Planning & Zoning HANDBOOK

Third Edition

OCTOBER 2004

ARIZONA DEPARTMENT OF COMMERCE

Office of Smart Growth
1700 W. Washington, Suite 420
Phoenix, AZ 85007
Phone 602-771-1191 ▪ Fax 602-771-1210 ▪ www.azcommerce.com

Planning & Zoning
HANDBOOK

TABLE OF CONTENTS

Planning & Zoning HANDBOOK

INTRODUCTION

CHAPTER 1

CHAPTER 1

INTRODUCTION

1.1 PURPOSE OF HANDBOOK

In response to planning and zoning questions from planning staff and public officials from around the state, the Arizona Department of Commerce, Community Planning Office has developed a third edition of the Arizona Planning and Zoning Handbook. This Handbook is prepared for use by planning and zoning commissioners, members of boards of adjustments, elected officials, planners, developers, and citizens with an interest in community (municipal and county) planning in Arizona.

The Handbook covers:

- Arizona Planning and Zoning Law
- Growing Smarter and Growing Smarter Plus Acts
- Role and Responsibilities of the Planning and Zoning Commission
- Role of the Board of Adjustment
- Role of the City and Town Council
- Role of the Board of Supervisors
- Planning and Development Administration
- Model Ordinances, Guidelines and Procedures
- Capital Improvements Programming
- Development Impact Fees
- Community Design Review
- Community Redevelopment
- Historic Preservation
- Environmental Planning
- Public Involvement and Public Meetings

Please note: Before adopting any of the ordinances, policies, or procedures discussed here, legal counsel should be consulted to address the specific application to your jurisdiction.

1.2 ARIZONA TECHNICAL ASSISTANCE

Training, workshops, or other technical assistance on most of the topics in the Handbook is available through the Community Planning Office of the Arizona Department of Commerce. The Office is designed to provide statewide technical assistance and training to Arizona's municipalities, counties, and tribal communities in areas such as land use planning, development, zoning, infrastructure, public participation, and strategic planning. A fundamental philosophy of the Office is to foster community capacity-building and foundation development that will enable local leaders to make informed decisions affecting their community's future.

QUESTIONS, COMMENTS or SUGGESTIONS regarding the Handbook or requests for training and assistance are welcome and may be addressed to:

Arizona Department of Commerce
Community Planning Office
1700 West Washington, Suite 420
Phoenix, Arizona 85007
(602) 771-1191, Fax (602) 771-1210

1.3 ACKNOWLEDGEMENTS

A special thanks to Michael D. House, a land use law consultant, who wrote the update to Chapter 3, (Legal Issues in Planning), and to the following individuals who reviewed portions of the Third Edition of the Handbook:

- *Wayne Balmer*, City of Mesa - Chaps 8, 10 (Zoning and Development Tools)
- *Debra Stark*, City of Peoria – Chaps 3, 4 (Legal and Public Involvement)
- *Ron Short* and *Jon Froke*, City of Glendale – Chaps 5, 6 (Boards & Commissions and General Plans)
- *Jerry Owen*, City of Cottonwood – Chaps 5, 8 (Boards & Commissions and Zoning)
- *John Kross*, Town of Queen Creek – Chaps 9, 10 (Subdivision Regs/Site Plan Review and Development Tools)
- *Monty Stansbury*, Yuma County – Chaps 4, 6, 7 (Public Involvement and Comprehensive Plans)
- *Mary Dahl*, Santa Cruz County – Chaps 5, 10 (Boards & Commissions and Development Tools)
- *Bill Towler*, Coconino County – Chaps 6, 7, 9 (Comprehensive Plans and Subdivision Regs)
- *Arlan Colton*, Pima County – Chaps 3, 6, 7 (Legal and General/Comprehensive Plans)
- *John DiTullio* and *Steve Betts,* Gallagher & Kennedy – Chap 3 (Legal)
- *Matt Lore*, Arizona League of Cities and Towns Chap 4 (Public Involvement)

DEFINITION & HISTORY OF PLANNING

CHAPTER 2

CHAPTER 2

DEFINITION & HISTORY OF PLANNING

2.1 WHAT IS PLANNING?

Defined in broad terms, planning is a continuous process to guide the preservation, development, or redevelopment of a neighborhood, community, or region. Its purpose is to create and maintain a desirable environment and to promote the public health, safety, and welfare guided by the aims, goals, and ambitions of its residents.

An established planning program will help local officials in making decisions. It is important that planning is comprehensive, pragmatic, and continuous; that it deals with all aspects of development; and that it provide realistic goals and strategies for development. Planning tools must comply with statutory requirements and incorporate a community vision or ideal. Planning is the first step in the preparation of development and preservation regulations that put into practice the long-range goals stated in the community's plan.

2.2 DEFINITION OF TERMS

We have attempted to minimize the use of jargon in this Handbook, but the following terms have a special meaning in planning and will be referenced. Appendix A provides an extensive glossary.

GOALS

Broad, long-range statements that represent future visions of the community.

OBJECTIVES

Often used interchangeably with the word "goal", an objective is defined here as a measurable and verifiable method of achieving a goal.

STRATEGIES

Strategies are specific actions that identify what will be accomplished, by who, when, and how. If the goal sets a general direction for action, then the strategy specifies exactly how to get there.

POLICIES

A policy is a brief, direct statement of what you intend to do to implement your goals and objectives. Ideally, policy formulation is the result of group identification of goals and objectives, represents group consensus, and sets criteria for decision-making.

The relationship between these concepts may be illustrated as a planning continuum where goals are the "thinking" phase and strategies lead to the "doing" or implementation phase.

PLANS

A plan is an official policy document to guide the physical development and conservation of a community. Plans often contain a variety of maps to illustrate existing and proposed conditions. Counties and municipalities are mandated by Arizona law to develop comprehensive and general plans, respectively.

ZONING:

Zoning is a tool to implement the policies and goals established in a community's plan as they relate to land use. It specifies activities allowed on each parcel of land as well as any associated standards or exceptions.

Creating a municipal general plan or county comprehensive plan involves a series of steps that are discussed in greater detail in later chapters. The process includes:

1. Data gathering on existing conditions
2. Evaluating community resources
3. Organizing public discussion and input
4. Analyzing alternatives for the plan
5. Preparing, adopting, implementing, and updating the plan

2.3 HISTORY OF PLANNING

Urban planning in the United States has been influenced by historic events, the national economy, and changes in social attitudes. The Puritan work ethic formed the basis for the agrarian philosophy associated with Thomas Jefferson. This philosophy is based on the belief that the agricultural life has the most human value, and reflected the largely rural settlement pattern in the country at that time.

With the industrial revolution, cities grew in size and importance. The Public Health, Garden City, and City Beautiful movements of the 19th century raised issues of health and aesthetics in the city, and profoundly affected the design and development of cities during the first half of the 20th century. Planning gained acceptance as a discipline with the publication of the 1928 Standard City Planning Enabling Act (SPEA) by the U.S. Department of Commerce. This model law provided for the creation of a local agency comprised of both elected officials and appointed citizens, charged with the responsibility of

preparing planning studies and programming the future development of the municipality. Today many states, including Arizona, have planning enabling legislation that follows the guidance established in this model act.

Contemporary planning issues have emerged from various interest groups and challenges throughout the 19th and 20th centuries, including the following:

- **Public Health Movement**
  The Public Health Movement developed in the late 1800s from a concern for public health and workers' safety. This movement focused on the establishment of industrial safety requirements, maximum work hours, minimum housing standards, public recreation amenities, and ensuring the provision of light and air in cities.

- **Garden City Movement**
  The Garden City Movement began with Ebenezer Howard's classic work, *Tomorrow: A Peaceful Path to Real Reform,* published in 1898, later republished in 1902, *Garden Cities of Tomorrow.* A reaction to industrialization and poor living conditions in cities, this movement was predicated on the inherent immorality of the city, a return to the country village, and the sacredness of nature. The Garden City Movement proposed public greenbelts and agricultural areas surrounding self-supporting, satellite communities ringing a central garden city with maximum populations to prevent sprawl.

  The impact of the Garden City Movement was seen in the 1920s with the first comprehensive suburban neighborhood designs made up of residential areas with open space, parks, shopping facilities, and schools.

- **City Beautiful Movement**
  Emphasizing design and aesthetics, the City Beautiful Movement emerged from the 1893 Columbian Exposition in Chicago. The Exposition provided a prominent American example of a great group of buildings designed in relation to each other and in relation to open spaces. Contributions of the movement included: a revival of city planning and its establishment as a permanent part of local government, an emphasis on physical site planning, the professional consultant role, and the establishment of quasi-independent planning commissions composed of citizens.

- **City Efficient Movement**
  The City Efficient Movement saw the passage of new laws and court cases relative to land use, zoning, subdivision control, and administrative planning regulation. Civil engineers, attorneys, and public administrators began to play a larger role in city planning with an increase in demand for public services and facilities such as highways and sanitary sewers.

