

### *Home Rule versus General Law Municipalities*

All of the municipalities in Alaska fall into one of two classifications. They are either general law or home rule municipalities. General law municipalities (first- and second-class cities and first- and second-class boroughs) may only exercise those powers they are granted by law. Therefore, they must comply with all the relevant provisions of the planning, platting, and land use statutes in AS 29.40. Home rule municipalities are cities and boroughs that have adopted a home rule charter. Many of the provisions of AS 29.40 that govern general law municipalities do not apply to home rule municipalities; in fact AS 29.10.200 lists just two provisions of 29.40 that apply to home rule municipalities: title to vacated area and subdivision of state land.

### *Cities Inside and Outside Boroughs*

All boroughs, both general law and home rule, must exercise planning powers on an area-wide basis, that is, both inside and outside its cities. Therefore, cities inside a borough, whether general law or home rule, have no planning, platting, or land use regulation authority. However, AS 29.40.010(b) authorizes a borough to delegate to a city any of its powers and duties that are governed by AS 29.40 (the chapter of the Municipal Government that governs the exercise of planning, platting, land use regulation). A number of cities within boroughs have been delegated some or all of their borough's planning and land use regulation powers. A home rule city inside a borough has only those planning and land use regulation powers granted to it by the borough. Unless the borough is home rule, the exercise by a home rule city of delegated powers would still be governed by the provisions of Title 29 because the borough can delegate only those powers it possesses, and it possesses only general law borough powers. Home rule cities that are outside boroughs must exercise planning, platting, and land use regulation powers but, with minor exceptions, are not governed by AS 29.40. First-class cities outside boroughs must, and second-class cities outside boroughs may, exercise these powers as provided in AS 29.40.

## **COMPOSITION OF THE PLANNING COMMISSION**

Each city or borough establishing a planning commission must first pass an ordinance that identifies the number of commissioners, their qualifications, their duties, how vacancies are filled, the frequency of regular meetings, who serves as their staff, and general operating procedures. One of the first things you should do as a new commissioner is to review the local ordinance establishing your planning commission.

A general law municipality is required to establish a planning commission of five members, unless the local ordinance establishing the commission requires a greater number of members. Members of a planning commission in a general law municipality are appointed to three-year terms by the mayor, subject to confirmation by the governing body. The assembly or city council may interview planning commission applicants before confirming an appointment. If one or more home rule or first-class cities within a general law borough have sufficient population to entitle the city to a seat on the commission, AS 29.40.020(a) requires that the appointment is made from a list of recommendations submitted by the city council. A home rule municipality may establish its own method for appointment, terms, and number of members.

## DUTIES OF THE COMMISSION

State statute (AS 29.40.020 (b)(1) and (2)) and local home rule charters or codes of ordinances define the authority and responsibilities of the planning commission. Some planning commissions also have bylaws that provide further detail on meetings and other operational matters. See Appendix A for sample bylaws. The duties of the planning commission will vary from one community to another depending on the need (or perceived need) for planning, support for planning by the council or assembly, the community's rate of growth and change, big infrastructure or resource development projects on the way, and other factors. The local ordinance establishing the commission and describing its authority and duties should take all of these factors into account. The following list of duties shows the range of activities with which a planning commission may become involved.

### *Prepare a Comprehensive Plan*

The comprehensive plan, which is discussed in more detail in Chapter Five, contains an inventory of community conditions, policy statements to guide community development, and maps displaying intended land use in the community. It can be the most important document the commission will prepare. If properly prepared and followed, the policies and maps in the plan can guide land-use and development decisions for years.

### *Act as the Platting Authority*

As the platting authority, the planning commission reviews and approves major subdivisions (creation of five or more lots), may review minor subdivisions (creation of four or fewer lots, commonly called short plats), approves re-plats and lot-line adjustments of existing plats, accepts dedications of land for necessary public uses, and grants vacations of public land, rights of way, and easements.

### *Review and Recommend Land Use Regulations*

Land use regulations, most frequently zoning and platting (i.e., subdivision) ordinances, are frequently used to implement the comprehensive plan. The commission is closely involved in the preparation, use and amendment of land use regulations and other implementation methods, and provides recommendations to the city council or assembly. AS 29.40.040(a)(3) permits the preparation of other regulatory measures that further the goals and objectives of the comprehensive plan. These can include design review ordinances, overlay zones, and other regulations including those for development on steep slopes, in floodplains, and within historic districts.

### *Review and Recommend the Rezone of Property*

The commission reviews proposed zoning changes and recommends to the city council or assembly whether a zoning change should be granted. The city council or assembly has the final decision, since rezones are approved by ordinance. Rezones, if approved, occur as amendments to the official zoning map.

### *Act on Variances and Land Use Permits*

The commission has the authority to approve or deny applications for variances and land use permits. Conditional-use permits are the most commonly known and used. However, planning commissions may issue other types of use permits. The Bristol Bay Borough, for example, uses Site Development Permits. Variances and permits are explained in Chapter Six (under Plan Implementation), and are also defined in the Glossary.

### *Review and Advise on Land Acquisition and Disposal*

Many municipalities have received land entitlements from the State. Others have or will receive land under the provisions of the Alaska Native Claims Settlement Act. The planning commission should review plans and make recommendations to the council or assembly on what land should be acquired or disposed and how the land should be used.

### *Hear Appeals from Administrative Decisions*

AS 29.40.050 (a) and (b) authorizes the creation of a Board of Adjustment to hear appeals from “an administrative decision of a municipal employee, board, or commission made in the enforcement, administration, or application of a land use regulation adopted under this chapter.” Typically, the city council or borough assembly is authorized by ordinance to act as the Board of Adjustment to hear citizen appeals of permits issued or denied by the commission. The planning commission may also be authorized by ordinance to hear appeals from decisions made by the staff (i.e., administrative appeals).

### *Review and Recommend Capital Improvements*

Most planning commissions review and provide comment to the council or assembly on the municipality’s Capital Improvements Program (CIP). As the commission is regularly involved in decision-making about community development and should have a good perspective on capital projects and how they relate to the goals and objectives of the comprehensive plan, it should remain involved in preparation of the CIP from start to finish. This can include periodic updates, and/or assignment of a commissioner to the CIP committee.

### *Review the Annual Planning Budget*

The commission works closely with planning staff and has an interest in funding for planning programs. The commission should provide budget recommendations, review the planning budget when it is prepared, and provide recommendations to the city council or assembly before it is adopted. Commissioners can ask to see a draft budget at a March or April meeting (assuming the fiscal year begins on July 1).

### *Review and/or Help Develop the Planning Department's Annual Work Program*

The commission should help prepare and/or review the planning staff's annual workload so that the work plan reflects municipal and commission priorities.

### *Hold Public Meetings and Hearings*

This may seem too obvious to mention, but it is perhaps the most important activity of the commission. Public meetings and hearings provide an opportunity for direct interaction between the commission and local residents. They give local residents an opportunity to see the commission in action, and give commission members the chance to hear first-hand about the concerns of residents.

### *Initiate Planning Projects*

The planning commission can initiate planning projects when it recognizes a problem or a need that can be accommodated with available staff time and budget. Projects requiring significant staff time or budget appropriations will need city council or assembly approval.

### *Coordinate with Other Agencies' Plans*

State and federal agencies undertake planning studies, land management plans, and large construction projects (roads, bridges, ports, and harbors) that can significantly affect a municipality. The commission should review these plans and projects and provide recommendations for city council or borough assembly action as necessary.

### *Other Duties as Authorized by Ordinance*

The city council or assembly may grant the commission authority that is not mentioned in this listing. This could include, for example, recommending building codes, a street numbering system, or recommending the condemnation of hazardous buildings.

# WHY DO COMMUNITIES NEED TO PLAN?

Planning is an important part of the city's civic, social and economic life. The commission will make decisions about how the city should be developed: where houses, industries, parks and open space should be; what should be preserved, what should be platted now, what should be built in the future. Municipalities plan in order to have some control over the type, location, costs and effects of development. They exercise their planning powers across a broad range of regulations, from very little to very sophisticated. Depending on the size and budget, some communities do it without a dedicated planner, others are supported by a full-time staff of one, two, or a dozen.

## **PLANNING SAVES MONEY,...**

Poor planning today can mean extra budget costs tomorrow. Good planning today can mean budget savings tomorrow. For example, approval of a residential subdivision far from services can later place demands on the budget if future residents require services. Likewise, permitting development in hazardous or environmentally sensitive areas (i.e., avalanche zones, wetlands, unstable soils) could result in unanticipated prevention and clean-up costs. Planning is simply thinking about how the elements of community growth can fit together to promote safety, allow the delivery of efficient services, and conserve environmentally active and sensitive areas.

## **... ESTABLISHES GROUND RULES,...**

Planning establishes ground rules and standards for residents, developers, and agencies. A community that has a comprehensive plan and land use regulations and follows them, signals that accepted standards and procedures apply to community development. Developers know the ground rules when filling out an application, and the public knows the standards in the city code that will apply when the application is evaluated. Having ground rules will not eliminate conflicts, but ensures that everyone involved or interested in a development activity is reading from the same page.

## **...SUPPORTS ECONOMIC DEVELOPMENT,...**

The planning process allows residents and decision-makers to examine alternatives and choose courses of action that can promote employment and economic well-being. The City of Kenai, for example, included development of an important city-owned property as a key planning element in its comprehensive plan. By doing this, the City was able to reach out to the broader community to determine the importance and value of the property and how it might be developed to benefit the community.

### **...PROVIDES A FORUM FOR REACHING CONSENSUS,...**

Achieving consensus is a vital aspect of community planning. A planning effort should involve a broad segment of the population to ensure that all community groups are heard. This gives the community a sense of ownership in the planning process. A comprehensive plan should be consistent with community values. Community-wide consensus has not been reached if a plan is drawn up by a small group of people who basically agree with each other. It is only when differing viewpoints and values are brought together, and the forces of negotiation, persuasion, and compromise are at work, that true planning takes place. Consensus in this context means the formulation of goals about which a majority (or more) of the community will agree.

### **...PROMOTES GOOD DESIGN,...**

Community design is the deliberate process of building the community on the basis of agreed-to architectural, aesthetic, and other objectives. It represents an effort to create higher quality in the built environment through control of exterior materials, color, parking, bulk, scale, and other features. Good design can also enhance the relationship between the built environment and the natural environment through landscaping, natural buffers, greenbelts and stream setbacks. Subdivision rules (which can include design) are often implemented through private covenants and restrictions.

### **...PROTECTS PROPERTY AND PROPERTY VALUES,...**

Planning can protect property and property values by separating a potentially harmful or disagreeable land use from surrounding residential and commercial uses. For example, communities should try to locate the landfill, power plant, processing plant or airport away from residences and schools. Zoning setbacks promote fire safety by requiring spacing between structures. Property values can be enhanced when the community plans for parks, trails, playgrounds, athletic fields and other amenities. This can be important in municipalities that levy a property tax.

### **...REDUCES PROPERTY AND ENVIRONMENTAL DAMAGE**

Planning can help a community identify areas where development may be inadvisable because of environmental conditions. These conditions may include avalanche or landslide hazards, floodplains, stream banks, wetlands or other locations too active or too sensitive for development. For example, building in areas that flood repeatedly creates a recurring problem that could have been avoided if the buildings were properly located or constructed. By using a planning process, areas that have important habitat or wildlife values can be classified. Measures can then be adopted to protect, conserve, and enhance those areas. Some communities coordinate their planning efforts with those of fish and wildlife management groups and agencies.

## A Brief History of Planning, Zoning and Platting

### PLANNING

Community planning in the United States dates back to the early days of the republic. Colonial Philadelphia, Williamsburg, and the new capital of Washington, D.C.,

were planned towns where the streets and public buildings were designed before development began. These cities followed the model established by European cities to build according to an overall design. Boulevards were arranged in relation to monumental public buildings and extensive parks to enhance the visual impression of the city.

The 'City Beautiful Movement' of the late 19th century provided momentum for reform. Influenced by the 1893 Chicago World's Fair, planners began looking at the physical layout of parks, streets, civic centers and transportation systems with an emphasis on aesthetics. The City Practical movement after World War I focused on the engineering, legal, social and administrative aspects of community problems.

The U.S. Department of Commerce issued the Standard City Planning Enabling Act in 1927 in response to growing interest in regional planning. Community planning began in earnest in the 1930s and 1940s as federal expenditures helped fund numerous planning studies. Local planning activity increased dramatically with the passage of Section 701 of the Federal Housing Act in 1954. Many communities used the Section 701 monies to create community plans to meet both the federal funding requirements as well as deal with local issues. The program was discontinued in 1981.

State provisions for planning came with the adoption of Title 29 of Alaska Statutes in 1959 (listed under Territorial Law of 1913 as municipal code) and Title 38 in 1959. AS 29.40 sets forth provisions for comprehensive planning, platting and zoning at the city and borough level in Alaska. Title 38 set forth platting requirements of the State of Alaska Department of Natural Resources (DNR), which is the platting authority inside and outside municipalities where there is no municipal platting authority.

### ZONING

Zoning gained acceptance and legal validity as a tool to guide overall city development in 1926 following the U.S. Supreme Court decision *Ambler Realty v. City of Euclid*. Zoning was a reaction to the rapid growth of cities, where original town designs were being outstripped by the rate of expansion. Conventional zoning assigned a development designation or use to every acre of land. These designations generally included residential, commercial, or industrial. The separation of certain uses and buildings through zoning protected property values and avoided unsafe mixtures of residential and industrial districts.

In recent years, planners have developed alternatives to conventional zoning. These include performance zoning, a points-based system that allows different uses to mix together if they are designed to minimize their impacts; incentive zoning, which encourages developers to build public amenities like a transit stop or park in exchange for higher density or greater building height; form-based zoning, that regulates the form – the bulk, design and location of the improvements that occupy the land – instead of the use; smart growth and new urbanism, which concentrate growth and create compact, medium/high density, transit-oriented neighborhoods, close to schools, work and services.

## PLATTING

The primary force behind land subdivision control came from the Standard City Platting Enabling Act of 1928 (Act). The Act provided for planning commission approval of plats. The plat review process helped ensure that residential streets would have adequate capacity to handle future traffic and that lots would be of adequate size and shape and have frontage on a public way. Prior to 1928, the main purpose of subdivision regulation was to provide a more efficient method for selling land by permitting a seller to record a plat that divided a large parcel of land into sequentially numbered blocks and lots.

Sales of land were then recorded in the office of the county clerk. Following World War II, subdivision regulation entered another phase, with emphasis shifting to the needs of new subdivision residents for public open space, parks and recreation facilities, and adequate streets bordering the subdivision. Local regulations imposed requirements for mandatory dedication of roads, parkland, school sites, and open space. By 1968, more than 95 percent of municipalities of 5,000 residents or more had adopted subdivision ordinances based on state statutes modeled after the 1928 Act.

In more recent years, communities have used subdivision regulations to guide growth and to manage development until adequate public facilities are in place. Others have used subdivision controls to preserve natural features, such as wetlands, floodplains, and sensitive habitat areas or to achieve other environmental goals such as the control of erosion or storm-water runoff.