- **City Humane Movement**
  The City Humane Movement developed as a result of the Depression of the 1930s. It concentrated on social and economic issues and ways of alleviating the problems of unemployment, poverty, and urban plight.

- **City Functional Movement**
  The City Functional Movement developed in the 1940s with the growth of the military and renewed industrialization. This movement emphasized functionalism and administrative efficiency, and contributed to the federal government's increased involvement in local planning and the passage of Section 701 of the Housing Act in 1954. The 701 program subsidized thousands of general plans and special projects for cities, counties, regional councils of government, and states until 1981. Many Arizona communities benefited from this program.

As the need to institutionalize the planning function under a single public authority became apparent, planning became a component of local government administration. Commissions made up of local leaders were established to guide local

planning and zoning decision-making with some autonomy from the political process (i.e. the city or town council). Many pioneers in the field recognized that the success and effectiveness of a planning program also required citizen participation.

At one time, the municipal plan was perceived as an objective, technical document that focused solely on the physical development of the community. The 1960s and '70s saw a renewed emphasis on social, economic, and environmental issues with the **Advocacy Movement** and the **Environmental Movement**. During this period, some planners actively promoted social reform, supporting the interests of low-income and minority groups, wildlife, the preservation of open space, and the conservation of natural resources. It has become common for plans to more explicitly address the impact of physical development on economic, social, and environmental issues, to ensure greater consistency among policies and goals for the community.

Planning in Arizona has had a relatively short history. Cities were not specifically authorized to prepare general plans before the Urban Environmental Management Act (UEMA) was passed by the State Legislature in 1973. However, Arizona previously had adopted a version of the Standard State Zoning Enabling Act that implied the authority for local jurisdictions to plan.

In 1998, the Arizona Legislature passed the Growing Smarter Act. The purpose of the Act was to strengthen the ability of Arizona's communities and counties to plan for growth, acquire and preserve open space, and develop strategies to comprehensively address growth related pressures. The Act requires new elements - Open Space, Growth Areas, Environmental Planning, and Cost of Development - to be included in general and comprehensive plans and also calls for more effective public participation, mandatory rezoning conformance to plans, and more regional cooperation.

A Growing Smarter Commission was created as part of the Growing Smarter Act. This body proposed revisions to the legislation, which were passed as the Growing Smarter Plus Act in 2000. The provisions of the Growing Smarter Plus Act included requirements for a water resources element and ratification of large and fast growing communities' general plans by the electorate. The Growing Smarter Oversight Council was created by Executive Order in 2001 to monitor the implementation of the legislation and make recommendations for changes. More information on the mandates for jurisdictions in the Growing Smarter/Growing Smarter Plus legislation is provided in Chapters 6 and 7 and on the Arizona Department of Commerce web site at www.azcommerce.com.

2.4 PURPOSE OF PLANNING

Planning for the future development of a community is important and it makes sense. The planning process provides an opportunity for jurisdictions and citizens to determine the vision for the future of the community. An effective process brings the appropriate stakeholders to the table to work through issues and ideas, so that the resulting plan can function as a policy guide for implementation efforts.

Communities plan to:

- Prepare for the future
- Accommodate the present
- Anticipate change
- Maximize community strengths
- Minimize community weaknesses
- Respond to legislative change
- Secure a sense of community coordination
- Deal with scarce resources
- Build a sense of community
- Provide for public health, safety, and welfare

Many communities in Arizona have established planning programs, appointed planning commissions, and hired professional planning staffs. The direction a community takes in relation to planning depends on its size, location, natural environment, finances, and level of development, the attitude of local officials and the willingness of citizens to participate in guiding development. Planning for our cities, towns, and counties is one way in which Arizona's physical and economic environment can be improved and preserved.

The planning process requires community members working together to develop a vision. This process involves professionals providing information, citizens expressing desires and needs, and elected officials ensuring the implementation of shared goals. Planning is an ongoing process that needs to be reassessed periodically.

2.4.1 Six Functions of Planning

1. Planning is a means of preparing for the future. Addressing community needs only when they have become so urgent that they demand immediate action can result in temporary, costly, or ineffective solutions. With proper planning, for example, school and park sites may be reserved in advance of need while reasonably priced, vacant land is still available.

2. Planning is a tool for identifying the causes of complex urban and rural problems and developing sound, cost-effective solutions.

3. Planning helps do first things first. With an inventory of existing conditions, community strengths and weaknesses, and a comprehensive or general plan, officials can better manage resources while preparing for the future.

4. Planning helps make sound policies for development. Good planning includes policy-making based on needs and priorities. For example, street improvements should be planned to accommodate the type of land uses that they serve.

5. Planning provides procedures for making sure that new physical development is coordinated with other uses and needs related to it. The comprehensive and general plan, and the capital improvement program in particular, help local officials to coordinate decisions and projects.

6. The planning process is a means of educating and informing. When policies are adopted based on public input, they are better understood and more likely to have community support.

2.4.2 What Planning Can & Can't Do

Planning ***CAN...***

- Help to stabilize a community in transition, to ensure orderly growth by identifying where it is going, and how it needs to get there.
- Protect property values by maintaining the integrity of a neighborhood.
- Improve the economic base of the community by providing a climate for business creation and expansion.
- Identify resources, opportunities, and constraints.
- Clarify community needs, goals, and objectives.
- Provide a forum for action.

Planning ***CAN'T (or shouldn't)…***

- Be a one-shot deal; it's an ongoing, evolving process.
- Automatically solve all problems.
- Correct all past mistakes.
- Be successful unless supported by policy and an action-oriented program.
- Be used to promote special interests.
- Be used to exclude others from the community.

Planning allows communities to meet challenges by setting a direction based on public consensus. It takes full advantage of opportunities while anticipating and minimizing weaknesses and threats inherent in any development process.

2.5 ADDITIONAL REFERENCES

- *The Citizen's Guide to Planning,* 1979 Herbert H. Smith. Chicago: Planners Press
- *The City in History: its Origins, its Transformations, and its Prospects,* 1968 Lewis Mumford. Harvest Books
- *Contemporary Urban Planning,* 2002 6th Edition. John M. Levy. Prentice Hall, Inc.
- *The Death and Life of Great American Cities.* 1992; Reissue Edition, Jane Jacobs. Vintage Books
- *The Practice of Local Government Planning,* 2000; 3rd Edition, Linda C. Dalton, Charles Hoch, Frank S. So. International City/County Management Association.
- *The Practice of State and Regional Planning,* 1986, Irving Hand, Bruce D. McDowell, and Frank S. So. Published by the American Planning Association in cooperation with the International City/County Management Association
- American Planning Association web site: www.planning.org
- Planning Commissioners' Journal web site: www.plannersweb.com
- Arizona Planning Association web site: www.azplanning.org

Common Questions newsletters are developed by the Community Planning Office, and are available at http://www.azcommerce.com/communityplanning/resource.asp.

Planning & Zoning HANDBOOK

LEGAL AUTHORITY TO PLAN & ZONE

CHAPTER 3

CHAPTER 3

LEGAL AUTHORITY TO PLAN & ZONE

Arizona municipal and county governments have no inherent power to regulate land use. They are political subdivisions of the state, and whatever legislative or administrative authority they have to plan and zone is derived from the enabling legislation that is adopted by the State Legislature. In Arizona, elected and appointed officials must observe the legal requirements set forth in the Arizona Revised Statutes (abbreviated throughout the Handbook as "A.R.S."). Officials should also be aware of recent state and federal court decisions that affect the legal interpretation of these statutes.

Although the authority of local governments to regulate land use is delegated by the state, the control of land use has historically been a function of local government. Local governments may exercise control over the development of land in a variety of ways, especially through comprehensive (or general) land use planning, zoning, ordinances and subdivision ordinances.

Because of legal implications inherent to nearly all aspects of planning, statutory and legal references have been included throughout this Handbook. State statutes may be modified by the Legislature and the courts may decide significant issues before this Handbook can be brought up to date. For this reason, local officials should always consult their jurisdiction's attorney for the latest law on the subject. (When possible, it is also recommended to have legal counsel present at public hearings.)

3.1 BACKGROUND OF LEGAL AUTHORITY

The Tenth Amendment to the Constitution of the United States reserves to the states or to the people all powers not specifically delegated to the federal government. One of these is the "police power". This power provides the authority to adopt laws, ordinances, and regulations to protect the public health, safety, morals, and welfare. Comprehensive land use planning, zoning and subdivision regulations fall under the umbrella of this authority.

The police power is an "elastic" power, changing form to reflect the conditions of the time. Regulations embraced under the complex conditions of today might have been condemned as arbitrary or unreasonable as little as 70 years ago, and vice versa. Over time, the courts have interpreted the legitimate use of the police power broadly to promote a variety of community benefits. These benefits can promote social, environmental, aesthetic or safety values. Planning has long been accepted as an important vehicle for a community to define and maintain its essential values and identity.

In exercising planning and land use control powers, local governments must follow several constitutional principles, including equal protection and due process. A more detailed discussion of some of the United States Supreme Court cases that established the current (at the time of this writing) interpretations of these and other constitutional principles can be found in Section 3.5 of this chapter. For a background compilation of Arizona planning and zoning case law that has evolved over time, a review of Jorden & House, *Arizona Land Use Law* (3rd Ed. and 2001 Supplement), published by the State Bar of Arizona *is* recommended.

3.2 ARIZONA MUNICIPAL PLANNING AUTHORITY

State planning and zoning statutes are not static. Historically, Arizona Statutes have been adjusted to fit changing times in a series of "tweaking" bills by the State Legislature. Two efforts have been more comprehensive: the 1973 Urban Environmental Management Act, and in 1998 and 2000, with the Growing Smarter and Growing Smarter Plus Acts.

In 1973, the Arizona State Legislature amended Title 9 of A.R.S. to authorize cities and towns to plan through the Urban Environmental Management Act (UEMA). Prior to 1973, cities and towns in Arizona had zoning authority but no explicit planning authority. However, the authority to plan was generally inferred to accompany the power to zone and some communities had planning power written into their charters.

The 1998 and 2000 Growing Smarter and Growing Smarter Plus Acts broadened the scope of general planning to include more specific mechanisms to manage and plan for growth. An initial update of general and comprehensive land use plans and subsequent updates every 10 years were also specified.

More information on the general plan elements and other components of planning and zoning that are defined by the statutes (current as of this writing) is included in Chapter 6 (for cities and towns) and Chapter 7 (for counties).

■ Planning Agency

A.R.S. § 9-461.01 authorizes establishment of a "Planning Agency" as the official body designated by local ordinance to carry out municipal planning. This agency may be a planning department, planning commission, hearing officer, the elected body itself, or any combination thereof. Once formed, the planning agency must:

1. Develop and maintain a general plan.

2. Develop specific plans as may be necessary to implement the general plan.

3. Periodically review the capital improvements program of the municipality.

4. Perform such other planning functions as directed by the elected body.

The agency will be limited by the powers outlined in the municipal ordinance. It may:

- Contract for, receive, and utilize any grants or other financial assistance made available by a municipality, a county, the state or federal government.

- Contract with the state or federal government and any of its agencies, or the elected body of any municipality or county.

■ **Creation of Municipal Planning Commission**
A.R.S. § 9-461.02 authorizes cities and towns to create a planning commission to advise on land use and development issues. Planning commissions in Arizona must have at least five members who are appointed by the elected body. The number of commissioners may differ depending on the degree of urbanization and development of the community. The ordinance establishing the commission must set the number of commissioners, the method of their appointment and removal, terms of office and process for selection of a chair, and duties of the planning commission. Chapter 5 provides a detailed discussion of the role of the commission.

A.R.S. § 9-461, 461-01, 461-02 have been included in Appendix B as a reference. To search the statutes in their entirety, consult your library or the A.R.S. web site at: www.azleg.state.az.us/ArizonaRevisedStatutes.asp.

3.2.1 Other Sources of Municipal Planning Authority

In addition to planning, zoning, and subdivision controls, municipalities may exercise other sources of authority to manage and direct land use in the interest of the public health and safety.

■ **Eminent Domain**
Municipalities have the power to acquire land for public purposes by eminent domain, providing that the property owner is compensated. The exercise of eminent domain powers can have a substantial impact on land use patterns in a community, especially when exercised as part of a municipal redevelopment plan.

■ **License and Permits Powers**
Licensing or permitting systems are frequently used to regulate activities affecting public health and safety and may affect land development in several ways. For example, the Urban Environmental Management Act provides that a permit system may be used to enforce zoning regulations.[1] These systems must be administered consistently with zoning laws and may not be used to forbid uses permitted by the zoning regulations.

Permit systems may be used to administer conditional uses, special uses, and signage. Proponents of permit regulations argue that local planning officials need discretion to administer conditional uses, as well as the power to impose conditions, supervise the continuation of the use, and restrict the life of the use. Conditional use permits and nonconforming uses are discussed in greater detail in Chapter 8.

[1] A.R.S. § 9-462.05(D)

■ Easements and Covenants

Easements and restrictive covenants are the primary tools for private land use control. Easements may be used to give local governments, public utilities, and adjacent property owners rights to access and use land owned by another; restrictive covenants may be employed to enforce a planned development scheme by limiting the purposes for which neighboring land may be used. Affirmative covenants may be used to impose obligations of maintenance and contribute to the upkeep of commonly owned property. These private control devices have been successfully used in large planned communities.

Public use of easements and covenants to control land use has been more limited. Recent suggestions for expanded public use of these devices fall into three basic categories. First, easements and covenants may be used to prevent development and to preserve open space by acquiring development rights. Second, they may be used, as is done in urban renewal projects, to control the use of land sold or otherwise disposed of by the government. Third, they may be used to obtain more detailed control over subdivisions and other forms of development than is possible under zoning regulations. Private restrictions may be more effective than general zoning regulations in many cases, also ensuring regular maintenance of the property. A city may require the filing of restrictive covenants as a condition of zoning and permit individual property owners to enforce them.[2]

■ Conservation Easements

A conservation easement is a legal agreement regarding the voluntary donation or sale of particular property rights to a governmental entity or nonprofit organization that agrees to monitor and enforce the terms of the agreement. Arizona's conservation easement statute [3] specifies that conservation easements may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered in the same manner as other easements. An easement may be created to protect or preserve:

- Historical, architectural, archeological, or cultural aspects of real property.
- Land for the outdoor recreation or education of the general public.
- Land as a natural habitat for fish, wildlife, and plants.
- Open space, including farmland and forestland, for the public's enjoyment pursuant to a clearly delineated governmental conservation policy.

The property owner (grantor) and public entity (holder or grantee) must agree on the terms of the easement. The grantor may specify how long a conservation easement will last, either in perpetuity, or for a given period of time. The grantor may also negotiate whether the public may have access to the property. The grantor, public entity, or a third party specified in the easement document may legally enforce the terms of the easement.

Once created, a conservation easement may be modified or terminated based on the agreement. The public benefits from the donation of these easements through conservation and protection of important natural and cultural resources. The property remains on the tax rolls, and private monies are used to acquire and maintain the property.

For more information on conservation easements contact...

State Historic Preservation Office
Arizona State Parks
1300 W. Washington Street
Phoenix, AZ 85007
(602) 542-4009
www.pr.state.az.us/partnerships/partners.html

[2] *Goodman v. Superior Court.*137 Ariz. 348, 670 P. 2d 746 (App. 1983)

[3] A.R.S. § 33-271 through § 33-276

■ **Public Acquisition and Disposition of Land**
Local governments may affect land use patterns within their boundaries by intervening directly in the development process:

- Through property acquisition by purchase or eminent domain.
- Through the development of publicly owned property for public use.
- By stimulating the redevelopment of under-utilized property through renewal and redevelopment programs.

In Arizona, municipalities may "purchase, lease, or rent land" outside, as well as within, their corporate limits.[4] The power to acquire property gives local governments a way to directly control the development of land. Traditionally, the broadest exercise of this power has been in the area of redevelopment. Under enabling legislation for the renewal of obsolete areas, Arizona cities are given authority to acquire interests in land by eminent domain, and to dispose of that land in ways that will assure its future development in accordance with a redevelopment plan. The powers conferred to municipalities to engage in redevelopment projects contrast dramatically with the more limited powers otherwise available for municipal land acquisition.

■ **Arizona Preserve Initiative**
The Arizona Preserve Initiative (API) provides a process for conserving Arizona State Trust Land as open space within or near a municipality. Adopted in 1996 and amended in 1997, the API allows for Trust Land to be sold or leased for conservation purposes.[5] As part of this process, land is reclassified and sold or leased through auction. A matching grant program is administered through Arizona State Parks to assist with funding the acquisition of Trust Land for conservation purposes. Funding for this program was approved by the voters as Proposition 303 in 1998 and totals $20 million per year for 11 years, beginning in fiscal year 2001.

For more information on the API and the grant program contact:

Arizona State Land Department
Arizona Preserve Initiative
1616 West Adams
Phoenix, AZ 85007
(602) 542-2643
http://www.land.state.az.us/

Arizona State Parks
Growing Smarter Grant Programs
1300 W. Washington Street
Phoenix, AZ 85007
grants@pr.state.az.us
http://www.pr.state.az.us/partnerships/growingsmarter/growing.html

■ **Transfer and Purchase of Development Rights**
The concept behind transfer of development rights (TDR) and purchase of development rights (PDR) is that property rights are comprised of a "bundle" of rights, which include development rights, air space rights, mining rights, etc. (see Appendix C, Land Rights Diagram). Under the PDR concept, private or government entities could negotiate with the landowner to purchase development rights on all or part of a property, and the title and other rights associated with the property remain with the original owners. This would allow the owner to benefit financially from the development potential of the property, and permit the retention of agriculture or open space in the community at lower public cost than the acquisition of the entire fee interest. A.R.S. § 9-464.01 provides that the acquisition of interests or rights in real property for the preservation of

[4] A.R.S. § 9-401
[5] A.R.S. Title 37, Article 4.2

open spaces or areas constitutes a public purpose for which public funds may be expended or advanced.