# CHAPTER TWO | HOW A PLANNING COMMISSION OPERATES

## How a Planning Commission Operates

- Planning Commission Roles
- Key Planning Commission Responsibilities
- Relationship Between Staff, Governing Body, and the Planning Commission
- Staff and Commission Relationship
- Elected Body and Commission Relationship
- Public Participation and Working with Citizens
- Public Involvement Techniques
- Elements of a Successful Public Meeting or Hearing

## PLANNING COMMISSION ROLES

The planning commission has three basic roles:

**Role #1. Advisory**

**Role #2. Regulatory**

**Role #3. Procedural**

### *Advisory Role*

The commission is the keeper of the plan. The plan refers to the local comprehensive plan and implementation ordinances. The commission is responsible for assisting with the preparation, review, and approval of the comprehensive plan and ordinances. Commissioners work with the public, the governing body, and staff. They advise the governing body on planning matters related to the development and implementation of the comprehensive plan. They make recommendations on plan adoption, plan amendments, and rezones. They listen, provide counsel, gather information, and facilitate discussions on growth and development.

### *Regulatory Role*

The commission administers the local land use regulations, such as the zoning and subdivision ordinances. It issues (or denies) permits and variances, and may approve (or reject) subdivision plats. The commission acts in a quasi-judiciary role, which means it has powers resembling those of a judge, insofar as it makes an official decision (permit, variance, plat) on the respective rights or claims of parties appearing before it.

### *Procedural Role*

The commission is charged with properly noticing and running an open meeting, making fair decisions, and conducting itself properly and in the public interest.

## KEY PLANNING COMMISSION RESPONSIBILITIES

### *Know your community and its geography and character*

Your knowledge as a local resident is invaluable to the commission. If you are not as familiar with your community as you might be, do yourself and the other commissioners a favor: after reading this handbook, go out and take a tour of your area. Look at the landscape and take note of the lot sizes, the ages, and the architecture of the homes. Make note of the major and minor streets and roads, the traffic and where people park. Find out where major utilities (and utility rights of way) are located. Where are the public buildings, parks, and schools? Where are the business areas and traffic flows? Where are the major industries?

Learn about the community's natural features: its salmon streams, lakes, berry-picking areas, drainage channels, wetlands, steep slopes, avalanche and landslide areas, stable and unstable soils, prevailing and seasonal winds, snowdrift patterns, and other matters that will affect development decisions. Discover what is happening with the natural environment. Are there areas prone to flooding or erosion? Is a wetland or wildlife habitat being threatened? Are there old landfills leaching pollutants into the water bodies?

Take note of where things are located and what is occurring. Is the community growing? Are businesses moving or finding it difficult to survive? Is traffic becoming more of a problem? Is the population aging? Is the number of children increasing or decreasing?

Get a firm understanding of your community and the factors affecting its prosperity, quality of life, and economic activity. In rural communities, land use planning that supports subsistence practices is as relevant as urban planning that supports cash-based economic activity.

### *Know your local regulations and all required procedures*

Preparation is key to being an effective planning commissioner, and it starts with knowledge. Commission members must have knowledge of the comprehensive plan and municipal land use codes (e.g. zoning and subdivision) at a minimum. Review the comprehensive plan and look for the general intent and for the way in which the various provisions interrelate. Ask yourself why certain uses are grouped with certain others. Look for patterns. Review the zoning and subdivision codes – their intent, definitions, applicability, and review procedures. Become familiar with the other plans and codes used in your community, such as housing plans, highway plans, the statewide transportation improvement plan, recreation and trails plans, flood mitigation plans, and where applicable, building and safety codes.



## RELATIONSHIP BETWEEN STAFF, GOVERNING BODY, AND THE PLANNING COMMISSION

### *Staff and Commission Relationship*

The planner (or planning staff in a larger community) plays a vital role in the planning process and the effectiveness of the planning commission. The planner carries out the tasks associated with administering the land use regulations, performs necessary research, prepares plans and reports, and distributes and explains the results of the work. Professional planners are trained to perform research; write reports and develop graphics and illustrations for the commission; make public presentations and meet with the public; interpret plans, municipal ordinances, and other laws; and carry out the routine tasks of their job, as well as providing direct assistance to the commission. They do this using their training in geography, landscape design, urban and rural planning, economics, law, and statistics, knowledge of the community, and other education and experience. The groundwork that your staff performs can help you run a more efficient, informed, inclusive, and effective meeting.

To help facilitate their job and make your commission meetings successful you can:

- Prepare for meetings by reading all reports.
- Call staff with your questions before the meeting.
- Examine all the facts on a given issue and make the best decision possible.
- State your reasons for your decision (legal findings of fact)

### How a Planning Commission Operates

- Administers the land use regulations
- Prepares staff reports and notices for meetings
- Researches planning, land use, and development issues
- Advises and assists the planning commission
- Educates and assists the public
- Knows and interprets laws and ordinances
- Conducts community and capital project planning
- Negotiates, facilitates, and coordinates between agencies, developers, and the public
- Enforces municipal code and conditions of approval stipulated by the commission
- Provides continuity – policy, documents, and people

Be prepared to explain your reasoning if the commission decision differs from the staff recommendation. Remember that the planner's first responsibility is to the city or borough administration. In some communities the planner has multiple roles, also serving as the engineer, the manager/administrator, or the clerk. In any case, the position is vital to the success of the commission. If the needs for staff support are not met, the commission should consider recommending funding for a fulltime or part-time planner.

### **ELECTED BODY AND COMMISSION RELATIONSHIP**

As a planning commission, are too many of your recommendations or decisions overturned by the elected officials? Or, do elected officials wonder what direction the planning commission will take next? The following ideas may improve working relationships between the planning commission and elected officials.

- Understand the respective responsibilities and authority of the planning commission and the elected body.
- Make sound decisions with adequate findings to ensure that the reasons for your actions are clear to the elected officials.
- Attend the governing body's meeting when an appeal of one of your decisions is being heard.
- Ask for clarification of the governing body's policies or actions that are unclear.
- Include in planning commission minutes any questions or points of view that are not obvious in your decisions and findings.
- Request an annual joint work session to discuss budgets, staffing, work plans and other priorities.
- Recognize the elected officials' responsibilities to voters. Be acquainted with the viewpoints of the members of the governing body.
- Enlist the help of the media. Use opinion pieces (or local equivalent) to clarify commission opinions.
- Do not rely solely on staff to convey your message – either to the public or to appropriate elected officials.
- Do an annual self-evaluation and follow through with any needed changes in how the commission does business.

## PUBLIC PARTICIPATION AND WORKING WITH CITIZENS

Public participation takes a great deal of planning, hard work, and resources. The planning commission is an important forum where the public has a chance to learn about the community, find out about proposed projects, and participate in the decision-making process. Major reasons to incorporate meaningful and broad-based public participation as part of the local planning program include:

- Improving the general trust in government.
- Tapping local knowledge and talents.
- Creating a sense of ownership in the plan and governing regulations.
- Creating a constituency for planning.
- Ensuring the plan remains intact over time.
- Increasing the quality of the plan.
- Improving enforcement of land use laws.
- Streamlining the development and planning process

Involving the public gives the commission an opportunity to educate, build support, and encourage broad-based involvement in community affairs. The public shows up just about as often to oppose a matter before the commission as to support one, and sometimes does not show up at all. But even though the work of the commission goes on whether people are in the audience or not, the public purpose remains, and public involvement should be encouraged at all times.

## PUBLIC INVOLVEMENT TECHNIQUES

There are a number of public involvement techniques a community can use that have proven successful. These can work well to keep the community informed about plans and actions. Techniques include:

- Visioning and focus groups
- Public meetings
- Open houses (information sharing/gathering)
- Facilitated discussions (issue identification, scoping, present alternatives)
- Joint meetings with community councils, city councils or assembly, and local corporations
- Newsletters
- Media – interviews, talk shows, public service announcements
- Surveys

## ELEMENTS OF A SUCCESSFUL PUBLIC MEETING OR HEARING

Consider the following checklist when planning the next public meeting or hearing:

### *☑ Purpose*

There needs to be a reason to meet. The purpose may be to gather information (listen, learn, recommend to the council) about a project, proposal, or agency plan. Or the purpose may be to perform an official function, like making a decision (issue or deny a permit; approve or reject a plat).

### *☑ Notice*

People need to know the date, time, and place of the hearing or meeting, and what is on the agenda.

### *☑ Preparation*

For a successful meeting, an agenda must be prepared and published, applicants and others must be notified, arrangements must be made for a proper meeting place and time, and reports and visual aids prepared.

### ✓ *Agenda*

Public meetings and hearings need clear and fair rules and procedures, and the assurance the rules will be followed. Post an agenda at least a week before the meeting, then stick to it for an effective (and efficient) hearing.

### ✓ *Participants*

Make sure the necessary people (the applicant, expert witnesses, affected neighbors, project sponsors) are given notice about the meeting.

### ✓ *Place*

The site for the meeting needs to be convenient for the participants and of a type and size appropriate for the meeting.

### ✓ *Results*

Take a few minutes at the end of a meeting, if possible, to reflect on the meeting and what was accomplished or left unfinished. Did we cover everything? Do the findings make sense?

### ✓ *The Record*

A record of the meeting must be kept. A list of the time, the place, participants, and results may be adequate for an informal meeting. For public hearings, minutes must be taken and filed with the local government. It is important to have an original record of the meeting for reference, and all commissions should record them if possible. In many communities, the meetings are recorded and the files, including minutes, staff reports, public and agency correspondence and other material are retained for future reference and may be posted online to allow for easy public access.





# CHAPTER THREE | PLANNING COMMISSION MEETINGS

## Planning Commission Meetings

- Types of Planning Commission Meetings
- The Planning Commission Meeting
- Running a Meeting
- Parliamentary Procedure
- Sources of Information for Decision-Making
- Findings
- The Record

### **TYPES OF PLANNING COMMISSION MEETINGS**

The commission may use several different types of meetings in order to conduct its business. These include regular meetings, special meetings, and work sessions.

#### *Regular Meetings*

Regular meetings are the decision-making meetings and often are public hearings. The regular meeting date may be designated in the ordinance establishing the commission, or the commission may determine the date for regular meetings by resolution. The commission should try to hold regular meetings and must always provide notice of meetings as required by local code and the state Open Meetings Act.

#### *Special Meetings*

Special meetings may be held under the conditions prescribed in the ordinance governing the commission. A common provision permits the commission chair or three members to call a special meeting. Reasonable public notice of the special meeting must be given. Often, the governing ordinance will limit the matters that may be acted on at a special meeting to those contained in the public notice. Typically, a special meeting is needed because of a large workload or special project, but may also be due to an emergency or extraordinary circumstance.

#### *Work Sessions*

Work sessions are much less formal than commission meetings and permit commission members to receive information and discuss matters in a more relaxed manner. They are often used to learn about and discuss more complex or lengthy matters. However, work sessions are viewed as something other than a commission meeting; the commission is not allowed to make motions or otherwise take action to resolve a question or make a decision.

## THE PLANNING COMMISSION MEETING

### *Be prepared*

Each member should receive a copy of the meeting agenda, background reports, studies, and maps several days before the scheduled meeting. Commissioners should contact staff if they have any questions about the contents of the packet. If appropriate, and legal in your community, a site visit may be helpful, especially for more controversial projects (however, see the section on ex-parte contact in Chapter Four).

### *Explain the meeting procedures at the beginning of the meeting*

Rules of procedure will make the meeting run more efficiently and effectively, and will make the job of the commissioner, if not more enjoyable, then at least more productive. The rules outline how the commission handles its business and include items such as limits for speakers, managing the agenda, and procedures for deferring business. Testimony will be more relevant when people understand the basis for the decision. This information should be in the planning commission by-laws.

### *Be on time and start on time*

If the meeting is scheduled for 7 p.m., the meeting should start at 7 p.m. All absences should be excused beforehand. Commissioners should strive to arrive on time. It is unfair to the public and to the other members of the commission who arrived on time, for absent or tardy commissioners to leave the commission short of a quorum or with only the minimum number needed to conduct a meeting.

### *Show respect for the Chair*

Say Madam Chair, Mr. Chair, Chairman Brown, etc. This establishes the civility that is needed for a meeting.

### *Treat people equally; don't use first names*

If the first person to testify is referred to as Mr. Jones, refer to the next person as Mrs. Smith even if she's Susie, your sister-in-law.

## The meeting agenda might look like this:

- I. Call to Order
  1. Roll Call
  2. Approval of Agenda
  3. Consent Agenda
- II. Approval of Minutes
- III. Public Hearing Items
- IV. Old Business
- V. New Business
- VI. Committee Reports
- VII. Items not Scheduled for Public Hearing
- VIII. Commissioner Comments
- IX. Adjournment

### *Summarize what you have heard*

Before the meeting is adjourned, commissioners should comment on which facts are important to the decision and which facts are not. They should determine if any action taken requires further attention before the next scheduled commission meeting. Debriefing may also help commissions become more effective.

### *Set the agenda*

Have an agenda (sample on page 24) that describes what will happen at the commission meeting. Sticking to the agenda is essential to having a productive meeting. An agenda also provides structure and order for commission deliberations.

The agenda should be posted and available for public review at least a week before the meeting so the public has ample opportunity to review it. Some municipal attorneys believe that the agenda must be published in the notice of the meeting and that items not included on the published agenda may not be acted on by the commission. You should confirm whether you can take action on items not on the agenda, but it is always a good idea to limit commission action to properly noticed items.

### *Provide Adequate Meeting Notice*

Always provide adequate public notice of items that will be coming before the commission. This is not just because of legal requirements, but because it is simply good business to keep the public informed about matters before the commission.

The State of Alaska Open Meetings Act (AS 44.62.310) requires that all meetings of a public body, such as a planning commission, be open to the public. More explicit information regarding the length of notice, where to publish or post the notice, and the kinds of information that should be contained in the notice should be in the municipality's ordinance establishing the planning commission or in another chapter of the municipal code dealing with public notice.

## How does the commission make decisions?

- *Using common sense.*
- *Thinking about what is in the best interest of the larger community.*
- *Considering the rules.*
- *Using persuasion or arguments based on testimony*
- *Interpreting the comprehensive plan in accordance with legal requirements.*

Notice requirements can include the following options. Use the options that fit your community and your local ordinance requirements:

## PUBLIC NOTICE

- *A notice in a paper of general circulation at least seven days in advance of the meeting which includes the matters to be considered, the time and place of the meeting, and the place where documents relating to the matters may be reviewed.*
- A notice mailed to property owners who live within several hundred feet of a site that may be affected by a land-use action (i.e., subdivision, rezone, or variance).
- Notices posted at conspicuous locations in the community such as the post office, store, health clinic, and city hall.
- A notice posted at or near the site where a land-use action is proposed to take place.
- If the community is served by radio or TV, a notice may be broadcast as public service announcement (PSA) or be posted on the scanner. While these may help get the word out, they are not a substitute for the official notice.
- You should make sure that your municipal attorney has approved your notice format and content

### *Provide Adequate Meeting Space*

Decisions can be easier to make if the meeting room is large enough, well lit, and comfortable to work in. Select a meeting place that can be used regularly so the public will know, month-to-month, where the commission will be meeting. Make exceptions only when a large crowd is expected and more meeting space is needed. There should be adequate heating and ventilation and nearby rest rooms.