Similar benefits may occur under a TDR system, although TDR allows for "trading" of development rights among landowners rather than outright purchase. Under the TDR concept, "sending areas" and "receiving areas" are created to identify land that is suitable for limiting or accepting additional development rights, respectively. A property owner would be able to transfer development rights from one location to another. A municipality could also purchase development rights in a sending area for resale in a receiving area, or otherwise function as an intermediary as specified by its ordinance.

A.R.S. § 9-462.01(A)(12) establishes the authority and requirements associated with the TDR process. "Development rights" are defined in the statute as the maximum allowable development, with respect to the use, area, bulk, or height of improvements. A quantifiable value for development rights must be established in a TDR ordinance, which could include number of dwelling units, floor area, floor area ratio, height limitations, or traffic generation. Receiving properties must be identified based on the ability to accommodate the additional development rights without "substantial adverse environmental, economic, or social impact to the property or neighboring properties". Sending properties are defined in law as areas with special characteristics, which may include floodplain, mountains, recreation or parkland or historic or aesthetic value.[6]

■ **Development ("Impact") Fees**

A.R.S. § 9-463.05 authorizes a municipality to assess development fees to offset costs to the municipality associated with providing necessary public services to a development. A development fee must result in a beneficial use to the development, must bear a reasonable relationship to the burden imposed upon the municipality to provide additional necessary public services to the development, and must be assessed in a nondiscriminatory manner. A development impact fee ordinance must provide a credit toward the payment of a development fee for the required dedication of public sites and improvements provided by the developer for which the development fee is assessed.

■ **Development Agreements**

A.R.S. § 9-500.05 authorizes a municipality to enter into development agreements. A development agreement may address any matter relating to the development of property, including land use restrictions, provisions for infrastructure, phasing schedules, timing of annexation, and duration of the agreement. A development agreement must be consistent with a municipality's general and specific plans. This statute has not been construed by the Arizona courts in a land use context. Unresolved legal issues regarding development agreements include the relationship of such agreements to zoning regulations, notice and hearing procedures for adoption of development agreements, and whether such agreements constitute "contract zoning."

■ **Moratoriums**

A.R.S. § 9-463.06 prescribes the conditions under which a city or town may enact a moratorium on development or construction activities, including notice and hearing requirements and written findings justifying the need for the moratorium. The statute provides that a moratorium may be justified by either a need based on a shortage of essential public services or a "compelling need," which is defined as a clear and imminent danger to the health and safety of the public. The statute also provides for limitations on the duration of moratoriums and requires that procedures be established to allow landowners to seek waivers.

[6] A.R.S. § 9-462.01(H)

3.3 COUNTY PLANNING AUTHORITY

The counties' primary tools for land use control are planning, zoning, and subdivision regulations. Although the 1998 and 2000 Growing Smarter/Plus Acts added to county planning tools, authority in these areas is not as comprehensive as that of municipalities. The authority of counties to zone is set forth in A.R.S. §§ 11-801 to 11-833. Counties may enact airport and floodplain regulations pursuant to the same enabling legislation applicable to municipalities. Counties also are authorized to adopt overlay zoning districts and regulations.[7]

A.R.S. § 11-802 provides counties with specific statutory power to engage in comprehensive planning:

> "The board of supervisors of a county, in order to conserve and promote the public health, safety, convenience and general welfare and in accordance with the provisions of this chapter, shall plan and provide for the future growth and improvement of its area of jurisdiction, and coordinate all public improvements in accordance therewith…"

A.R.S. § 11-821 provides that a county planning commission and board of supervisors are responsible for formulating and adopting a long-term, comprehensive plan. (For more information on the county comprehensive plan and its elements, see Chapter 7.)

■ **Creation of Planning Commission**

A.R.S. § 11-802 also directs each county board of supervisors to:

> "…form planning and zoning commissions to consult with and advise it regarding matters of planning, zoning, and subdivision platting and in the manner provided in this chapter, adopt and enforce such rules, regulations, ordinances and plans as may apply to the development of its area of jurisdiction."

A.R.S. § 11-803 provides the regulations for the composition and term-length of county planning and zoning commissions. The number of members is dependent upon the number of supervisors in the county.

- In counties having three supervisory districts, the commission consists of nine members. Three members are appointed from each supervisory district by the supervisor from that district, and not more than three may be a resident of an incorporated municipality.

- In counties having five districts, the commission consists of ten members, two from each district, and not more than one from each district may be a resident of an incorporated municipality.

With the exception of the first appointed planning and zoning commission, county commissioners' terms are for four years. Depending on the number of members, the initial planning and zoning commission will consist of five two-year and five four-year terms (for a ten-member commission) or four two-year and four-four year terms (for a nine-member commission). If a vacancy occurs other than by expiration of the term, it must be filled by an appointment replacing the remaining portion of the term.

The county supervisors may remove a member of the commission for cause. The county assessor, county engineer, county health officer and county

[7] A.R.S. § 11-821(F)

attorney all serve in an advisory capacity to the planning commission and board of adjustment.

The statutes that govern county planning and zoning authority (A.R.S. § 11-801, 11-802, 11-803 and 11-804) are included in Appendix B. To search the statutes in their entirety, consult a library or the ARS website at: www.azleg.state.az.us/ArizonaRevisedStatutes.asp.

3.3.1 Other Sources of County Authority to Control Land Use

Much of Section 3.2.1 related to municipal authority also applies to county planning, including the discussions of permits and licensing, easements and covenants, the acquisition and disposition of land, and the Arizona Preserve Initiative. Specific provisions with regard to county authority are noted below. Arizona Statutes do not address TDR in counties. In several areas, counties have authority to adopt regulations affecting land use that cities do not possess, such as the power to regulate air pollution.

■ **Nuisance**

Only county boards of health have authority to control and abate nuisance.[8] The board of supervisors has authority to "make and enforce all local, police, sanitary and other regulations not in conflict with general law".[9] The statutes authorize the county to establish boards of health, which may exercise all usual powers, including the regulation of sanitary conditions for subdivision.[10]

■ **Licenses and Permits**

Counties may require licenses and permits and building codes may be adopted and enforced through permits.[11] However, the activities and occupations subject to regulation may be more limited than those for cities. Before the county may regulate, the express power to do so must be delegated to it through enabling legislation.[12]

■ **Acquisition and Disposition of Land**

Counties may acquire land for public purposes including open space by eminent domain.[13] Counties cannot engage in redevelopment or renewal activities, and the procedures for disposing county-owned land are restricted.

■ **Pollution Control**

The responsibility for controlling air pollution is shared by the Arizona Department of Environmental Quality and county boards of supervisors at the local level. Each board must designate a county department, establish an air control district or form a multi-county air quality control region to enforce air quality legislation within "non-attainment areas".[14] A board of supervisors is required to adopt such rules as it determines are necessary and feasible to control the release into the atmosphere of air contaminants originating within the county or multi-county air quality region. Standards must be at least equal to, or more restrictive than, those adopted by the State.[15]

■ **Development ("Impact") Fees**

The Growing Smarter/Plus legislation authorized a county that has adopted a capital facilities plan to assess development fees within the covered planning area in order to offset the capital costs for water, sewer, streets, parks and public safety facilities determined by the plan to be necessary for public services provided by the county to a

[8] A.R.S. §§ 36-601 and 36-602

[9] A.R.S.§ 11-251(31)

[10] A.R.S. § 36-182 and *Davis v. Hidden*, 124 Ariz. 546, 606 P.2d 36 (1979).

[11] A.R.S. §§ 11-808, 11-861, and 11-863.

[12] *Davis v. Hidden*, 124 Ariz. 546, 606 P.2d 36 (1979)

[13] A.R.S. §§ 9-464.01 and 12-1111.

[14] A.R.S. § 49-473

[15] A.R.S. § 49-479

development in the planning area.[16] Development fees assessed by a county are subject to the same requirements imposed on municipalities, except that a county must give at least 120 days of advance notice of the intention to assess a new or increased development fee.

■ **Development Agreements**

A.R.S. § 11-1101 authorizes a county to enter into development agreements. The authority granted is substantially the same as that granted to municipalities, except that a county may only enter into development agreements relating to property outside the incorporated area of a city or town.

3.4 THE TAKINGS ISSUES AND PLANNING

Justice William O. Douglas of the U.S. Supreme Court, writing the majority opinion in *Village of Belle Terre v. Borass* [17] upheld a zoning ordinance restricting land use to single-family dwelling units, stating:

> "A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land use project addressed to family needs - the police power is not confined to elimination of filth, stench, and unhealthy places, it is ample to lay out zones where family values, youth values, and the blessing of quiet seclusion, and clean air make the area a sanctuary for people."

Zoning has also been defined as the process whereby a community defines its essential character. Whether driven by a concern for health and safety, or other public values, zoning provides the mechanism by which neighboring uses of land are not mutually – or more often unilaterally – destructive.[18] As Justice Sutherland observed for the United States Supreme Court in the landmark case of Village of *Euclid v. Ambler Realty Co.*,[19] the power to zone closely parallels the common law of nuisance and thus finds guidance in the maxim "sic utere tuo ut alienum non laedas" (use your own property in such a manner as not to injure that of another).[20] Hence, a community reasonably might conclude that a factory has no place in an otherwise exclusively residential section or that an amusement park does not belong in an area devoted to quiet parks, libraries, and schools. As in nuisance law, the issue is ultimately one of whether the proposed land use is – "like a pig in the parlor instead of the barnyard" – "merely the wrong thing in the wrong place." [21]

In the interest of the public health, safety, and welfare, government can appropriate private land for public purposes. When this occurs, compensation must be paid. The term "taking" refers to a situation in which the regulation of private property without compensation is considered so burdensome as to be unconstitutional. This is sometimes also referred to as inverse condemnation.

The police power, i.e., the power to protect the public health safety and welfare (discussed in 3.1) is the legal basis for land use regulation. The courts interpret this authority broadly. Land use regulations may include economic, aesthetic, or safety considerations – as long as local law is not in conflict with state or federal law. Typically, landowners who claim inverse condemnation must show that for a temporary or permanent period of time all the use and value of a property has been destroyed – not just the owner's ability

[16] A.R.S. § 11-1102

[17] 416 U.S. 1(1974)

[18] *Brendale v. Confederated Tribes and Bands of Yakima Indian Nations*, 492 U.S. 408 (1989).

[19] 272 U.S. 365(1926)

[20] Id., at 387

[21] Id., at 388

to pursue a preferred or intended use. In Arizona, case law has affirmed that, to constitute a taking, a land use regulation must deprive the landowner of all reasonable use for which the property is adapted, and destroy its economic value, or leave all but a bare residue of its value.[22]

Takings are often a complex issue, and any specific questions should be directed to legal counsel. In precedent-setting court decisions, several considerations have been identified with regard to land use regulation and takings:

■ **Public Benefit**
Land use regulations must promote the common good. As expressed in *Agins v. City of Tiburon*,[23] part of the test to determine if a taking has occurred is if an ordinance "substantially advances legitimate state interests." In that case, the community's low density zoning ordinance was upheld. The court found that the preservation of open space is a legitimate use of the police power to guard a community against the effects of urbanization. In another example, in *Village of Euclid v. Ambler Realty Co.*,[24] the U.S. Supreme Court held that zoning classifications that separate incompatible land uses may benefit the whole community by ensuring safety and protecting property values. Zoning that protects or enhances the health and safety or welfare of a community will typically pass this test.

■ **Economically Viable Land Uses**
Another consideration used by courts evaluating the constitutionality of a land use regulation is whether it deprives a property of all economically viable use. Some fluctuation in property value is likely to occur in response to any government regulation. Fluctuation alone is not typically grounds for a finding of a taking. Typically, the courts have found that a taking has occurred when a regulation restricts a property from all economically viable uses in the name of the common good.

■ **Exaction**
A nexus (reasonable relationship or logical connection) should exist between an exaction permit condition and the nature of the projected impacts of the proposed development. The scope of an exaction must be roughly proportional to the projected impact of the proposed development.

■ **Due Process**
Under the U.S. Constitution, property owners are guaranteed due process of law when the government deprives them of property. In evaluating the legitimacy of a regulation or land use decision, courts may review the process through which it was developed to ensure this guarantee. Such a review may include the assurance that fair public hearings were held or conflicts of interest avoided, among other procedural considerations.

To summarize, a municipality can minimize or avoid the potential for damages to be assessed against it by ensuring that its land use regulations:

- Do not exert disproportionate effects on individual developers or property owners.
- Establish a connection (nexus) between the condition imposed and the perceived impacts of the development.
- Allow some economically viable use of the property.

Municipal attorneys and planners may evaluate procedures to minimize exposure to regulatory taking claims and to avoid liability for damages in the following ways:

[22] *Ranch 57 v. City of Yuma*,152 Ariz. 218, 731 P.2d 113 (Ariz. App. 1986)
[23] 447 U.S. 255 (1979),
[24] 272 U.S. 365

- Determine the adequacy of land uses in the general plan and zoning categories to ensure a reasonable array of uses that may apply to property in each district.

- Evaluate existing procedures for obtaining relief. It may be advisable to enable an aggrieved landowner to appeal to the city or town council to alleviate the effect of potentially confiscatory regulations. It should be noted that Arizona law already requires a process for appealing administrative exactions in municipalities [A.R.S. § 9-500.12] and counties [A.R.S. § 11-810].

- Establish the necessity for justifying development fees and exactions with studies that link the public purpose to be achieved with the nature and extent of the conditions imposed. Traditional dedication requirements may be more suspect than fee exactions because they are seldom preceded by capital facilities studies that typically accompany fee ordinances.

In addition to constitutional principles that protect property owners from arbitrary and confiscatory land use regulations, "protected development rights" statutes have been adopted in Arizona that permit land to be developed in accordance with certain approved development plans, notwithstanding changes in land use regulations for specified periods of time. These statutes are set forth in A.R.S. § 9-1201 et seq. (cities and towns) and A.R.S. § 11-1201 et seq. (counties).

3.5 CASE LAW REGARDING LAND USE REGULATION

The United States Supreme Court has handed down several significant rulings that relate to planning and land use regulations. Brief descriptions of the background and holding for each case are provided below. Please note that court decisions can shift, be defined more precisely, or otherwise reinterpreted over time, as new cases are heard and new justices are appointed. When in doubt on the legal aspects of a specific situation, it is recommended that legal counsel be consulted.

3.5.1

***Penn Central Transportation Company v. City of New York*, 438 U.S. 104,98 S.Ct. 2646 (1978)**

Background ■ Owners of Penn Central wished to develop a multi-story tower above its station in New York City. This desire was in conflict with the New York City Landmark Preservation Ordinance, which had been adopted to preserve the character of existing designated historic buildings. Penn Central challenged the ordinance and sued to build the office tower and recover compensatory damages for the temporary "taking" of holding up the development of the tower.

Supreme Court Holding ■ The Supreme Court held that the property right to maximize the economic potential by developing the skyscraper was only one of many property rights held by the owners. The ordinance was applied to like properties and therefore did not single out Penn Central. All owners of like properties were both restricted in their development potential and enjoyed the benefits of the Landmark Preservation Ordinance. Penn Central was not prevented from carrying out their existing lucrative business in the terminal so the court determined that the prevention of a skyscraper was not a taking.

3.5.2 *Agins v. The City of Tiburon*, 447 U.S. 255 (1980)

Background ■ Agins acquired 5 acres of unimproved land in Tiburon, California for residential development. The City of Tiburon rezoned the land to allow between one and five single-family residences and open space uses. Agins sued the city, alleging that the restrictions on the use of their property due to zoning amounted to a taking without just compensation. The California Supreme Courts ruled for Tiburon, holding that the zoning ordinance had deprived Agins of his property. The case was appealed to the Supreme Court.

Supreme Court Holding ■ The Court upheld the zoning designation, and established a "two-part test" for determining whether regulation has resulted in a taking. The test indicates that a taking has occurred: 1) if it can be shown that the regulation deprives an owner economically viable use of his land, or 2) if the regulation does not advance a legitimate government interest. This is frequently referred to as the "disjunctive test". In this case, the appellants were not prevented from using their property or denied other fundamental attributes of ownership by the zoning ordinance. In addition, the Court determined that the ordinance did substantially advance the legitimate government goal of discouraging premature and unnecessary conversion of open space to urban land uses.

3.5.3 *First English Evangelical Lutheran Church of Glendale v. Los Angeles County*, 107 S.Ct. 2378 (1987)

Background ■ The church owned land along a creek where flooding had destroyed all the buildings on the property. In response to the flooding, Los Angeles County adopted an interim ordinance prohibiting construction or reconstruction of buildings or other structures within an interim flood protection area, which included land owned by the church. As a result, the church sued the county to recover damages, alleging that the ordinance denied it all use of its property.

The California courts held that a landowner need not be compensated for the reason that compensation is not required unless an ordinance is first declared unconstitutional and the government decides to let it remain in effect. Otherwise, invalidation of the ordinance is a sufficient remedy. The case was appealed to the Supreme Court.

Supreme Court Holding ■ The U.S. Supreme Court reversed the California Court of Appeals and held that even though a taking may be temporary in nature, invalidation of a regulation is not an adequate remedy and that under the Just Compensation Clause of the Fifth Amendment, compensation must be paid for the period of time an unconstitutional regulation is in effect.