## RUNNING A MEETING

### *Role of the Chair*

The attitude and abilities of the chair are critical to having a successful meeting. A capable chair knows the issues, understands his or her fellow commissioners, conducts a well-run meeting, and is able to bring the commission to a decision even on difficult issues. A person should be named as chair for his or her leadership abilities in addition to having other qualities such as integrity and fairness.

The chair is somewhat removed from the meeting in that he or she does not participate as fully in the meeting as the other members. Since it is the chair's job to preside impartially over the meeting, he or she does not normally become involved in the debate or deliberations, except to lead the group toward making a decision.

### *Responsibilities of the Chair*

The chair has two types of responsibilities: those contained in the municipal code and the commission's rules of procedure, and those that are related to the chair's leadership abilities and the expectations of the public and the other commissioners. Some of the chair's procedural responsibilities include:

- **Running a Timely Meeting.** It is the chair's responsibility to run an orderly meeting and conduct the commission's business in a fair and timely manner. Other commissioners, the staff, and the public will look to the chair for leadership.
- **Maintaining Order.** The chair cannot allow members of the public to clap, cheer, whistle, or otherwise be disruptive in response to testimony that is being presented to the commission or to comments by commissioners. The chair should gavel down this kind of behavior and run an orderly meeting. Neither should the chair permit members of the commission to accuse or overtly challenge one another, members of the public, persons testifying, or the staff.
- **Keeping business moving.** The commission should not endlessly mull over matters, continually request new information, or otherwise delay making a decision when the information needed for doing so has been presented. The chair should move the decision along by summarizing the facts and the positions presented by commission members and bringing matters to a vote. Failure to do so could keep the council or assembly waiting, which may be relying on the commission's recommendation; and to the applicant, whose proposal may be unfairly delayed by indecision.





## PARLIAMENTARY PROCEDURE

The ordinance establishing the commission may prescribe the parliamentary rules you are to follow and may give the commission authority to modify those rules. If none are prescribed by ordinance, then the commission must adopt formal rules of procedure, most likely Robert's Rules of Order, which are intended for groups that do not meet in daily session and are commonly used by local elected and appointed bodies. Robert's Rules may seem complicated, but it is a good idea to learn the basics. This will make you a better commission member and will contribute to the skills that characterize a good commission.

### *Quorum*

Title 29 (AS 29.40.020(a)) states that the commission is made up of five members unless the local governing body establishes a greater number by ordinance. Commissions in larger municipalities usually have seven to nine members.

A quorum is the minimum number of commission members needed to convene a meeting or conduct business. A quorum is always a majority of the total membership. Typically, it is also the minimum number of votes needed to adopt a motion.

When only a quorum is present, any one member can prevent matters before the commission from being adopted, in effect becoming a majority of one. This can be unfair to applicants and to residents, who lose the benefit of the other members' viewpoints and their prospective votes. It takes the same number of 'yes' votes whether a mere quorum, or the full membership, is present. With just a quorum present, approval requires unanimous consent; with full membership, those same five votes are simply a majority. It is important to have planning commissioners who are committed to attending meetings.

Some municipalities require only a majority of those present to take action on a matter, and some provide for alternate members who may participate when one or more regular members are absent or have a conflict of interest. It is good practice (and required for councils and assemblies) to require a majority vote of the full membership (4 of 7; 5 of 9) to take official action. It is not a good policy for a commission to act on controversial, complicated, or difficult issues when several members are absent, even though a quorum is present.

### *Motions*

All formal actions (votes) taken by the commission are initiated by motion. For example, a commissioner might say, “I move that the commission approve the rezone of Tract B from low density to medium density residential.” Stating a motion places a matter before the commission for its consideration and permits debate to take place. Amendments to the main motion are always voted on before voting on the main motion itself. During discussion on the motion, members give their reasons for supporting or not supporting the motion as stated.

It can be important for commission members to give their reasons for voting ‘yes’ or ‘no’ on a motion. The reasons given for or against a given matter are needed to support the commission’s position and form part of the findings that will be reviewed if a decision is appealed.

### *Formal Acts of the Commission*

Acts of the commission, such as granting a variance or conditional-use permit or approving a plat, are considered to be formal acts of the commission. Most ordinances governing planning commissions require a resolution, a Notice of Decision (NOD), or similar documentation for formal acts. The documentation describes the action taken, its effective date, its expiration date, conditions on approval, and other information that fully describes the action taken. The resolution or NOD is the document that contains or appends the findings of the commission and its rationale for the decision. It is important to remember that a written record is needed to document the commission’s formal acts and that findings must be made in quasi-judicial proceedings such as actions on plats, conditional-use permits, and variances.

## The record should contain the following:

- The application
- Correspondence between the applicant and the staff
- The staff report and written comments submitted by neighbors and other members of the public
- Oral evidence given at the hearing
- Plats, plans, drawings, photographs, deeds, surveys, reports of consultants and experts
- Written testimony
- Records of mailed and published notice (if notice is an issue)
- Municipal records and other documents submitted during the proceeding.

## SOURCES OF INFORMATION FOR DECISION-MAKING

### *Testimony at Meetings*

Testimony at meetings is probably the form of public participation most familiar to a planning commissioner. With adequate notice and an opportunity to review the agenda before a meeting, citizens can appear before the commission and present their viewpoints.

Testimony at meetings is sometimes associated with crowded meeting halls and angry residents. From time to time, meetings will bring out polarized opinion or cover items that are controversial in the community. However, the commission may also hear many good ideas that can contribute to sensible, fair decisions.

The commission will sometimes hear from expert witnesses - people who are recognized to speak with authority on a certain subject. The commission may disagree with expert testimony, but in all cases, should make findings based on the facts it knows.

### *Public Opinion Surveys*

Surveys can be useful indicators of community opinion on matters such as growth and economic development. They can help determine community-wide attitudes. Care should be exercised in preparing a survey to assure that the questions are clear and specific and do not lead to pre-determined answers. The information being solicited must be useful in making decisions about community goals. Surveys can be important when local leaders simply don't know what the public is thinking, or when it is important to gather factual information on matters like demographics and household income.

### *Citizen Committees*

Neighborhood associations, advocacy organizations, civic and special interest groups may take notice when particular issues that affect them are before the commission. These groups and organizations may be permanent, such as a local chamber of commerce, or ad hoc, formed around a particular issue or concern. Typically, these groups will advocate for a specific interest or purpose. These groups are often good sources of factual and background information. They are often well organized and prepared to provide thorough testimony.

Ad hoc committees are temporary committees appointed to investigate specific issues or problems and make recommendations to the city council and/or commission. Committees may also be formed to hear testimony and offer recommendations on major community undertakings such as a comprehensive plan. Ad hoc committees are usually composed of people with some interest or expertise in the issue under study. It is a good idea, when forming an ad hoc committee, to have at least one member of the commission appointed to the committee. This will keep open lines of communication between the two groups and keep the commission informed about the ad hoc committee's progress and problems. Ad hoc committees are disbanded when their work is completed.

## FINDINGS

### *What Are Findings?*

Findings are a statement by the commission of the standards, evidence, and reasoning it used to arrive at a decision. They are the road map that shows the reasoning process that got the commission from the evidence presented during the public hearing to its final conclusion to grant or deny the applicant's request. Findings are important in helping the public understand why the commission reached the decision it did.

One of the most common reasons that courts overrule commission decisions is that the commission has failed to prepare findings. The lack of findings will result in a remand to the commission or, if justice requires, a de novo hearing by the court where the court orders a new hearing and assumes the role of the commission.

The court has made it clear that even if an ordinance does not require findings, they must nevertheless be made in quasi-judicial proceedings, such as a variance proceeding. The court has also explained why findings are necessary, how they should be structured, and the benefit a commission will derive from going through the exercise of making findings.

Findings set out the relevant facts found from the evidence presented; relate these facts to the conditions that must be proved or to the standards that must be met; state whether the relevant condition or standard is shown to have been met or not by the identified facts; and state whether all the necessary elements have been sufficiently shown. If there was no evidence given to prove one or more of the necessary elements, this lack of evidence must be stated.

The findings state whether the permit is granted or denied. If conditions or limitations are to be imposed on the permit, there should be findings that justify them. If evidence is rejected because it is believed to be unreliable or not believable, then the commission should state that it did not rely on that evidence because it believed it to be unreliable or unbelievable, or that it found other evidence that was more reliable or believable.



- Findings should be issued for all decisions made by the commission. If the proceeding was for the purpose of considering whether to revoke or deny a permit, findings must still be made even if the commission decides, for example, that a permit should not be revoked. Although a resolution is typically used to describe the findings, no particular format is required to present the decision and findings.

### *How Do You Make Findings?*

There are several methods of making findings. Three methods are commonly used in Alaska:

- 1 The commission can compose each of the findings through the commission's usual decision-making process, that is, through motion and discussion and debate. This can be an extremely time-consuming method and often produces inadequately drafted, incomplete, ambiguous, or confusing language.
- 2 The commission can discuss the evidence received and determine its decision along with a summary of findings that it believes supports its decision. The matter is then referred back to staff with directions to draft detailed findings and a decision consistent with the commission's discussion and summary of findings. The staff draft is then returned to the commission for its final approval.

A drawback is that this method may delay the final decision for two to five weeks, depending on how often the commission meets. This can be troublesome if the code requires the final decision to be issued within a specified time from the close of the hearing. Another drawback may be getting commission approval of the draft final findings if all members who were present at the hearing are not present at the subsequent meeting when the draft is presented for approval. A serious question arises as to whether members who did not hear the evidence can vote to approve the draft final decision. The advantage to this method is that it provides the best opportunity for the commission to approve well-written findings. It also gives staff a chance, if necessary, to consult with the municipal attorney.

An alternative to commission approval of the staff draft is to delegate to the member who presided at the hearing the authority to review and approve the staff draft.

- 3 Staff can include proposed findings and recommendations, including conditions, with its report on the application. If the commission agrees with staff findings and recommendations, adoption of the report is, in effect, the adoption of findings and constitutes the commission's formal notice of decision (a formal notice document is signed as soon after the meeting as possible).

However, the report cannot include consideration of evidence that is presented at the hearing. The commission can add, delete or revise conditions based on new information presented at the hearing, giving its reasons on the record, and staff can return these in a formal notice for signature. In some cases, if additional review or information is needed, the commission may continue an item to a subsequent meeting.

A well-researched and well-prepared staff report, based on a complete application, attentive to code requirements, that includes all public and agency comments received by staff, is the best assurance that staff findings and recommendations will be accepted.

In exceptional cases where a recommendation can go either way, staff may provide two sets of proposed findings: one supporting approval of the application and one supporting denial. This may set the stage for a successful appeal by a disappointed applicant or other party to the proceeding as it suggests that there is some arbitrariness in the decision finally made by the commission.

### WHAT MAKES A GOOD FINDING?

The best findings include the following five key elements:

- 🔑 An identification of the parties, property, and the requested action (i.e., permit, variance, plat). This will ensure that everyone has reached a decision on the same subject. It will frame the issues.
- 🔑 A list of the witnesses, documents, and exhibits relied upon. Use only evidence that was introduced at the hearing. Personal knowledge may be used if that knowledge is commonly shared by others in the community. Knowledge that is not widely shared may be used, as long as it is announced and the parties are given the opportunity to rebut it.
- 🔑 An identification of the standard established by the ordinance for the action requested by the applicant. The standard might be undue hardship, public safety, or exceptional circumstances. By stating the standard, the commission acknowledges that it knows the standard, and it helps the commission focus on the standards that must be met.
- 🔑 An explanation, fact by fact, why the evidence does or does not establish that the standard has been met. Try not to leave out any facts. Even if the court disagrees with the commission's judgment, it is likely to uphold the decision if it feels that a hard look was taken at all the evidence.

- 🔑 If a permit or variance is granted, a description of it and any conditions should be attached. This is invaluable for the parties and staff. Findings can be prepared after a decision is made and adopted at the next meeting. Almost any finding is better than no finding. If the commission does not announce the reasons for a decision, it will reflect poorly on the commission, and the decision could be jeopardized.

## THE RECORD

The record is the collection of all the evidence presented to the commission during the proceeding. This is the foundation upon which the commission's decision rests.

In an appeal of a commission's decision, the court is not going to step into the shoes of the commission and decide what decision the commission should have made if the commission made supportable findings that reasonably explain its decision. What the court will ask is whether there is substantial evidence in the record that supports the commission's findings. Substantial evidence is evidence a reasonable mind would accept as supporting the commission's conclusion. Even if the court believes that there is other evidence on the point that is stronger than the evidence relied upon by the commission, the court will defer to the commission's selection of the competing evidence so long as a reasonable mind would accept such evidence.

The reasonable mind test gives broad, but not unlimited, latitude to the commission's selection from among competing evidence in the record. While the commission is not bound to determine which the best and strongest evidence would be, it cannot invent evidence nor stretch the evidence beyond recognition.

As stated by the Maryland Court of Appeals a long time ago, the commission has:

**"... the duty of deciding in accordance with the evidence, and it is arbitrary and unlawful to make an essential finding without supporting evidence."**

Heath et al. v. Mayor and City Council of Baltimore, 49 A.2d 799, 804 (Md. 1946)







## Decision making

- Types of Planning Commission Decisions
- Due Process
- Ex Parte Contacts
- Conflict of Interest
- Open Meetings Act

### TYPES OF COMMISSION DECISIONS

Planning commission decisions can be either legislative or quasi-judicial (adjudicative) in nature. Substantive due process (reasonableness of decision) rules apply to legislative decision-making, while procedural due process (fairness of the process) rules apply to quasi-judicial proceedings.

#### *Legislative Decisions*

Legislative decisions are decisions that make or interpret policy. The decisions may be broad ranging, such as recommending the adoption of a comprehensive plan or recommending priorities for the capital improvements program, or very specific, such as recommending amendments to the platting code or advocating for a new staff member. The key element of legislative decisions is that they apply equally (or are meant to apply equally) to everyone in the community or to everyone in a class of persons, not just to a specific individual or property. Another element is that only the governing body has discretion to adopt or not adopt the legislative proposal. A law that sets speed limits is legislative because it applies to and affects all those persons who drive, and the legislative body has discretion as to which limit to adopt or whether to adopt any speed limit at all. In Alaska, a rezone is legislative. It affects all those with property in the area that is rezoned, and the governing body has the discretion to approve or deny the rezoning.

Although there may be statutory rules that govern legislative proceedings, there are no procedural due process rules that apply to legislative proceedings. Courts are hesitant to invade the procedural realm of the legislative branch of government. However, if a rezone was clearly contrary to the comprehensive plan, a court could easily find such an act to be arbitrary and capricious, no matter how many hearings were held or how many persons supported the rezone.

### *Quasi-Judicial Decisions*

Generally, quasi-judicial proceedings involve decisions that have a direct effect on the rights and liabilities of a single person or, occasionally, a small group of identified persons. Quasijudicial proceedings deal with matters in which a determination will be made on whether a person has shown that they have met all the established requirements that give them a right to a permit, variance, or other entitlement. The commission must determine whether, from all the evidence presented, the required standards have been met. Variances and certain types of permits are examples of entitlements that must be granted if the applicant is able to show that their request or proposal meets all the required standards.

Quasi-judicial proceedings also occur when the commission sits as a Board of Adjustment to hear appeals from the decisions of administrative officials, such as the building official or planning director. A proceeding to determine whether a previously granted permit should be revoked is also a quasi-judicial proceeding to which the full array of procedural due process rules apply. Platting approval is also a quasi-judicial proceeding.

### **DUE PROCESS**

**“No person shall... be deprived of life, liberty, or property, without due process of law;...”**  
 - Fifth Amendment to the U.S. Constitution

These words in the U.S. Constitution and similar words in the Alaska Constitution give rise to a number of rules applicable to the decision-making process of most planning commission proceedings. These are rules that the courts have found necessary to ensure that a person whose rights are at stake in a governmental proceeding receives the process that is due them.

The due process clause is the most important, pervasive, and frequently encountered constitutional principle. The fundamental concept underlying due process law was embodied in the Magna Carta in 1215. The framers of the U.S. Constitution incorporated this important phrase in the Fifth Amendment as a limitation on the power of the federal government. The ratification of the Fourteenth Amendment after the Civil War took the phrase due process of law and used it to limit the actions of state government.

## What legal basis do you use for your decisions?

- Federal and state constitutions
- State enabling legislation (AS 29)
- Municipal charter
- Local regulations
- Procedures in your code
- Commission by-laws.

**The principle of due process contains two basic components:**

### 1. Procedural Due Process

This requires that before any person is deprived of life, liberty, or property, he must be given a fair hearing or an opportunity to be heard and defend against proposed action to be taken against him. What does this mean in the context of planning? Provide adequate public notice. The notice must be sufficient to make all interested persons aware of the matter, where additional information may be obtained, and when and where to participate. The notice should be well in advance of the hearing or meeting.

There must be a fair hearing before an impartial tribunal (i.e. the planning commission). Interested persons must be given a reasonable opportunity to present their case. This means an orderly, well-run hearing at a reasonable time and at a reasonable location.

Keep a record of the public process. This means that all information/evidence used in the decision and the actual decision made (staff reports, minutes, testimony, and resolutions) must all be kept as part of the record.

### 2. Substantive Due Process

This requires that no person may be deprived of life, liberty, or property under circumstances that are unreasonable, arbitrary, or capricious. This constitutes a major limitation on the police power of the states and is relevant to the concepts of takings.

What does substantive due process mean in the context of planning? Once again, it is about fairness and ensuring that the commission's decision is not arbitrary or capricious, and that all decisions are based on the facts in the case.

Remember, the recurring principle that supports the procedural due process rule is **fairness**. The recurring principle that supports the substantive due process rule is **reasonableness**. The lack of required due process in a commission proceeding forms the basis for the reversal of a commission decision. It is more important to be fair than right.

## EX PARTE CONTACTS

Direct communication between a citizen and a commissioner is common for planning commissioners because of their visibility in the community and the nature of their work. Discussions with commission members outside the public forum can be a beneficial way to exchange information and help keep commissioners informed of residents' attitudes. However, a distinction must be drawn between contact on general or legislative matters and contact on quasi-judicial matters that are currently before the commission or are scheduled to come before the commission. While such contact may be permissible in a proceeding on a legislative matter (where the contact is known as lobbying), it is impermissible in quasi-judicial proceedings.

### *What Does Ex Parte Mean?*

Ex parte is a Latin term that means, from or on one side only. It is the label for private communications between an interested party in a quasi-judicial proceeding (i.e., variance, conditional use permit, or subdivision approval) and a member of the body that is hearing the matter. One or more members of the commission will have received evidence that may influence their vote, but the other parties to the proceeding will be unaware of this evidence and will not have an opportunity to rebut it or to take it into account in presenting their arguments. This is a problem. Just as it would be unfair to allow only one side of a proposal to present evidence at a hearing, it is also unfair to permit any side to present evidence to the decision makers in private. The essential feature of an ex parte contact is that someone with an interest in a quasi-judicial decision before the commission – an applicant, a representative of an applicant, or an opponent of the application – is attempting to influence a vote outside the public forum. Unless corrected, ex parte communications can result in a violation of procedural due process.

### *What To Do When It Occurs*

Ex parte contact can occur in a number of ways, and many are quite innocent and unintentional. Telephone calls, informal meetings, lunches, or even a casual encounter on a street corner all present opportunities for citizens to express facts or an opinion about a quasi-judicial matter to a commissioner. As soon as a commissioner senses that he or she is about to be involved in an ex parte contact, he or she should stop the conversation and explain that commissioners are not permitted to hear anything about the matter except at the hearing. The commissioner should recommend that the citizen submit their comments in writing to the commission or appear and testify on the record along with the other citizens who are concerned about the matter.

If discussion of the matter comes up among members of an association at a meeting of the association the commissioner is attending, the commissioner should attempt to have the discussion put on hold until the commissioner can leave the room.

Site visits, whether by an individual commissioner, a commission subcommittee, or the entire commission must be handled carefully, particularly if the applicant or an opponent is present and attempts to point out particular features of the site or provide other information relevant to the application. If you have any questions regarding making a site visit, consult your municipal attorney. And, don't forget that a site visit by the commission, a commission subcommittee, or the lesser of a quorum or four members is subject to the Open Meetings Act. Adequate public notice of such a site visit must be given and the public must be able to attend and observe the visit.

### *Correcting Ex Parte Contacts*

If you have been involved in an ex parte contact under any circumstance, you may be able to overcome the fairness problem by disclosing the contact and the substance of what was related to you at the beginning of the hearing. This will get the evidence you received on the record and out in front of the interested persons. Then, you should state whether you believe that the contact has swayed your view of the matter and whether you can give an unbiased view to all the evidence presented.

## **CONFLICT OF INTEREST**

As public officials, commissioners have a duty to make decisions in the best interest of the public without the influence of personal interests. When a commissioner has a financial interest in a matter before the commission, that commissioner has a conflict of interest and usually may not participate in the decision on the matter.

### *What Constitutes a Conflict of Interest in Alaska?*

AS 29.20.010(a)(4) requires that each municipality (including home rule) adopt a conflict of interest ordinance which provides that:

**“(4) a municipal employee or official, other than a member of the governing body, may not participate in an official action in which the employee or official has a substantial financial interest.”**

However, the law does not provide us with a definition of what “substantial financial interest” means nor does it tell us what procedure to follow to determine whether a substantial financial interest exists. Because these essential details are missing in the statute, each municipality may address them differently in the ordinance that the statute requires it to adopt. While other subsections of this statute set out a procedure that could allow a governing body member to participate in a decision in which the member has a substantial financial interest, these subsections do not apply to the planning commission. The subsection that applies to planning commissions (and platting boards) quoted above, is absolute: if a member has a substantial financial interest in a matter, that commissioner is prohibited from participating in official action on that matter.

### *What Constitutes a Substantial Financial Interest?*

How much interest must there be to constitute a substantial financial interest? You must review the conflict of interest ordinance your municipality has adopted because an interest that rises to a substantial financial interest in one municipality may be defined as not substantial by another municipality. For example, one municipality might define a substantial financial interest as the ownership of any amount of stock in a corporation. Another municipality might define it as ownership of more than one-tenth of 1 percent of all the outstanding shares of a corporation.





### *Appearance of Fairness*

A discussion about conflict of interest often includes consideration of the appearance of fairness doctrine. Simply stated, the doctrine requires that not only must hearings be fair; there must not even be an appearance of unfairness. Even if no actual unfairness exists, the mere appearance of unfairness must be avoided. The application of this doctrine improves the appearance of the integrity of the commission and its decisions. However, its application often makes the concept of “substantial financial interest” irrelevant because it can lead to a commissioner abstaining from voting when there is no financial interest at all.

### *Financial Disclosure*

Alaska’s Public Official Financial Disclosure Law, AS 39.50, must also be considered in relationship to the conflict of Interest requirements. In fact, in the past, the Financial Disclosure Law was called the Conflict of Interest Law, even though it has never regulated or prohibited conflict of interest. It requires only that certain public officials, including planning commissioners, annually file a statement disclosing the official’s financial interests held during the preceding year. Public financial disclosure is intended to discourage public officials from promoting a private or business interest in their performance of a public duty and to ensure that public officials are free of the influence of undisclosed private or business interests in their official acts. The law is further intended to develop accountability in government by permitting public review of the personal finances of office holders.

Members of a municipal planning commission must file the disclosure statement with their municipal clerk. You should be able to obtain from your municipal clerk a copy of the instruction manual published by the Alaska Public Offices Commission (APOC) that explains the requirements of the law. Failure by a commissioner to make a timely disclosure required under AS 39.50 will not jeopardize commission decisions; however, it will subject a commissioner to civil fines imposed by the Public Offices Commission or possible misdemeanor prosecution by the state.

AS 39.50 requires that each financial disclosure statement be an accurate representation of a commissioner’s financial affairs and, to the extent known, the financial affairs of specified family members for the prior calendar year. It must be filed under oath.

AS 39.50.145 allows municipalities to exempt themselves from the financial disclosure requirements of AS 39.50 upon an affirmative vote of the residents. Your municipal clerk or the Alaska Public Offices Commission can tell you whether your municipality has exempted itself from the financial disclosure requirements of AS 39.50.



Municipal assemblies, city councils, boards, commissions, committees, and similar bodies with authority to establish policies, make decisions, advise, or make recommendations are covered by the Act. The Act further provides that any action taken contrary to the Act may be voided. In general terms, the Act requires:

### **Open Forum**

Any fact-gathering, investigation, or discussion regarding public business by the commission, formal or informal, must be open to the public.

### **Reasonable Public Notice**

Unless a legitimate emergency exists, reasonable public notice must be provided for all meetings of the commission. The notice must contain the date, time and place of the meeting. It is common to provide a week's notice or longer. Notice of commission meetings must be posted at the city or borough offices, and should also be posted at the Post Office and other public places. Notice must be given in a consistent manner for all meetings.

### **Teleconferencing**

Meetings held by teleconference must be open to the public and must meet Open Meetings Act requirements, including giving notice of the teleconference site locations and having available commission materials at teleconference sites. All votes at teleconferenced meetings are by roll call.

### **Open Voting**

Except for a vote to organize the commission, the voting shall be conducted so that the public knows how each person voted.

### **Executive Session**

Specific procedures must be followed in order to hold an executive session, that is, a session in private, behind closed doors.

### *How is the Act Interpreted?*

The act is interpreted liberally and in favor of openness. Any discussion of public business by a majority is definitely a meeting; however, a majority may not be required for a violation of the Act to occur.

The Act defines a meeting in AS 44.62.310 (h) (2) (A) and (B) as a “gathering of members of a governmental body when:

- (A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity, or
- (B) more than three members or a majority of the members, whichever is less, are present, the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity.”

A meeting encompasses every step of the decision-making process including information-gathering and preliminary and informal deliberations where no decision is made. To be safe, whenever commissioners are gathering facts, exchanging ideas, suggesting strategies, or otherwise dealing with matters of substance, they should be alert to the possibility that they are engaged in a meeting of a public body and must comply with the Act.

### *What Happens If the Act Is Violated?*

The Alaska Supreme Court has taken a stern view of violations. Any action taken by the planning commission in violation of the Open Meetings Act can be made void by the court.

When the commission follows the procedures required by the Open Meetings Act, political or legal problems are seldom raised. It is when the procedures are ignored, either intentionally or unintentionally, that the public and the press may become alarmed and assume the worst about secret meetings. Planning commissioners should ensure that proper procedure is followed at all times.





## The Comprehensive Plan

- Definition of a Comprehensive Plan
- Comprehensive Plan Preparation
- Elements of a Typical Comprehensive Plan
- When to Update or Rewrite the Comprehensive Plan
- Additional Comprehensive Planning Subjects

### **THE COMPREHENSIVE PLAN**

The most common, and one of the most important, responsibilities authorized for a planning commission is preparing the comprehensive plan for the community.

### **DEFINITION OF A COMPREHENSIVE PLAN**

The comprehensive plan is a blueprint for guiding development in a community. It includes information on population dynamics and demographics, physical conditions, land use, the environment, transportation, public facilities, open space, and legal and fiscal aspects. The plan reflects the vision and direction of residents. The comprehensive plan's vision, goals, objectives, policies, and implementation strategies provide a framework for decision-making regarding land use, transportation, housing, public facilities, and economic development.

While the comprehensive plan deals with growth and development in general, it must not be vague or difficult to interpret. The success of the comprehensive plan depends on the community's commitment to planning and its acceptance of the plan as a valid expression of community attitudes, values, and agreed-upon direction. It helps ensure a degree of predictability about the future by guiding decisions and courses of action that are taken.

The comprehensive plan, also referred to as the ‘general plan’, ‘master plan’, or ‘land use plan’, is meant to serve several purposes:

### *Fulfills Legal Obligations*

Alaska communities must have an adopted comprehensive plan before they may adopt land use regulations such as zoning and subdivision ordinances. Increasingly, state and federal agencies require a plan as a condition of receiving grants.

### *Provides a Vision of the Future*

The plan typically has a vision statement (about values, future, identity), long-range goals about the development (and conservation) of the community, and policies that guide day-to-day decision-making. The plan contains a map depicting intended land use by type, location and density and should identify land needed for important public facilities including landfills, ports, power plants, schools, and streets. The plan also links together physical development of the land with the social and economic development of the community.

### *Serves as a Decision-Making Tool*

The plan is a guide for decision-making and growth. Elected officials and planning commissioners will use and rely on a thoughtfully prepared plan, particularly the policies, when they make decisions that shape the community’s future.

### *Serves a Coordinating Function*

The plan provides an opportunity to place under a single cover policies for a wide range of municipal activities including land use, utilities, recreation, and transportation. This coordinating function of the plan can reduce the potential for contradictory or competing policies from city departments.

## A high-quality plan includes:

- A systematic and comprehensive collection and analysis of data
- Clear and comprehensive goals
- Specific, action-oriented policies for implementation
- Local official support
- Local community support
- Current and up-to-date data and policies

## COMPREHENSIVE PLAN PREPARATION

A community that undertakes planning establishes a degree of predictability and certainty over the patterns and costs of community growth. Growth, change, and the associated opportunities and problems provide both motivation and focus for comprehensive planning. Planning is a dynamic, ongoing process, but it is possible to organize it into a series of discrete or separate steps.