The *First English* decision had less impact in Arizona than in some other states because the Arizona Supreme Court had already ruled that landowners may seek compensation for damages that result from confiscatory land use regulations and temporary takings *Corrigan v. City of Scottsdale.*[25]

3.5.4 *Nollan v. California Coastal Commission*, 107 S.Ct. 3141 (1987)

Background ■ Nollan had applied for a permit to build a larger house on his beachfront lot. The California Coastal Commission included a permit

[25] 149 Ariz. 538, 720 P.2d 513 (1985), *cert. denied*, 479 U.S. 986

condition that required Nollan provide a public easement across his property, to allow access from one public beach to another public beach. Nollan sued, alleging a taking. The county court struck down the permit condition, but on appeal the California Court of Appeals ruled that the condition did not violate the takings clause of the constitution. The case was appealed to the Supreme Court.

Supreme Court Holding ■ The Court determined that the Coastal Commission's imposition of a requirement of a public easement across the plaintiff's property as a condition of development approval constituted a taking without just compensation under the Fifth Amendment. Although the government has the power to impose conditions on permits to further public purposes, the Court determined that the Coastal Commission's goal of public access was not sufficiently related to the permit sought by Nollan. The rationale for the permit condition was that the new development would block the view of the beach, discouraging access, and that the impact of the development, together with other development in the area, would cumulatively burden the public's right to traverse the beach. Although the public goal of continuous beach access is valid, the government must pursue that goal through means other than disproportionately burdening coastal landowners. In other words, there was no rational connection ("nexus") between the permit to build a larger house and the need for public access across Nollan's property. The fact that the house might block view of the beach from the road had nothing to do with the need of people already on a public beach to traverse Nollan's property to get to another public beach on the other side.

This decision warns jurisdictions that they must thoroughly consider and document the nexus between public goals and the exactions intended to achieve them.

3.5.5

Lucas v. South Carolina Coastal Council, 112 S.Ct. 2886, 120 L.Ed. 798 (1992)

Background ■ Lucas bought two residential lots on a South Carolina barrier island, intending to build single-family homes such as those on the immediately adjacent parcels. At the time of purchase, Lucas's lots were not subject to the state's coastal zone building permit requirements. Subsequently, the state legislature enacted the Beachfront Management Act, which barred Lucas from erecting any permanent habitable structures on his lots. Lucas filed suit against the state agency, contending that the ban on construction deprived him of all economically viable use of his property and therefore effected a taking under the Fifth and Fourteenth Amendments that required the payment of just compensation. He did not dispute the validity of the regulation as a lawful exercise of the police power. A state court agreed with Lucas, then the South Carolina Supreme Court reversed this decision, ruling that no compensation was required since the regulation in question – the Beachfront Management Act – was designed to prevent "harmful or noxious" uses of property. The case was appealed to the U.S. Supreme Court.

Supreme Court Holding ■ The U.S. Supreme Court reversed the South Carolina Supreme Court ruling and remanded the case to the state courts to give the state an opportunity to prove that, under state common-law principles of nuisance and property law, Lucas' proposed uses of the lots could be prohibited. If state common law principles would have prevented the erection of habitable structures (although the Court deemed this unlikely), then the state could reasonably argue that it is not responsible for compensation since the Beachfront Management Act does not deprive the landowner of private property, as the "proscribed use interests were not part of his title to begin with." Otherwise, the Court decision affirmed that the government would be required

to provide compensation, since all economically viable use of Lucas' property was lost. A key outcome of this case is the affirmation that government regulation can affect a taking (as opposed to a physical taking, in which the government would actually take possession of a property).

Although the validity of the use of the police power to enact the Beachfront Management Act was not questioned in this case, the Supreme Court listed in its decision the considerations for a typical inquiry into whether a taking has occurred, which included: 1) the degree of harm to public resources or adjacent private property posed by the landowner's proposed activities; 2) the social value of the landowner's activities and their suitability to the locality in question; and 3) the relative ease with which the alleged harm can be avoided through measures taken by both the landowner and the government (or adjacent private landowners). In addition, the fact that a particular use has long been engaged in by nearby owners (or that that other nearby landowners are permitted to continue the use denied to the aggrieved landowner) is typically irrelevant to common-law prohibition (though changed circumstances or new knowledge may make what was previously permissible no longer so).

3.5.6 *Dolan v. City of Tigard*, 114 S.CE. 2309 (1994)

Background ■ Dolan applied for a permit to expand her store and pave her parking lot. Approval of the permit was conditioned on the dedication of land for two purposes: a public greenway along a creek on the property to minimize flooding that would be exacerbated by the increase in impervious surface on the property, and a pedestrian/bike pathway to ease traffic congestion in the central business district. Through the City of Tigard Board of Appeals, Dolan alleged an uncompensated taking occurred since the land dedications were not related to the proposed development. The Board of Appeals (and later the state courts) rejected this assertion, finding a reasonable relationship between the permit conditions and the proposed development. The case was appealed to the U.S. Supreme Court.

Supreme Court Holding ■ The Court reversed the decision, stating that the dedication requirements constituted an uncompensated taking of property. The Court found that preventing flooding and reducing traffic congestion were public purposes, and that a nexus did exist between the public purposes and the general strategies of limiting development and providing for alternative means of transportation. However, the Court used an individualized measure of "rough proportionality" to determine whether the nature and extent of the land dedication requirements fit the nature of the proposed development, and found that they did not. This finding was based on the fact that: 1) Dolan had already dedicated 15% of her property in the floodplain to open space under the city code, and the city did not specify why a public (as opposed to a private) easement was necessary for flood control; and 2) the city did not demonstrate that the vehicle and bike trips generated by Dolan's development would reasonably relate to the pathway easement.

3.5.7 *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 216 f.3d 764 (2002)

Background ■ Between 1981 and 1984, the Tahoe Regional Planning Agency issued a moratorium on development on certain sensitive lands along the Lake Tahoe coastline. The agency was concerned about water quality degradation due to runoff from shoreline development, and the moratorium was imposed as a way to avoid

further damage while the problem was studied and a land use plan developed. Hundreds of landowners who had bought undeveloped lots along the lake sued, arguing that the moratorium constituted a taking since it deprived them of all economically viable use of their properties. The case reached the U.S. Supreme Court and was decided in April 2002.

Supreme Court Holding ■ The Court held that the moratorium did not automatically amount to a taking. The plaintiffs had argued that the *Lucas* case (described above) indicated that regulation would affect a taking if all viable economic uses were prohibited by it, and raised the prospect that even temporary restrictions would be subject to this rule. The merit of the water degradation considerations was not at issue. The decision stated that "land use regulations are ubiquitous and most of them impact property values in some tangential way", but that compensation for all such regulations would "render government processes prohibitively expensive or encourage hasty decision-making." Each moratorium must be weighed on its merits, including consideration of the public purpose, duration, and impact on the property owners' expectations. In essence, the Court upheld the moratorium as a legitimate aspect of planning efforts to address community issues.

3.5.8 *Palazzolo v. Rhode Island*, 121 S.Ct. 2448 (2001)

Background ■ Palazzolo's predecessor in interest purchased an 18-acre waterfront parcel in 1959. Most of the parcel was a salt marsh subject to tidal flooding. Some applications to develop the parcel were rejected by various governmental agencies in the early 1960s. In 1971, the state designated salt marshes as protected coastal wetlands on which development is greatly limited. The effect of the regulation was to limited development on Palazzolo's land to one single-family residence. In the early 1980s, Palazzolo applied to fill part of the parcel and build a private beach club. After his application was denied, he filed an inverse condemnation action in state court asserting, among other things, that the wetlands regulations had taken his property without just compensation by depriving him of all economically beneficial use and seeking damages. The trial court ruled against Palazzolo and the Rhode Island Supreme Court affirmed, holding, among other things, that he could not assert a takings claim based on the denial of all economically viable use in light of undisputed evidence that he had $200,000 in development value remaining on an upland parcel of the property.

Supreme Court Holding ■ The U.S. Supreme Court held that the Rhode Island Supreme Court did not err in finding that Palazzolo failed to establish a deprivation of all economic use, for it was undisputed that his parcel retained significant development value. The Court noted that a state may not evade the duty to compensate on the premise that the landowner is left with a token interest, but that was not the situation in this case. A regulation permitting a landowner to build a substantial residence on an 18-acre parcel does not leave the property "economically idle." Although deprivation of all economic use was not shown, the case was remanded to the state courts to consider whether a taking had occurred under the ad hoc factual analysis of all circumstances approach set forth in the *Penn Central* case (see Section 3.5.1 of this chapter).

3.6 ADDITIONAL REFERENCES

For specific cases or detailed questions, please consult with your jurisdiction's attorney.