### *Plan to Plan*

Allocate time, human resources, money, and energy to the effort. Do not assume these factors will manage themselves or can be dealt with as problems arise.

### *Structure and Schedule the Process*

Determine the role the public will play, identify key stakeholders who need to be involved, decide how the plan will be developed (in-house or by a consultant), decide how the plan could be organized, and decide the role of the governing body and the commission in the process. Prepare a plan development schedule with key milestones so the project stays on track.

### *Identify Issues and Problems*

Preparation for a community-based comprehensive plan requires identifying the reasons for undertaking the planning and establishing basic directions for the planning process. It is an effort that needs both technical analysis and citizen involvement.

### *Gather and Analyze Community Conditions*

Describe and analyze the community's current physical, environmental, and social and economic characteristics. Can the infrastructure accommodate growth? Is the number of jobs growing? Are the creeks and wetlands healthy?

### *Identify the Community's Vision of the Future*

A vision statement affirms the community's identity and directs the development of goals and policies in the plan.

### *Develop Plan Goals*

Goals describe the major themes that characterize the community's direction and purpose, and the means of realizing them.

### *Identify and Evaluate Plan Options*

The comprehensive plan process identifies several alternatives for future growth and development based on planning assumptions. These possible land use scenarios are tied to the vision, goals, and objectives.

### *Select a Planning Option*

The next step in the planning process includes selection of a preferred planning alternative with maps and policies that give daily direction to the plan.

### *Implement the Plan*

The final step in the planning process is the adoption of plan policies to implement the preferred option. Further implementation of the plan depends on land use regulations, capital improvement plans, and day to day decisions of the staff, commission, and elected officials.

### *Review and Monitor the Plan*

Create a steering committee to look at the plan, make sure it is up-to-date and useful, and oversee it through a scheduled review and revision.

Change is inevitable and, over time, development will affect the places we live. The kind of development that takes place, however, can be managed and regulated. Planning can play an important role in improving life in the community, and in making the community a better place to live.

Based on "Plan Preparation Steps" PC Journal No.39 Summer 2000

## ELEMENTS OF A TYPICAL COMPREHENSIVE PLAN

AS 29.40.030(a) describes a comprehensive plan as:

The comprehensive plan is a compilation of policy statements, goals, standards, and maps for guiding the physical, social, and economic development, both private and public, of the first- or second-class borough, and may include, but is not limited to, the following:

1. statements of policies, goals, and standards;
2. a land use plan;
3. a community facilities plan;
4. a transportation plan; and
5. recommendations for implementation of the comprehensive plan.

A Comprehensive Plan may generally include:

- Vision Statement
- General statement of goals and objectives
- Background report (also called an Inventory):
  - ◊ Regional needs
  - ◊ Historic and cultural resources
  - ◊ Coastal and natural resources
  - ◊ Sensitive environmental areas
  - ◊ Population trends
  - ◊ Transportation facilities
  - ◊ Utilities and infrastructure
  - ◊ Housing resources and needs
  - ◊ Educational, cultural and historic facilities
  - ◊ Health and emergency facilities
  - ◊ Health and emergency facilities
  - ◊ Park and recreational facilities
- ◊ Commercial uses and facilities
- ◊ Industrial and port facilities
- Analysis and cross-reference of data
- Land Use Plan (especially the map)
- Community Facilities Plan (could also be the CIP)
- Other plans such as parks and recreation, flood mitigation
- Principles, policies, and standards
- Other plans and studies adopted as elements of the plan
- Strategies for improving the local economy

## When to Update or Rewrite the Comprehensive Plan

AS 29.40.030(b) states that “. . .The assembly shall, after receiving the recommendations of the planning commission, periodically undertake an overall review of the comprehensive plan and update the plan as necessary.” To determine if the plan should be updated, consider:

### Adoption Date of the Comprehensive Plan

Examine the plan every 2-5 years to determine if the data and other parts of the plan are still relevant.

### Frequent amendments to the comprehensive plan and zoning ordinances

If the plan is amended frequently or there are a substantial number of rezones, this may be a signal that a revision is needed.

### Changes in internal policies and conditions

For example, the city or borough has decided to dispose of municipal lands or buildings, or the city council embraces sustainability. This could create a need to update and revise the plan and ordinances.

### Local policy

Some communities update their plan on a periodic basis as a matter of policy.

### Changes in external conditions

The construction or extension of a major public facility such as water and sewer lines, a new highway, or development of a large project such as a mine are likely to have an impact on future development in the community. Big events signal the need to review the plan and related ordinances and update them as necessary.

### Usefulness

If the plan is out-of-date, is irrelevant, or is not being used, it should be updated.

## ADDITIONAL COMPREHENSIVE PLANNING SUBJECTS

In addition to the typical elements defined by statute, the following planning subjects may also be included in the comprehensive plan. Inclusion of these planning subjects will add breadth and value to the comprehensive plan, assist with decision-making, and overall improve the quality of development in the community.

### *Transportation*

Transportation is part of the essential infrastructure of a community. Along with water and wastewater, fire and police protection, schools, and recreational facilities, the transportation system is part of the foundation on which a community is built. Roads and streets, trails, pedestrian amenities, airports, ferry terminals, and ports, harbors and docks all comprise the transportation system. The location of transportation improvements is closely tied to land use and development, and is a crucial element of the community's social and economic well-being.

Transportation planning by the Alaska Department of Transportation and Public Facilities (AK DOT&PF) occurs in multiple ways. Fairbanks and Anchorage, as federal Metropolitan Planning Organizations (MPOs), are able to prepare their own long-range transportation plans which are binding on AK DOT&PF. All other areas of the state are planned either under the Statewide Long Range Transportation Plan (normally a policy and not a project-level plan), or more detailed area, corridor, or modal-specific plans.

Changes to federal transportation planning (and funding) will likely require more deliberate consistency between local comprehensive plans and state transportation plans. Future transportation plans appear likely to pay increasing attention to transit, walking, and bicycling.

### *Parks, Recreation, and Trails Plans*

These are an expression of the community's objectives, needs, and priorities for the provision of leisure space, and recreation services and facilities. The plan should be long-range and comprehensive. It should describe alternatives, recommendations, and guidelines for public and private decisions related to the use and preservation of open space for recreation. The plan should detail community recreation needs (parks, trails, facilities) and translate them into specific sites to acquire or develop. It also details policies, practices, or criteria related to the design and management of these spaces and services. The community will review how a specific subdivision will impact those needs defined in the Parks, Recreation and Trails Plan. This is important because once land is developed; it almost never reverts to a pre-developed condition.

### *Open Space Plans*

Open space meets the need (psychological and physical) for contrast and change from the indoor environment. Open space plans, often elements of a parks and recreation plan, can designate areas such as wetlands, berry-picking areas, creek and stream corridors, scenic or unique locations, floodplains and flood-prone locations, for retention in a natural or largely natural state. As with parks, once land is developed (i.e. with structures or roads), it almost never reverts to open space.

### *Housing Plans*

Housing plans address infill, urban renewal, rehabilitation, and small business development. Housing is one of the most important elements in our lives and our communities – socially, physically, and economically. In Alaska, federal agencies, such as Housing and Urban Development (HUD) and the Department of Agriculture/Rural Development and the Federal Housing Authority (FHA), as well as Alaska Housing Finance Corporation and regional housing authorities, all influence the funding of affordable housing in communities. Location of new housing and the feasibility of rehabilitating older housing are the greatest determinant of where future infrastructure, such as water, sewer, and utilities, will go.

Local government has a direct impact on housing through its comprehensive plan and zoning and subdivision regulations. Land use regulations and permitting (including building permits) should protect the public interest without being excessive. The implications of housing decisions made by the governing body or the commission need to be considered from time-to-time, to make sure they don't affect the cost of housing unnecessarily, or allow housing to be developed haphazardly.

### *Economic Development Plans*

Economic development plans can be used to expand opportunity for commerce and industry (and hence jobs or job opportunities) in the community. Economic development is about retaining existing businesses and starting new businesses in the community, having an existing business expand into the community, or otherwise expanding the employment of the community. An economic development plan should identify resources, opportunities and policies that can promote employment. Mining, energy development or big infrastructure like a port, can also increase employment. Communities anticipating rapid growth should consider how they will fund and provide new public facilities and services.







## How a Planning Commission Operates

- Plan Implementation
- Zoning Regulations
- Zoning Authorizations
- Zoning Issues
- Subdivision Regulation
- Additional Implementation Tools

### **ZONING REGULATIONS**

Zoning is the conventional method of land use regulation. It is a legislative process through which the local governing body divides the municipality into districts and adopts regulations concerning the use of land and the placement, spacing and sizing of buildings within each district.

#### *Purpose of Zoning*

The basic purposes of a municipal zoning code and map are to:

### **PROTECT PUBLIC HEALTH AND SAFETY**

The zoning code may require setbacks between buildings to promote fire safety or require lots large enough for safe on-site waste disposal. The code can be used to separate harmful or unpleasant land uses such as landfills, power plants, sewage treatment or brightly lit areas, from housing and residential areas.

### **MAINTAIN PROPERTY VALUES**

Property values can be protected by creating long-term stability in neighborhoods through reducing or eliminating the potential for conflicting or incompatible uses. Industrial investments can also be protected from other incompatible activities.

### **PROVIDE UNIFORM REGULATIONS**

The uniform regulations of zoning districts establish ground rules for developers, local officials, and the public at large.

## REDUCE NUISANCES

Nuisances such as light, glare, dust, odor or noise can be regulated to contain the nuisances on, or largely on, the site where they originate. Screening, vegetation or some other form of buffer can be required between, for example, a wrecking yard or storage lot and adjacent streets or roads, or nearby houses or businesses.

## DESIGNATE LAND FOR CRITICAL USES

A municipality may have only limited land areas suitable for industrial or recreational activities. Waterfront property suitable for water-dependent uses may be scarce or in demand. Only certain parcels may be acceptable for generally unpopular uses like gravel pits and landfills. Zoning for appropriate, site-dependent uses can ensure the availability of land important for community development.

### *The Legal Basis for Zoning in Alaska*

The history of zoning in Chapter One established zoning as a lawful and constitutional use of the police power. The courts have upheld local zoning as long as it has public benefits and purpose, is consistent with the comprehensive plan and results from a fair, deliberative process.

Chapter 29.40 of Alaska Statutes provides municipal authority for planning, platting, and land use regulation. In addition, home rule governments may provide for local planning and land use authority through provisions in their home rule charters. AS 29.40.040(a) provides:

In accordance with a comprehensive plan adopted under AS 29.40.030 and in order to implement the plan, the assembly by ordinance shall adopt or amend provisions governing the use and occupancy of land that may include, but are not limited to,

- (1) zoning regulations restricting the use of land and improvements by geographic districts;
- (2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;
- (3) measures to further the goals and objectives of the comprehensive plan.

A municipality's zoning code consists of two parts: the map and the text. The map shows the location of different districts or zones, while the text contains the standards for development within each district.

## ZONING AUTHORIZATIONS

The zoning ordinance is comprised of a map depicting zoning districts such as residential, commercial, and industrial land uses, and a text that specifies permitted, conditionally permitted, and prohibited uses in those districts, as well as other provisions. Some zoning ordinances have more general zoning districts, such as a central business district, residential and rural districts, while others may have a more complex array of districts.

The zoning ordinance establishes standards within each zoning district for minimum lot size, minimum lot width and depth, setbacks between structures, maximum building height, parking, maximum and minimum lot coverage, signage, and other prerequisites for development. The ordinance also defines zoning-related authorizations, such as variances, conditional-use permits, planned unit developments, home occupations, accessory uses, and non-conforming uses. It will describe the administrative requirements for these zoning authorizations, permits, approvals, and appeals.

Two of the most common zoning authorizations are conditional-use permits (CUP) and variances. These are described below:

### *Conditional-Use Permits (CUP)*

A conditional use is a use not allowed outright in a particular zone, but that could be permitted if conditions attached to the approval make the activity compatible with the surrounding, allowed uses. A typical conditional use is a church in a residential neighborhood. State law does not give specific guidance for conditional-use permitting, so municipalities are free to design a conditional use permitting system (or similar permitting system) that best fits their needs.

Conditional-use permits are sometimes called special exceptions or special permits. They are a flexible planning tool that permits a developer to proceed with a project under restrictions designed to eliminate or reduce the adverse impacts that could occur if there were no restrictions on the use.



### *Standards for issuing a CUP*

The standards for issuing a CUP are as various as the governing bodies which enact them. Sometimes courts balk at very broad or vague standards, such as when a use is permitted if it “is in the best interests of the community” or would “promote the public health, safety and welfare.” Such vague standards invite abuse, so it is best to use more definite standards or to adopt regulations or interpretive rules better defining the standards, if they are vague.

### *Purpose of the CUP*

The purpose of the conditional-use permit is to determine how the project can be made compatible with the abutting lots and the surrounding neighborhood. Standards such as “in keeping with the character of the neighborhood” or “consistent with the character of the uses authorized in the zoning district” focus on the purpose of the conditional-use permit. Such standards, if given honest and serious attention, will serve a commission much better than vague and very general standards. In addition to the conditional-use standards, many codes also provide a list of adverse impacts to consider when evaluating a conditional-use permit application. These could include such things as traffic generation, noise, lighting glare, on-street parking pressure, dust, and damage to municipal roads, and visual impact (and the need for buffering).

### *Variations*

A variance is an exception from the strict terms of the zoning (or platting) code. It allows for the relaxation of the strict requirements of the code in certain extraordinary cases. Its purpose is to prevent the zoning code from prohibiting reasonable use of a lot because of some peculiarity of the lot not affecting other neighboring properties. It has been described as a safety valve that prevents a regulatory taking of property in cases where it would be impossible to comply with the terms of the zoning code and still make a reasonable use of the property. A variance is essentially permission to violate the explicit provisions of the code, and can be seen as an extraordinary remedy for an extraordinary situation.

A variance cannot be granted if the hardship is self-imposed.

#### **Variations**

- Hardship demonstrated
- Standards of review applied
- Findings written and adopted
- Due process followed

### *Title 29 Requirements for Variances*

Title 29 contains explicit prohibitions on the granting of variances. The language in Title 29 is usually adopted verbatim in local zoning codes because, except for home rule governments, local governments are bound by it. AS 29.40.040(b) provides:

A variance from a land use regulation adopted under this section may not be granted if

- (1) special conditions that require the variance are caused by the person seeking the variance;
- (2) the variance will permit a land use in a district in which that use is prohibited; or
- (3) the variance is sought solely to relieve pecuniary hardship or inconvenience.

Variances can be use or area variances. As the name implies, a use variance permits a use otherwise prohibited in a given zoning district. AS 29.40.040(b)(2) prohibits use variances for general law municipalities; however, home rule municipalities are not prohibited from allowing them. Area variances provide relief from setback, frontage, height, density, and similar prescriptive requirements and are permitted by AS 29.40.040 (b). Both general law and home rule municipalities may issue area variances.

### *Granting Variances*

Most zoning ordinances authorize the granting of a variance to relieve “unnecessary hardship.” AS 29.40.040 prohibits variances solely to relieve financial hardship or inconvenience, but the commission can take such hardship into account if it is serious enough and sufficiently related to the land. A court will usually find that a hardship exists if the property to which a zoning requirement applies cannot be put to some reasonable use consistent with the zoning regulations. In other words, if a zoning regulation deprives the owner of all beneficial use of the land because of a peculiarity of the land itself, the owner is entitled to some relaxation of the regulation. A mere reduction in value is not a hardship. A complete inability to sell the property for any permitted use, after a good faith attempt to sell it, is sometimes accepted as evidence of a loss of reasonable return.

A “hardship” deserving a variance must usually be caused by circumstances unique to the property involved and an applicant will be required to show that his/her neighbors do not suffer from a similar hardship. Examples of hardships justifying a variance could include the existence of a stream or drainage crossing the applicant’s land, leaving a reduced buildable area and making compliance with setback requirements impossible, or the presence of unbuildable soils or steep slopes unique to a particular lot.

Public sentiment, whether it is for or against a variance, is never a reason to grant or deny a variance. This is a tough rule to remember when a hearing is filled with angry neighbors, but the commission’s job is to determine whether the property qualifies for a variance, not whether granting the variance has substantial public support or opposition.

When a property owner has shown that a property meets the standards for granting a variance, it must be granted. The commission has no discretion to deny it. Conversely, because a variance is to be granted only in exceptional cases and the grant amounts to a dispensation to violate the law, variances may not be granted unless all the standards for the variance have been proven. The commission has no authority to grant a variance in the absence of any one of the required standards.

### *Use of Variances to Solve Planning Problems*

If the commission is granting a lot of variances, it probably needs to examine the zoning code for deficiencies. The code could be too restrictive or simply not take into account the unique topography and environmental conditions that may exist in the municipality.

As in other quasi-judicial proceedings, the commission must observe the due process requirements of the U.S. Constitution, and it must include written findings and conclusions in its decision to grant or deny a variance.

## **ZONING ISSUES**

### *Zoning Map Revisions*

The Commission typically revises the official zoning map to bring it up-to-date when the Comprehensive Plan is updated. From time to time, the commission will review rezone requests that are smaller in size, are out-of-character with the zoning in the neighborhood, and may be inconsistent with the Comprehensive Plan. Often thought of as spot zoning, the commission needs to look at these requests carefully.

A small rezone that has clear public purpose and benefits, and is consistent with the comprehensive plan, has a good chance of standing. A similar rezone that clearly benefits the property owner but is not well-related to a public benefit or purpose and is inconsistent with the comprehensive plan has a good chance of falling.

### *Zoning Enforcement*

Municipal ordinances may enact fines for zoning violations, such as a home occupation that doesn't have a permit or an addition built too close to a property line. Many municipalities don't have dedicated enforcement staff, so the planner, the public works director, or the clerk or administrator, may be assigned the duty. Suggestions for an enforcement program include:

- Seek an administrative solution before resorting to a fine.
- Know what the code says. When a violation is alleged or observed, always look at the permit file and make a site visit.
- Talk with the violator.
- Designate one person as the zoning enforcement officer.
- Use caution. Do not pursue an enforcement action without having all the facts lined up.
- Go by the book. For enforcement to work, it must be fair, consistent and impartial.
- Maintain a separate file for all enforcement activities, indexed by lot number or parcel number; cross-file as needed with conditional use or variance files, police files, or other records.
- Understand that positive interpersonal skills are crucial to effective enforcement.
- Keep a detailed log of each inspection. Think of this log as a record that could be subpoenaed in a court case.
- Document each inspection with photographs and a narrative description. Use a tape recorder and a camera that prints the time and date on each picture.
- Maintain complete, detailed files.

## **SUBDIVISION REGULATION**

### *Purpose of Regulation*

How does a planning commission shape its community's character? One very important way is through the subdivision code. This essential tool influences the layout of lots and streets and helps coordinate the construction of streets, utilities and other infrastructure that supports homes and businesses. The location and size of platted lots establishes a template for community development. When land is platted, the pattern of physical development is set and is, for all practical purposes, irreversible.

The subdivision ordinance regulates the division of land into building lots for the purpose of sale, development or lease. The ordinance specifies procedures that are to be followed when land is divided and built upon. When used in conjunction with the comprehensive plan and the zoning ordinance, the subdivision ordinance ensures that the land development process is accomplished in an orderly and consistent manner.

### *Reasons for Regulating Subdivisions*

Communities regulate the subdivision of land for several reasons:

- Rational layout of street pattern, including connections with existing and future streets.
- Design and width of streets for efficient movement of traffic, ability to provide fire protection, provision of parking and safe pedestrian access.
- Proper design of drainage and storm water systems.
- Provision of on-lot water supply and sewage disposal with the assurance these services can be provided either by the community or property owner.
- Lot size, location and dimension for adequate frontage on a public right of way.
- Legal description of lots to avoid boundary disputes and encroachments onto rights of way and other public or commonly held property.
- Designation and protection of wetlands, stream banks and other environmentally sensitive areas, and avoidance of hazardous areas such as avalanche and landslide chutes.

The extent to which a community regulates subdivisions will vary. One community might simply have minimum provisions, while another may want protection of stream banks, provision of curbs and sidewalks, or provisions for clustering housing on the most buildable portion of a site (often referred to as a Planned Unit Development). Despite the potential for variation, the purpose of platting remains substantially similar from municipality to municipality. The purpose is to guide the conversion of vacant land into improved or developed land, consistent with technical requirements and community standards.

**A typical subdivision ordinance might contain the following requirements:**

- Approval by the Alaska Department of Environmental Conservation (ADEC) of all on-site wastewater and sewage disposal.
- Provision of buffers along anadromous fish streams.
- Provision of adequate drainage facilities to minimize run-off and possible damage to adjacent properties.
- Dedication of streets and platted rights of way consistent with the municipality’s existing and planned streets and roads.
- Minimum widths for dedicated streets and utility easements.
- Construction of public improvements such as streets, sewer and water lines.
- Underground installation of electric and communication cables.
- Minimum and preferred lot and block dimensions and arrangements.
- Dedication of easements for locating utilities, with a requirement that utility installations match up with the community’s existing system.
- Assurance that all lots abut on a platted right of way.
- Dedication of land for parks or public open space.

While these provisions may change from municipality to municipality, their basic intent is to assure that newly created lots do not become problems, and create unanticipated costs for their owners, the local government, or the owners of adjacent lots.

**NOTES:**

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### *Subdivision Procedures*

Chapter 29.40.070-160 of Alaska Statutes establishes some common platting provisions and procedures for municipalities. AS 29.40.100 establishes minimum requirements for the plat itself, and states that any “other information that may be required by ordinance” must also be displayed on the plat.

Basic information on the preliminary plat map gives the planning commission a solid foundation from which to evaluate the proposed subdivision. While commissioners should consider visiting the site of a proposed subdivision on their own to gain some first-hand understanding of the proposal, such visits should be made with care as the visit can create an ex parte communication problem, especially if anyone associated with the subdivider or anyone who opposes the subdivision solely accompanies the commissioner on the site visit.

### *Requirements for Preliminary Plat Maps*

The following information should appear on a preliminary plat map:

- The signature and seal of a land surveyor licensed to practice in the State of Alaska
- A title block in the lower right-hand corner containing the following information
  - ◊ Proposed name of the subdivision
  - ◊ Scale (not to exceed 100 feet to the inch)
  - ◊ Date of application
  - ◊ Name and address of the property owner
  - ◊ Location of the subdivision by reference to U.S. survey numbers
- A north arrow
- The location of existing and proposed property lines

- The size of each parcel created by the subdivision, expressed in square feet
- The linear dimensions of each lot created by the subdivision
- Topographic lines at 10-foot intervals (5 feet on slopes over 5%)
- The location of significant natural features such as, but not limited to, creeks and streams, wetlands, outcrops and significant habitats
- The locations of hazards including steep slopes, avalanche and landslide chutes and snow drifts
- The location, type and description of streets, sidewalks, and public open space
- Existing sewer and water mains, drainage culverts or other underground structures, together with pipe sizes and grades
- Existing pole lines, ditches, canals, natural drainage channels and open waterways
- A certification from a qualified engineer licensed by the state (if needed), stating that the proposed lots are large enough and have soil of sufficient permeability to permit the construction of approved systems for on-lot waste disposal
- A test to determine adequate soil conditions which may affect the development of the subdivision
- Management of surface and subsurface drainage for the subdivision and the effect of such method on the adjacent properties
- Dedication of parcels for public use or reserved by deed for the use of all of the property owners in the proposed subdivision, together with the purposes and conditions or limitations on such reservations
- The layout, names, grades and widths of proposed rights-of-way and easements within the subdivision

NOTES:

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### *Submittal and Approval of Final Plat*

In the typical process, the platting board (or planning commission sitting as the platting board), reviews the preliminary plat and determines whether it is in compliance with all of the standards in the municipal platting code. Upon completing its review, the platting board may approve the preliminary plat as submitted; approve the preliminary plat with additional conditions or stipulations; or reject the preliminary plat with cause. The board must set out the reasons for its acceptance or rejection of the plat. The process for setting out these reasons is covered in Chapter Three - Findings.

Upon platting board approval of the preliminary plat, the applicant must submit a final plat consistent with the approved preliminary plat. The applicant must make all public improvements to the subdivision as a condition of final plat approval. Some municipalities permit a plat to receive final plat approval before the required improvements are constructed and accepted if the subdivider has provided adequate security to guarantee their construction by a specified date. Types of security might include a performance bond, cash, or real property to be held in trust by the municipality. Once the platting board approves the final plat, a copy of the plat must be submitted to the district recorder's office, and lots may be sold.

### *Major and Minor Plats*

Subdivisions typically qualify as major plats if they have five or more lots. Minor plats, also known as short plats, typically have four or fewer lots. The procedure for review of major and minor plats should be set forth in the local subdivision code. Minor plat review is usually intended to allow for an expedited review of a subdivision that is expected to have "low impact" (i.e., fewer lots, less road development, no dedications or vacations needed, on land already determined suitable for development and not subject to natural hazards). However, the approval of a minor plat is based on the same considerations that apply to a major plat. These considerations include: compliance with design standards of the local regulations; compliance with the comprehensive plan; and compliance with the primary subdivision criteria.

### *Vacation of Rights of Way*

A vacation is the formal action for abandoning or revoking a public right to use an easement, trail, or right of way. The process for vacations is essentially the same as the subdivision process. Title 29 provides that no vacation may take place without the approval of the appropriate governing body – this may be the planning commission or, in some communities, a platting board.

Typically, a vacation requires concurrence and signature of the majority of the owners of land adjoining the proposed vacation. The applicant for the vacation must also demonstrate that the area proposed for vacation is no longer practical for the uses or purposes authorized or that other provisions have been made which are more beneficial to the public.

Vacation of a public right of way is, for all practical purposes, irreversible, and should be done only when it is certain that the right of way is no longer needed for any public purpose.

### **ADDITIONAL IMPLEMENTATION TOOLS**

Zoning and subdivision regulations depend on the comprehensive plan (described in Chapter Five). Although the comprehensive plan addresses land use principles, it does not regulate land use nor does it define in great detail how the land is to be developed. This is the role of zoning and subdivision ordinances. The comprehensive plan provides the public policy basis for zoning districts and the rules for development of land that, when used in combination, direct what happens on the land.

While zoning and platting are the typical means of implementing the comprehensive plan, there are other tools. The commission can use other measures to further the goals and objectives of the plan.

These other measures can include, but are not limited to, such things as:

- Municipal entitlement program
- Municipal land management program
- Capital improvements program
- Statewide Transportation Improvement Program (STIP)
- Sanitation master plans
- Municipal budget
- Design review standards
- Floodplain regulations
- Land Management Plans of State and Federal Agencies
- Historic preservation standards
- Environmental impact assessments

### *Municipal Entitlements*

Since 1962, the state legislature has granted state land to local governments for several reasons: to provide an incentive to form local governments, to provide a means of revenue production through sales or lease that expand the municipal tax base, to provide land for community development and public facilities, and to provide local public recreation opportunities. Under the 1978 Municipal Entitlement Act, boroughs and home-rule municipalities in existence in 1978 were granted specific acreage of state land based on negotiations that factored in population, the size of the municipality, and availability of state land within their boundaries. For more information on this program and process, contact the Division of Mining, Land and Water in the Alaska Department of Natural Resources.

### *Municipal Land Disposal Methods*

City or borough-owned real property, or any interest in real property, may be conveyed by deed or leased by the municipality using a number of methods of disposal such as:

- Public auction
- Exchange for other real property owned by a person, another municipality, the State of Alaska, the United States of America, corporations, trusts, or other legal entity
- Over-the-counter programs
- Lotteries, whether gaming or non-gaming
- Competitive bid via auction or request for proposal
- Agreements by application
- Remote parcel disposal programs
- Homestead program
- Real estate brokers
- Any other means permitted by law

City- or borough-owned real property, or an interest in real property, may be: dedicated for public purposes; granted or reserved for easements and rights of way; and permitted for utilities or encroachments in accordance with local regulations. Many municipalities require that a best interest finding be made and approved by city council or assembly resolution when disposing of, exchanging, or otherwise conveying an interest in real property. These requirements should be described in a land disposal ordinance. All land disposals will be reviewed by the governing body because they must be approved by ordinance.

### *Capital Improvement Program*

The capital improvement program (CIP) is one of the most powerful tools for implementing a community's comprehensive plan when CIP projects are linked to the goals and objectives of the plan. The CIP can have a great influence on the pace and quality of development in a community.

### *Contents of the CIP*

A completed CIP contains a list of capital improvement projects by priority, information about each project, a schedule for seeking funding, and a construction schedule. The CIP will include projects that are needed right away and projects that will be needed over the next five or six years. Each year as the projects are funded and completed the CIP is updated to add new projects and to reflect changes in community needs and priorities.

The CIP will list major non-recurring expenditures for libraries, museums, fire and police stations, parks, civic centers, street construction or reconstruction, sewage and water treatment plants, and water and sewer lines. Costs associated with capital projects include engineering and architectural fees, feasibility studies, land appraisal and acquisition, construction and related furnishing, and equipment for new facilities.

#### **The CIP will typically contain the following three elements:**

- 1. An overview of the CIP process and a listing of the benefits a community will derive from the improvements.*
- 2. A section on financial data with historical revenue and expenditures data along with projected revenue, expenditure and debt service.*
- 3. Projects recommended for funding during the CIP period, the relationship of the project to the community's comprehensive plan, and how the projects will be financed.*

### *CIP Preparation*

Local government practices vary as to how the CIP is prepared. The responsibility for preparing the CIP may be that of the municipal manager's office, the public works department, or the planning department. Typically, proposals from all operating departments are submitted several months before the beginning of the new fiscal year. The municipality's finance department, manager, public works director, and planner will evaluate them, determine the local government's ability to pay for the new projects based on revenue forecasts, and then organize the projects into a schedule.