Web site for the Arizona State Legislature: http://www.azleg.state.az.us

Web site for the U.S. Supreme Court:
http://www.supremecourtus.gov/index.html

Web site for the Legal Information Institute:
http://www.law.cornell.edu/topics/land_use.html

[1] A.R.S. § 9-462.05(D)
[2] *Goodman v. Superior Court,* 137 Ariz. 348, 670 P. 2d 746 (App. 1983)
[3] A.R.S. § 33-271 through § 33-276
[4] A.R.S. § 9-401
[5] A.R.S. Title 37, Article 4.2
[6] A.R.S. § 9-462.01(H)
[7] A.R.S. § 11-821(F)
[8] A.R.S. §§ 36-601 and 36-602
[9] A.R.S.§ 11-251(31)
[10] A.R.S. § 36-182 and *Davis v. Hidden*, 124 Ariz. 546, 606 P.2d 36 (1979).
[11] A.R.S. §§ 11-808, 11-861, and 11-863.
[12] *Davis v. Hidden*, 124 Ariz. 546, 606 P.2d 36 (1979)
[13] A.R.S. §§ 9-464.01 and 12-1111.
[14] A.R.S. § 49-473
[15] A.R.S. § 49-479
[16] A.R.S. § 11-1102
[17] 416 U.S. 1(1974)
[18] *Brendale v. Confederated Tribes and Bands of Yakima Indian Nations*, 492 U.S. 408 (1989).
[19] 272 U.S. 365(1926)
[20] Id., at 387
[21] Id., at 388
[22] *Ranch 57 v. City of Yuma*,152 Ariz. 218, 731 P.2d 113 (Ariz. App. 1986)
[23] 447 U.S. 255 (1979),
[24] 272 U.S. 365
[25] 149 Ariz. 538, 720 P.2d 513 (1985), *cert. denied*, 479 U.S. 986

Planning & Zoning HANDBOOK

PUBLIC PARTICIPATION & PUBLIC HEARINGS

CHAPTER 4

CHAPTER 4

PUBLIC PARTICIPATION & PUBLIC HEARINGS

Planning commissions and boards of adjustment have a responsibility to inform and educate their communities on the purpose and benefits of planning, as well as invite public input on planning issues. This chapter focuses on the statutory requirements for public notification and involvement – especially provisions of the Open Meeting Law and Growing Smarter/Plus – and techniques for conducting meetings.

Well-run meetings and open public participation are vital to the ability of the commission or board to make informed and effective decisions. First, more input often leads to better decision-making, since decisions are then based on more information. Second, when the public sees the process through which decisions are made as reasonable and objective, those decisions are more likely to be accepted. Finally, State Statutes establish certain requirements with regard to public notification and input. Not following the law may invalidate a decision.

4.1 THE OPEN MEETING LAW

The operation of government and the activities of government officials are often topics of interest to the public. Generally speaking, there seems to be a distinct message delivered by the public:

The public's business must be conducted in public!

Arizona's Open Meeting Law [A.R.S. § 35-5431] provides very simply that, with a few limited exceptions, all meetings of a public body shall be open to all persons desiring to attend.

The law defines a meeting as "the gathering of a quorum of members of a public body to propose or take legal action, including any deliberations with respect to such action." This means that all meetings or gatherings at which a quorum of the public body is present to discuss or decide public business must comply with the notice, agenda and minute requirements specified in the law and, except where an executive session is expressly authorized, be open to the public. Meetings of less than a quorum that are perceived to be an attempt to get around this provision are also violations of the Open Meeting Law. The law requires that any doubts on correct procedure be resolved in favor of openness.

General Provisions ■ The Open Meeting Law applies to more than just the meetings of the Legislature, the boards of supervisors, and city or town councils. It applies to any "public body." If the public body or its presiding officer appoints a committee or subcommittee to study a particular issue, the law also governs the meetings of the committee or subcommittee, regardless of the composition of the group. This means that planning and zoning commissions, boards of adjustment, library boards, school boards, special district boards, and any standing, special, and advisory committees or subcommittees to these groups, must all comply.

Sanctions ■ If any business of a public body is conducted in violation of the provisions of the Open Meeting Law, the actions taken at such a meeting are null and void. In addition, any person affected, the Attorney General, or the county attorney may file an action and obtain civil penalties, attorneys' fees and court injunctions against the public body or individual who violated the law. The court may remove that person or those persons from office and personally assess them with the attorneys' fee award.

Ratification ■ A public body may ratify legal action previously taken in violation of the law. Ratification is appropriate when the public body needs to validate a prior act in order to preserve the earlier effective date of the action. For example, some public bodies are required by law to approve their budgets by a certain date. If the public body discovered after the statutory deadline that its earlier approval was void due to a violation of the Open Meeting Law, it could face serious legal problems. In this situation, it would be appropriate for the public body to meet and ratify its prior action in order to preserve the initial effective date of the action. Ratification merely validates the prior action; it does not eliminate liability of the public body or others for injunctive relief, penalties and fees. The procedure for ratification is prescribed in A.R.S. § 38-431.05(B).

4.1.1 Public Notice Requirements

The Open Meeting Law requires that public notice be given for all public meetings and executive sessions. In giving notice, the first step is to file a statement with the municipal or county clerk identifying where public notices of the meetings of the public body will be posted. Once this statement has been filed, the law requires that the public body post notice each of its meetings

in accordance with this statement and "give such additional notice as is reasonable and practicable." The notice must be posted at least twenty-four hours before the meeting, and must include the time, date, and place of the meeting.

Any public body that intends to meet for a specified calendar period on a regular day or date and at a regular place and time may post public notice of these meetings at the beginning of this period of time. For example, a notice of regularly scheduled meetings of a city council may be posted once at the proper location to cover all regular meetings taking place during a specified period of time. The notice must indicate the period of time for which the notice will be valid.

Notice for Meeting Resumption ■ Except when an actual emergency is found to exist, no public meeting or executive session may be held with less than twenty-four hours notice to the members of the public body and the general public. However, a meeting may be recessed and resumed with less than twenty-four hours notice if public notice of the initial session of the meeting was properly given; and if, prior to recessing, notice is publicly given as to the time and place of the resumption of the meeting, or the method by which public notice for the resumption of the meeting is to be given.

The only exception to these provisions for public notice is in the case of an emergency when a meeting can be called with notice appropriate under the circumstances.

4.1.2 The Meeting Agenda

The Open Meeting Law requires that the public body provide an agenda of the specific matters to be discussed, considered or decided at a public meeting. This does not permit the use of agenda items such as "new business" or "old business" unless the specific items of new and old business are listed. The agenda should "contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided." In addition, public bodies may include a "call to the public" in their agendas to designate a part of the meeting during which members of the public may address the public body on any issue. However, it should be noted that the public body should not discuss or take action on the issues raised during the call to public, but may decide to place the issue on a future agenda for discussion or action. If it is essential that the body act immediately, it should declare an emergency and take action in accordance with the emergency procedure prescribed in A.R.S. § 38-431.02.

The agenda may be included as part of the public notice, or if the notice advises the public as to how they can obtain an agenda, it can be distributed separately from the notice. In either case, the agenda must be made available at least twenty-four hours before the meeting, unless an actual emergency is found to exist.

Preparing the Agenda ■ The agenda for any single meeting should not be overloaded. If necessary, schedule an occasional extra meeting to clear any backlog of items that need to be considered. This is better than holding a marathon meeting to tackle a long list of items. Prior to regular meetings, boards and commissions may opt to hold study sessions with staff present to review complex cases and familiarize themselves with the case materials. Study sessions are useful because they provide an informal setting for commission members to discuss and ask questions, and also provide the public or potential applicants the opportunity to learn commission's concerns and philosophy prior to a formal hearing.

Schedule topics on the agenda to avoid inconvenience or delays to the public, and follow the agenda. Unopposed and noncontroversial items should be addressed first, allowing the people connected with them to leave early on. This practice will also help move things along expeditiously on the agenda.

Consent and Action Items ■ Many commissions find that dividing the agenda into two parts, consent and action items, helps speed the meeting along. Items listed under consent are usually decisions for which there is no controversy, consensus has been reached, no new information is available, and the case already has been reviewed by the commission in detail. The consent items are read at the public meeting. Before a motion is made and note is taken, the chair asks if any commissioner or member of the public would like any of the items removed from the consent agenda in order to hear discussion of the item. If no one objects, then a motion to approve the consent agenda is made and the vote taken. If any item is removed, it is put on the regular agenda. The commission can then move on to action items.

For each action item, staff should present the facts of the case and staff recommendations. Board members and commissioners should ask any questions of staff not addressed in any pre-meeting study session before turning to the applicants to present their case. Finally, board members and commissioners may ask brief, pertinent questions of the applicants. This should be an opportunity to gather new information to aid in decision-making.

4.1.3 Executive Sessions

The Open Meeting Law permits public bodies to hold an executive session – a closed meeting from which the public may be excluded – for discussion and consideration of particular subjects. The law specifies the seven purposes for which an executive session may be called. These are:

1. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resigning of a public officer, appointee or employee of any public body (with the exception of salary discussions in which an officer, appointee or employee may demand that such discussion or consideration occur at a public meeting). The public body must provide the officer, appointee or employee with such notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether such discussion or consideration should occur at a public meeting.