### Steps for preparing a CIP might look like this:

- 1. Establish a schedule and procedures*
- 2. Identify capital improvement needs*
- 3. Evaluate and rank project needs*
- 4. Develop additional information about priority projects*
- 5. Complete and adopt CIP*
- 6. Seek or budget funding for first year projects*
- 7. Update CIP*

- "CIP Process" PC Journal Number 25, Winter 1995

### *Role of the Planning Commission in the CIP Process*

The planning commission is involved in preparing the CIP because of the effect that projects may have on the community's physical development, and to ensure that projects are consistent with the Comprehensive Plan. Sometimes the commission may advise elected officials and the administration on general priorities for selecting projects. The commission will review the draft CIP against the backdrop of the comprehensive plan and forward its recommendations to the governing body. Public hearings are a part of the CIP process. The public hearing may be before the planning commission or governing body or both.

#### **Questions the planning commission might ask when reviewing a proposed CIP:**

- Is the project consistent with the comprehensive plan? If a high priority project in the comprehensive plan has been postponed, ask why.
- *Does the comprehensive plan have policies to ensure that certain urban design or architectural requirements are met with new facilities such as civic and recreational centers and libraries?*
- *Is the project well thought out?*
- *Is the project related to other projects and is the sequence of construction reasonable? For example, the water department should install a water line in a street before the street department undertakes resurfacing, to avoid digging up a freshly surfaced street.*
- *If the project serves a developing area, what are the assumptions as to the levels of service and the ultimate population of the area as anticipated in the comprehensive plan?*
- Have all agencies that might be affected by a project been contacted? For example, the school board might want to coordinate the location of a new school site with the acquisition of a new park.
- Is there balance between repair and maintenance of existing facilities versus installation of new improvements?
- Is one part of the community getting more than its fair share?
- Is the local government spending enough on capital projects in comparison with annual operating expenses, or is it falling behind in responding to community growth and change?

### *Statewide Transportation Improvement Program*

The AK DOT&PF funds road, airport, and marine highway projects that can have significant effects on municipalities. The Statewide Transportation Improvement Program (STIP) is both AK DOT&PF's plan and public process for allocating funding for surface transportation – highways, transit, trails, and ferries – for a three-year period. Aviation and ports and harbors projects are not included in the STIP. There are three broad spending categories affecting roads, ferries, trails, and transit. All projects for which funding is requested, is first placed into one of these three categories:

**National Highway System (NHS)** is the system of most important highways and ferry links between the state's population centers and economic centers, border crossings and intermodal facilities.

**Community Transportation Program (CTP)** creates partnerships with local governments to build projects serving local and regional needs. This category includes state highways that are not considered NHS routes, including local streets and roads.

**Trails and Recreational Access for Alaska (TRAAK)** projects improve access to recreational facilities, provide trails for transportation facilities, and provide interpretative improvements along highways.

Requests for projects to be funded by the CTP and TRAAK programs are solicited statewide. Boroughs, cities, villages, transit providers, Native organizations, local governments, private parties, and state and federal agencies are requested to make project nominations. The planning commission can participate in the CTP and TRAAK processes by helping their local government review nominations to ensure the projects serve local and regional needs. The planning commission's role is to review transportation projects from local, state, and federal agencies and evaluate each project as it relates to the local comprehensive plan goals and policies and local transportation plan recommendations.

### *Sanitation Master Plans*

The extension of water and wastewater service into an area is one of the first steps in opening an area to development and for increasing the density of housing. Planning for water and wastewater systems is called sanitation planning. The end product is a water and wastewater master plan, or sanitation master plan. Much of the work necessary for the master plan will be contained in the community's comprehensive plan – social and economic information (e.g. population and economic forecasts), physical environment and natural resources information (e.g. soils and hydrology), and community information (e.g. land ownership and future locations for residential, commercial and industrial uses). The sanitation master plan goals, objectives, and alternatives for implementation should also be directly linked to the community comprehensive plan goals, objectives, and policies for land use and development patterns.

Typically, the planning commission is involved at different stages in the sanitation master planning process. Their involvement should be at the start of the process both for project scoping and when community input is gathered; during the evaluation of alternatives; during the selection of a system alternative; and during the implementation phase and capital improvements program steps. In fact, the local subdivision code works hand-in-hand to implement the sanitation master plan.

### *Municipal Budget*

The municipal budget is an important element in implementing the goals and objectives of the Comprehensive Plan. The budget reflects the community's priorities for services and facilities. Implementation of the comprehensive plan can be reflected in the municipal budget in a number of ways:

### *Budget Reflects Plan Vision*

- Staff is available to carry out the planning objectives.
- Capital projects defined in the CIP process are funded.
- Comprehensive plan updates, as well as other more specialized plans, are funded.

### *Design Review Standards*

The appearance of buildings, including signage, color, lighting, landscaping, and parking can be achieved through design standards for new construction (and sometimes substantial renovations) adopted by ordinance. Typically the planning staff will administer the design review standards on smaller scale projects. For larger, more detailed projects, a design review board, or the planning commission, may be involved.

### *Floodplain Regulations*

Establishment of standards for construction in river floodplains and coastal areas complements local subdivision regulations by identifying flood hazard areas. The governing body should require the subdivider to delineate flood hazard areas on the face of the plat. Where appropriate and provided for by ordinance, mitigation measures, such as floodproofing, may be necessary. Participation in the National Flood Insurance Program (NFIP) may also be important in a community with historic flood hazards and loss of life and property. Incorporation of flood hazard information into the comprehensive plan and land use regulations is critical.

### *State and Federal Planning Programs*

The Alaska Native Claims Settlement Act (ANCSA) was passed in 1971. The intent of ANCSA was to legislatively resolve Alaska Native land claims. ANCSA established 13 regional corporations and more than 200 village corporations on a shareholder basis. Forty-four million acres of land were to be conveyed to corporations. Generally, village corporations own surface estate while regional corporations own subsurface estate of village lands and additional surface selections. ANCSA lands are subject to local planning and zoning regulation when they are developed.

Alaska National Interest Lands Conservation Act (ANILCA) of 1980 resulted from Section 17(d)2 of ANCSA. It specified that 80 million acres be placed in national parks, forests, wildlife refuges or wild and scenic river systems. Management units were created that are subject to comprehensive conservation plans or other management plans. Many areas important for timber or mineral development were excluded from these conservation units. ANILCA provided the federal government with the right to manage subsistence resources and harvests on ANILCA lands.

The Alaska Department of Natural Resources (DNR) prepares state area plans for state-owned lands. The plans define recommendations for land classifications and management guidelines.

### *Historic Preservation*

In order to preserve the architecture and appearance of buildings in designated historic districts, the community must work with property owners, architects, and historians to define the district's character. Subsequent standards can be developed to encourage and ensure the historic character is retained.

### *Environmental Assessment*

Increasingly, assessment of the environmental effects of a project, such as a new subdivision or transportation project, is being included in project review. While in most cases the environmental review of a project will be required by state or, more likely, federal law, the commission may undertake an environmental review under local code provisions. The commission should be familiar with the community's environmental resources generally, and at the project site. Effective environmental assessment includes comparing the environmental baseline, (i.e., what exists in the community or on a particular property today) against the anticipated changes resulting from development of the project.





# GLOSSARY

## A

- **Absentee** – a commission member who is not in attendance at a meeting.
- **Abstain** – to refrain from casting a vote.
- **Accessory use** – a permitted building or activity that is secondary to the main use on the same site. It is allowed without prior review or approval. For example, a smokehouse or tool shed on a single-family residential lot.
- **Adjourn** – to close a particular session; to suspend a meeting or a proceeding to a future time.
- **Agenda** – A schedule of items intended to be taken up at a meeting.
- **Appeal** – A request seeking relief from a decision already made by the commission or official.
- **Areawide** – The exercise of local government powers throughout a borough, both inside and outside all cities in the borough.
- made, for example, improvements required in a subdivision approval.
- **Borough** – a form of regional municipal government.
- **Borough assembly** – The governing body of a borough.
- **Buffering** – cushioning, shielding, or protection between uses, such as vegetation.
- **Building area** – the total square footage of a lot that is covered by a building, excluding steps, decks, and patios.
- **Bylaws** – rules adopted by a commission which govern its procedure.

## B

- **Bond** – A financial guarantee to fulfill a legal obligation. In land development, a surety bond or performance bond may be purchased to guarantee that certain improvements can be
- **Capital Improvements Program** – a list or schedule of public projects that a city or borough intends to undertake over a specified period of time. Projects are prioritized, costs are estimated, and methods of financing are described. The capital improvements program should be consistent with policies in the comprehensive plan and should be updated annually.
- **Chair** – the presiding officer of the commission or of a meeting or proceeding.
- **Charter** – the governing document of a home rule municipality
- **City** – a form of municipal government.

- **City council** – the legislative or governing body in cities.
- **Cluster subdivision** – a cluster subdivision is a form of development that permits a reduction in lot area provided there is no increase in the number of lots permitted under the conventional subdivision or increase in the overall density of development.
- **Commercial use** – a use of land devoted to commercial or business purposes, such as retail sales, services, or business offices.
- **Comprehensive plan** – a written legal document, which may include or be accompanied by graphics, adopted by the governing body containing policies that will guide land use and development in the community.
- **Conditional uses** – uses that are not permitted outright in the zoning ordinance but may be allowed in a zoning district after certain conditions are met which are designed to safeguard neighboring properties.

## D

- **Dedication** – the gift or donation of private property by the owner to a city or borough or other public body. A dedication is completed through the conveyance of written deed or title and a formal acceptance by the public body.

## E

- **Ex parte Contact** – any contact outside of the public hearing in a land use case by a member of the decision making body and someone wishing to directly or indirectly influence the outcome of the case.

## F

- **Findings** – facts determined by the commission in reference to its decision, either on an application or on a particular phase of an application.
- **Floor area ratio (FAR)** – the gross floor area of all buildings or structures on a lot divided by the total lot area (FAR = total building floor area IT total lot area).

## G

- **Grandfathered use** – A use or activity that was lawful prior to the adoption, revision, or amendment of a zoning ordinance, but which does not conform to the new (i.e., present) requirements of the ordinance.

## I

- **Industrial Use** – a use of land devoted to manufacturing or industrial processing.
- **Infrastructure** – physical improvements, structures, or installations which provide common services to a community or geographic area, e.g. water, sewer, gas mains, or electric power lines.

## L

- **Local Government** – a city or borough in Alaska.

## M

- **Majority** – more than half. On a public body, the majority is half the total membership plus one.
- **Master plan** – common use term for "comprehensive plan"  
Mayor – the chief elected official in Alaska cities and boroughs.
- **Mayor** – The chief elected official in Alaska cities and boroughs.
- **Minutes** – the chronological record of the proceedings of a public body.
- **Motion** – a formal proposal by a member of the commission by which the member attempts to bring a matter of business before the body. Also a request for a particular ruling by a party before an adjudicatory body.

## N

- **National Environmental Policy Act ( NEPA)** – Signed into law on January 1, 1970 by President Nixon, NEPA established procedural requirements for all federal government agencies to prepare Environmental Assessments (EA's) or Environmental Impact Statements (EIS's). EA's and EIS's contain statements of the environmental effects of proposed federal agency actions, or significant actions that require federal permits. Many Alaska transportation, oil and gas, and mining projects have been analyzed through "the NEPA process" often by Interdisciplinary Teams (IDT's) of local, state and federal agency staff and consultants.
- **Notice** – published information regarding an impending meeting, proceeding, or hearing giving at least time, date, place, and purpose.

## P

- **Planned Unit Development (PUD)** – A unified, overall development on a parcel two or three acres or larger that is meant to encourage innovative site design, including careful placement of buildings, attention to pedestrians, inclusion of public amenities, and conservation of open space and natural features.
- **Plat, final** – An approved subdivision map that is filed in the district recorder’s office. It must contain the information required by AS 29.40 as well as that required by local ordinances such as a legal description of all properties in the subdivision, street rights-of-way, easements, and lot lines. Final plat approval is usually given upon completion of the improvements or the posting of a bond guaranteeing construction of the improvements.
- **Plat, preliminary** – A draft map showing the proposed layout of subdivision submitted to the staff and the platting authority for preliminary approval.
- **Police power** – Powers granted to states in the 10th Amendment to the U.S. Constitution, which reserves to the states the rights and powers “not delegated to the United States”. They express the fundamental power vested in every state (and granted to municipalities) to limit and regulate the exercise of private rights in the interest of public health, public morals, public safety, and the general welfare of the community.
- **Prescriptive standard** – A standard such as setback, lot coverage or height limit that can be set and measured. It can also include measurable noise and light levels.

- **Public Hearing** – A public proceeding at which the public is given the right and opportunity to speak regarding a particular matter or issue.

## Q

- **Quasi-judicial action** – a judicial action taken by a public person or body (i.e., the planning commission) who is not a judge. It involves an official decision on the respective rights or claims of parties appearing before the body making the decision.
- **Quorum** – the number of members of a body who, by law or rule, must be present in order that a meeting be convened.

## R

- **Record** – a document kept in the ordinary course of business by a governmental unit. Also the written expression of the proceedings of the commission Meeting minutes are one form of record.
- **Rezone** – the reclassification of land from one land use zoning designation to another.
- **Right-of-way** – is a legal right of passage over another’s property and the area through which that right exists. It most commonly refers to the streets and sidewalks, trails, curbs and gutters (if applicable), and utilities.

- **Riparian zone** - The zone of direct interaction between the uplands (the terrestrial system) and the creek, stream or river (the aquatic system).
- **Right of way** – A legal right of passage over another’s property and the area through which that right exists. It most commonly refers to the streets and sidewalks, trails, curbs and gutters (if applicable), and utilities.

## S

- **Setback** – the distance that a building must be set back from a property line or right-of-way. Setback requirements will often differ with the zoning district and are included in the zoning ordinance.
- **Spot Zoning** – A rezoning of a particular parcel of land to a zoning classification which is significantly different from the adjoining properties. Generally, spot zoning involves a relatively small parcel of land. Such action has normally not been favored by the courts unless it can be shown that it is consistent with the comprehensive plan.

## V

- **Vacation** – A formal action for abandoning or revoking a public right to use an easement, trail, or right-of-way.
- **Variance** – a waiver of the provisions of the zoning ordinance when strict application of the ordinance would cause exceptional, practical difficulties, or undue hardship to the property owner. Property standards in the ordinance are adjusted because the specific location, topography, shape, size or other environmental features of a lot make it impossible to comply with the zoning regulations as written. The variance

allows the property owner to use his/her land at the same intensity and develop it for the same uses allowed others in the same zone.

## Z

- **Zoning** – an application of the police power to regulate the use of land and the improvements on it for the protection of the public health, welfare, and safety. Zoning regulations establish standards for development and create a number of different zoning districts or classifications of land. Development and construction must be consistent with these criteria before being

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# APPENDIX A

## APPENDIX A

### Sample Planning Commission Bylaws

The following bylaws are hereby adopted by the Planning Commission of the municipality of [YOUR MUNICIPALITY], in order to:

1. Make the most efficient use of the time of the members, the planning staff, and any professional consultants, which may be hired.
2. Improve communications between the Commission and the public-at-large, including local residents, applicants for subdivision or construction permits and the other administrative agencies of [YOUR MUNICIPALITY] and the State of Alaska.
3. Balance the efforts of the Commission between response to applicants within [YOUR MUNICIPALITY] and the actual planning work necessary to guide the progressive development of [YOUR MUNICIPALITY] in the future.

BE IT RESOLVED THAT THE BYLAWS, AS HEREINAFTER SET FORTH, BE ADOPTED BY THE PLANNING COMMISSION of [YOUR MUNICIPALITY] to govern the proceedings on the commissioner.

The officers of the Planning Commission shall be Chairman, Vice-Chairman and Clerk, elected each year by a majority vote of the members of the Planning Commission at the first regular meeting in November.

## SCHEDULE OF MEETINGS

### Regular Meetings

The regular meetings of the Planning Commission of [YOUR MUNICIPALITY] shall be at 7:30 P.M. on the second and fourth Tuesday of each month.

No new business will be considered after 11:00 P.M. unless agreed to by five members present and the meetings will adjourn promptly at 11:30 P.M. unless an extension is allowed by five of the members present.

The order of business shall be:

- I. Roll Call
- II. Approval of the Minutes
- III. Regular Agenda\*
- IV. Committee Reports
- V. Staff Report
- VI. Public Participation on Non-Agenda Item
- VII. Commission Comments and Questions
- VIII. Adjournment

Items up for reconsideration will be listed at the end of the agenda as a non-agenda item for Possible Reconsideration.

*\*this includes variances; conditional use permits; plat approvals; recommendations on rezones; recommendations on plans, documents, studies and ordinances; other work.*

### ***Committee of the Whole***

The third Tuesday of each month will be reserved for discussion of any and all internal matters of the Commission, specifically including reports and recommendations of the various subcommittees.

### ***Special Meetings***

May be called at any time by the Chair or three members provided required notice is given and published.

### ***NOTICE OF MEETINGS***

All regular and special meetings of the commission shall have seven days notice. Notice shall be posted in a newspaper of general circulation available in the community; at city hall; and, at least two other locations highly visible to the public. Emergency meetings shall be called in the same manner as the elected body. A copy of the schedule of meetings shall be supplied to all local media as well as posted on the Municipal bulletin board. If a special meeting is called, the planning staff shall give appropriate notice to the media.

### ***COMMITTEES***

The Chair of the Commission shall appoint such committees as deemed necessary. Committee membership shall, for each committee, consist of at least four Planning Commission members. The Planning Commission Chair shall appoint the committee chair. The Planning Commission Chair will not serve as a committee chair but will be a member, ex officio, of all committees and will coordinate their activities.

Committee Chairs shall have full responsibility for conducting the affairs of their committees and reporting same to the full Planning Commission. In addition, the chairs of their designated alternates shall act as spokesmen for their committees at all public hearings and meetings.

### ***Subdivision Review Committee***

This shall be the official subdivision committee appointed by the Chairman with the approval of the Commission. It shall be the duty of this committee to study and assume responsibility for all subdivision development including site plan and subdivision review. All meetings of the Planning Commission or any of its committees shall be open to the public except for executive sessions.

At each regular meeting of the Planning Commission, the applicant and all persons having an interest in, or desiring to be heard upon any matter which is the subject of a specific public hearing, shall be given an opportunity to be heard during such public hearing portion of the meeting, and there shall be a time during regular meetings for members of the public to address the Planning Commission concerning any matter relevant to the Planning Commission's jurisdiction but not on the agenda. The time for such public participation, and any reasonable limitations thereon, shall be established from time to time by the Commission. Once public participation is closed, it cannot be reopened except by six votes.

# APPENDIX B

## APPENDIX B

### Alaska Statutes

#### Chapter 29.40. PLANNING, PLATTING, AND LAND USE REGULATION

##### Section:

- 10. Planning, platting and land use regulation
- 20. Planning commission
- 30. Comprehensive plan
- 40. Land use regulation
- 50. Appeals from administrative decisions
- 60. Judicial review
- 70. Platting regulation
- 80. Platting authority
- 90. Abbreviated plats and waiver
- 100. Information required
- 110. Plat procedure
- 120. Alteration or replat petition
- 130. Notice of hearing
- 140. Hearing and determination
- 150. Recording
- 160. Title to vacated area
- 170. Delegations
- 180. Prohibited acts; criminal penalties
- 190. Civil remedies and penalties
- 200. Subdivisions of state land

Sec. 29.40.010 Planning, platting, and land use regulation.

(a) A first or second class borough shall provide for planning, platting, and land use regulation on an areawide basis.

(b) If a city in a borough consents by ordinance, the assembly may by ordinance delegate any of its powers and duties under this chapter to the city. The assembly may by ordinance, without first obtaining the consent of the city, revoke any power or duty delegated under this section.

Sec. 29.40.020. Planning commission. (a) Each first and second class borough shall establish a planning commission consisting of five residents unless a greater number is required by ordinance. Commission membership shall be apportioned so that the number of members from home rule and first class cities reflects the proportion of borough population residing in home rule and first class cities located in the borough. A member shall be appointed by the borough mayor for a term of three years subject to confirmation by the assembly, except that a member from a home rule or first class city shall be selected from a list of recommendations submitted by the council. Members first appointed shall draw lots for one, two, and three year terms. Appointments to fill vacancies are for the unexpired term. The compensation and expenses of the planning commission and its staff are paid as directed by the assembly.

(b) In addition to the duties prescribed by ordinance, the planning commission shall

- (1) prepare and submit to the assembly a proposed comprehensive plan in accordance with AS 29.40.030 for the systematic and organized development of the borough;
- (2) review, recommend, and administer measures necessary to implement the comprehensive plan, including measures provided under AS 29.40.040.

Sec. 29.40.030. Comprehensive plan. a) The comprehensive plan is a compilation of policy statements, goals, standards, and maps for guiding the physical, social, and economic development, both private and public, of the first or second class borough, and may include, but is not limited to, the following:

- (1) statements of policies, goals, and standards;
- (2) a land use plan;
- (3) a community facilities plan;
- (4) a transportation plan; and
- (5) recommendations for implementation of the comprehensive plan.

(b) With the recommendations of the planning commission, the assembly shall adopt by ordinance a comprehensive plan. The assembly shall, after receiving the recommendations of the planning commission, periodically undertake an overall review of the comprehensive plan and update the plan as necessary.

Sec. 29.40.040 Land use regulation. (a) In accordance with a comprehensive plan adopted under AS 29.40.030 and in order to implement the plan, the assembly by ordinance shall adopt or amend provisions governing the use and occupancy of land that may include, but are not limited to,

- (1) zoning regulations restricting the use of land and improvements by geographic districts;
- (2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;

(3) measures to further the goals and objectives of the comprehensive plan.

(b) A variance from a land use regulation adopted under this section may not be granted if

- (1) special conditions that require the variance are caused by the person seeking the variance;
- (2) the variance will permit a land use in a district in which that use is prohibited; or
- (3) the variance is sought solely to relieve pecuniary hardship or inconvenience.

Sec. 29.40.050. Appeals from administrative decisions.

(a) By ordinance the assembly shall provide for an appeal from an administrative decision of a municipal employee, board, or commission made in the enforcement, administration, or application of a land use regulation adopted under this chapter. The assembly may provide for an appeal to a court, hearing officer, board of adjustment, or other body. The assembly shall provide for an appeal from a decision on a request for a variance from the terms of a land use regulation when literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the district.

(b) By ordinance the assembly may provide for appointment of a hearing officer, or for the composition, appointment, and terms of office of a board of adjustment or other body established to hear appeals from administrative actions. The assembly may define proper parties and prescribe evidentiary rules, standards of review, and remedies available to the hearing officer, board of adjustment, or other body.

Sec. 29.40.060. Judicial review. (a) The assembly shall provide by ordinance for an appeal by a municipal officer or person aggrieved from a decision of a hearing officer, board of adjustment, or other body to the superior court. (b) An appeal to the superior court under this section is an administrative appeal heard solely on the record established by the hearing officer, board of adjustment, or other body.

Sec. 29.40.070. Platting regulation. By ordinance the assembly shall adopt platting requirements that may include, but are not limited to, the control of

- (1) form, size, and other aspects of subdivision, dedications, and vacations of land;
- (2) dimensions and design of lots;
- (3) street width, arrangement, and rights-of-way, including requirements for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage, and other public utility facilities and improvements;
- (4) dedication of streets, rights-of-way, public utility easements and areas considered necessary by the platting authority for other public uses.

Sec. 29.40.080. Platting authority. (a) The assembly by ordinance shall establish a platting authority to administer subdivision regulations and to perform other duties as required by the assembly. The platting authority may consist of members of the planning commission or of other municipal residents.

(b) The assembly may by ordinance provide for an administrative official to act as the platting authority with regard to abbreviated plats.

Sec. 29.40.090. Abbreviated plats and waivers. (a)

Notwithstanding other provisions of this chapter, the assembly shall by ordinance establish an abbreviated plat procedure for a plat that will

- (1) subdivide a single lot into not more than four lots;
- (2) provide legal and physical access to a public highway or street for each lot created by the subdivision;
- (3) not contain or require a dedication of a street, right-of-way, or other area;
- (4) not require a vacation of a public dedication of land or a variance from a subdivision regulation.

(b) The platting authority shall waive the preparation, submission for approval, filing, and recording of a plat on satisfactory evidence that the subdivision meets the requirements of (a) of this section and each lot created by the subdivision is five acres or larger.

Sec. 29.40.100. Information required. A plat must show

- (1) initial point of survey;
- (2) original or reestablished corners and their descriptions;
- (3) actual traverse showing area of closure and all distances, angles, and calculations required to determine initial point, corners, and distances of the plat; and
- (4) other information that may be required by ordinance.

Sec. 29.40.110. Plat procedure. (a) The platting authority shall approve or disapprove a plat within 60 days after it is filed, or shall return it to the applicant for modification or correction. Unless the applicant for plat approval consents to an extension of time, the plat is considered approved and a certificate of approval shall be issued by the platting

authority on demand if the platting authority fails to act within 60 days.

(b) The platting authority shall state in writing its reasons for disapproval of a plat. If the platting authority approves a plat, the plat shall be acknowledged, filed, and recorded in accordance with AS 40.15.010 - 40.15.020

Sec. 29.40.120. Alteration or replat petition. A recorded plat may not be altered or replatted except by the platting authority on petition of the state, the borough, a public utility, or the owners of a majority of the land affected by the alteration or replat. A platted street may not be vacated, except on petition of the state, the borough, a public utility, or owners of a majority of the land fronting the part of the street sought to be vacated.

The petition shall be filed with the platting authority and shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

Sec. 29.40.130. Notice of hearing. The platting authority shall fix a time for a hearing on an alteration or replat petition that may not be more than 60 days after the petition is filed. Notice shall be published by the platting authority stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice must generally describe the alteration or replat sought. The platting authority shall also mail a copy of the notice to each affected property owner who did not sign the petition.

Sec. 29.40.140 Hearing and determination. (a) The platting authority shall consider the alteration or replat petition at a hearing and make its decision on the merits of the proposal.

(b) Vacation of a city street may not be made without the consent of the council. Vacation of a street in the borough area outside all cities may not be made without the consent of the assembly. The governing body shall have 30 days from the decision of the platting authority in which to veto a vacation of a street. If no veto is received by the platting authority within the 30-day period, consent is considered to have been given to the vacation.

Sec. 29.40.150. Recording. If the alteration or replat is approved, the revised plat shall be acknowledged, filed, and recorded in accordance with AS 40.15.010 - 40.15.020.

Sec. 29.40.160. Title to vacated area.(a) The title to the street or other public area vacated on a plat attaches to the lot or land bordering the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area that lies on one side of the boundary line shall attach to the abutting property on that side, and the street area that lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street that lies inside the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in a city if it lies inside the city, and in the borough if it lies inside the borough but outside all cities. If the property vacated is a lot, title vests in the rightful owner.

(b) If the municipality acquired the street or other public area vacated for legal consideration or by express dedication to the municipality other than as a subdivision platting requirement, before the final act of vacation the fair market value of the street or public area shall be deposited

with the platting authority to be paid to the municipality on final vacation.

(c) The provisions of (a) and (b) of this section apply to home rule and general law municipalities.

(d) The council of a second class city located outside a borough may vacate streets, alleys, crossings, sidewalks, or other public ways that may have been previously dedicated or established when the council finds that the streets, alleys, crossings, sidewalks, or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for another public purpose does not vest as provided in (a) of this section but remains in the city.

Sec. 29.40.170. Delegations. The planning commission and the platting authority may, as authorized by ordinance, delegate powers to hear and decide cases under this chapter, including, but not limited to, delegations to

- (1) one or more members of the planning commission or platting authority;
- (2) other boards or commissions;
- (3) a hearing officer designated by the planning commission or platting authority.

Sec. 29.40.180. Prohibited acts; criminal penalties. (a) The owner of land located in a subdivision may not transfer, sell, offer to sell, or enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved, filed, and recorded in accordance with this chapter. A person may not file or record a plat or other

document depicting subdivided land in a public recorder's office unless the plat or document has been approved by the platting authority. (b) For the violation of a provision of this chapter, a subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a platting authority in the exercise of its powers under this chapter, a municipality may by ordinance prescribe a penalty not to exceed a fine of \$1,000, and imprisonment for 90 days.

Sec. 29.40.190 Civil remedies and penalties.

(a) The municipality or an aggrieved person may institute a civil action against a person who violates a provision of this chapter, a subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a platting authority. In addition to other relief, a civil penalty not to exceed \$1,000, may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of a violation or threatened violation, the superior court shall grant the injunction.

(b) Each day that an unlawful act or condition continues constitutes a separate violation.

Sec. 29.40.200 Subdivisions of state land.

(a) The subdivision requirements adopted under this chapter apply to a subdivision plat of undeveloped state land for disposal under AS 38.05 or AS 38.08 filed with the platting authority. Subdivision ordinances and regulations adopted after the platting authority is notified by the commissioner of natural resources of a proposed sale of subdivided state land under AS 38.05 or AS 38.08 do not

apply to the state land in the proposed sale.

(b) The platting authority shall approve and sign a subdivision plat of state land within 60 days after its receipt from the commissioner of natural resources unless the platting authority

(1) determines that the plat does not comply with subdivision requirements; and

(2) notifies the commissioner of each determination of noncompliance within the 60-day period established in this subsection.

(c) The commissioner of natural resources may withdraw the subdivision plat and amend it in response to the determination of noncompliance by the platting authority under (b) of this section. The platting authority shall respond within 30 days to the amendment or response from the commissioner of natural resources.

(d) Nothing in this section relieves the Department of Natural Resources of its obligations to provide legal access to a subdivision.

(e) This section applies to home rule and general law municipalities.

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