2. Discussion or consideration of records exempt by law from public inspection.

3. Discussion or consultation for legal advice with the attorney(s) of the public body.

4. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorney(s) regarding the public body's position in pending or contemplated litigation.

5. Discussion or consultation with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body.

6. Discussion, consultation or consideration for international and interstate negotiations.

7. Discussion or consultation with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiation for the purchase or lease of real property.

The law only permits an executive session in these instances; it does not require an executive session. Planning commissions and boards of adjustment

should establish, with the assistance of their local attorney, a clear procedure to use when holding an executive session.

Public Notice of Executive Session ■ Before an executive session may be held, twenty-four hours notice of the executive session must be given, and a majority of the public body must vote in public to hold the executive session. For example, if the need for an executive session arises during the course of a regular meeting, the public body may vote to hold the session. However, the executive session cannot be held at that time, unless at least twenty-four hours notice has previously been given. The notice must cite A.R.S. § 38-431.02, the specific provision of law authorizing an executive session.

Executive sessions may be held during a public meeting if the proper notice of the executive session is posted as part of the public meeting notice or as a separate notice. If the need for an executive session arises at a time other than during a meeting, a notice calling a special meeting and an executive session must be posted. The special meeting must be convened to vote on holding an executive session, and then upon a majority vote in a public meeting, the public body may adjourn into executive session.

The Agenda for Executive Session ■ Agendas for executive sessions must contain a "general description of the matters to be considered" but should not contain information that "would defeat the purpose of the executive session."

No executive session may be held for the purpose of taking any legal action involving a final vote or decision.

4.1.4 Meeting Records

All public bodies, including subcommittees and advisory committees, must provide written minutes or a recording of all meetings. The minutes or recording of all public meetings must include, at a minimum, the following:

1. The date, time and place of the meeting.
2. The members of the public body recorded as either present or absent.
3. A general description of the matters discussed or considered.
4. An accurate description of all legal actions proposed, discussed or taken, the names of members proposing motions, and each member's vote.
5. The names of persons, as given, making statements or presenting material to the public body and a reference to the specific legal action addressed by the person.
6. If the discussion in the public session does not adequately disclose the subject matter and specifics of the action taken, the minutes of the public meeting at which such action was taken should contain sufficient information so that the public may investigate further the background or specific facts of the decision.
7. In the event that matters not on the agenda were discussed or decided at a meeting because of an actual emergency, the minutes must contain a statement setting forth the reasons necessitating the discussion, consideration or decision without the matter being placed on the agenda.
8. Finally, if a prior act is ratified, the minutes must contain a copy of the disclosure statement required for ratification.

In addition to written or recorded minutes of the meeting, the law provides that any part of a public meeting can be recorded by any person in attendance by means of a tape recorder, camera or other means of sonic reproduction as long as there is no significant interference with the conduct of the meeting.

Minutes of Executive Sessions ■ The minutes or a recording of any meeting, except for the minutes of executive sessions, must be open to public inspection no later than three working days after the meeting. Minutes must be taken in executive sessions and must be kept confidential except from the members of the public body that met in executive session or officers, appointees or employees who are the subject of discussions. The minutes of executive sessions must contain the information described in paragraphs 1, 2, 3 and 7 above. If the public body wishes to exclude all staff from attending the executive session, then a member of the public body should record the minutes.

A 1983 amendment to the Open Meeting Law allows the Attorney General or the county attorney access to the executive session minutes under certain circumstances. First a written complaint must be submitted alleging a violation of the law as it relates to executive sessions. Secondly, the Attorney General or the county attorney must issue an investigative request for the minutes of the executive session. Upon receipt of the request by the public body, including a city or town, the public body may comply with the request or, upon a majority vote, apply to a superior court in the county for a protective order directing that the minutes of the executive session not be disclosed.

The court then determines whether or not the minutes of the executive session are relevant to the complaint and can order them released if "justice so requires." At the public body's option, it may also disclose the minutes to the attorney general or the County Attorney.

4.2 PUBLIC PARTICIPATION REQUIREMENTS IN PLANNING & ZONING

4.2.1 General and Comprehensive Plans

The Growing Smarter and Growing Smarter Plus legislation was passed in 1998 and 2000, respectively, and included provisions related to public participation in the planning process. Legislation was passed in 2002 (House Bill 2601) that clarified some aspects of the mandates. Public participation procedures that are currently required by State Statutes to accompany general or comprehensive plan development, or the consideration of major amendments to the plan, are summarized below. For more information on the planning process or coordination with other agencies, please refer to Chapters 6 (for municipalities) and 7 (for counties).

Adoption of Written Procedures ■ The statutes require that the governing body adopt written public involvement procedures that will "provide effective, early, and continuous public participation in the development and major amendment of general plans from all geographic, ethnic, and economic areas." It is suggested the adoption of a public participation plan be one of the first steps taken by a community or county as it embarks on the development or update of a plan. The statutes specify that these procedures address:

- The broad dissemination of proposals and alternatives
- The opportunity for written comments
- Public hearings after effective notice
- Open discussions, communications programs and information services
- Consideration of public comments

Adoption of the Plan Document or Major Amendment ■ The planning commission, if one exists, must hold a public hearing to discuss the draft plan or amendment to the plan in accordance with the meeting and noticing requirements in State Statutes [see A.R.S. § 9-461.06(D) and (G) for municipalities and A.R.S. § 11-823(B) for counties]. If the municipality's population is larger than 25,000, two or more hearings must be held in different locations throughout the community. Once a recommendation on the plan is transmitted to the legislative body of the municipality or county, another hearing must be held prior to legislative action. If a motion to adopt or readopt a plan or major amendment fails to pass, the motion may be reconsidered in any manner allowable under the governing body's rules of procedure, but any subsequent motion must be approved by an affirmative vote of at least two-thirds of the governing body. Many municipalities will be subject to the ratification requirement before a proposed general plan is put into effect.

If a county fails to adopt or readopt the comprehensive plan, the current plan will remain in effect until a new plan is adopted. The board of supervisors must either reconsider the proposed plan or consider a revised plan within one year, and continue this process until one is adopted.

Major amendments should be defined in each plan, and are subject to different adoption requirements than minor amendments. Major amendments may be heard only once per calendar year at a single hearing, and application must occur in the same calendar year as a proposal is made [see A.R.S. § 9-461.06 (G)]. To approve the adoption or readoption of a major amendment, at least two-thirds of the governing body must vote affirmatively for approval.

Ratification ■ Upon adoption of the plan by the governing body, the plan must be ratified by a public vote before it can become effective. This applies to jurisdictions that meet either of the following two conditions.

- A population of 2,500 or more with an annual growth rate averaging 2% or more for the 10 year period of the most recent census, or
- A population of 10,000 or more.

The vote for ratification should occur at the next regularly scheduled general election or at a special election scheduled at least 120 days after the adoption of the plan, pursuant to A.R.S. § 16-204. The governing body shall include a description of the general plan and its elements in the election pamphlet and the plan shall be made available at two locations that are easily accessible to the public. The general plan may also be made available on the municipal website.

If the plan fails to be approved by the majority of voters in the election, the current plan will remain in effect until a new plan is ratified by means of the process described above. This can occur either at the next regularly scheduled general election or at a special election scheduled at least 120 days after the governing body has readopted the new or a revised new plan.

4.2.2 Notice for Zoning Hearings

The state requirements for most zoning hearings are lengthier with more elaborate notification procedures, in comparison to other meeting requirements. The citizen review process and all notification and hearing requirements apply to a zoning ordinance that changes any property from one zone to another, imposes any regulation not previously imposed on a property, or removes or modifies any regulation previously imposed.

Citizen Review Process for Rezonings ■ State Statutes require that the governing body adopt a citizen review process for rezonings by ordinance [A.R.S. §§ 9-462.03(A) and 11-829(B)]. This

process would then apply to all rezoning and specific plan applications that require a public hearing. The citizen review process should include procedures to address the following:

> Notification will be provided to adjacent landowners and potentially affected citizens of the application.

> The municipality will inform adjacent landowners and potentially affected citizens of the substance of the proposed rezoning.

> Adjacent landowners and other potentially affected citizens will be provided an opportunity to express any issue or concerns with the proposed rezoning before the public hearing.

Please note that the statutes already include fairly specific requirements for notification, as summarized below.

Municipal Notice Provisions ■ In 1988, the State Legislature amended A.R.S. § 9-462.04 requiring additional notice for municipal zoning ordinance changes. Notice for a rezoning hearing must include 1) the time and place of the public hearing, 2) a general explanation of the matter to be considered, and 3) a description of the area affected. Notice shall be given at least fifteen days prior to the hearing by the following means:

- Publication at least once in a newspaper published or circulated in the municipality,
- If there is no newspaper fitting this description, the notice must be posted on the affected property and in a least 10 public places in the municipality. All posted notices must be printed so that the following information is visible from a distance of 100 feet:
  - the word "zoning"
  - the present zoning district classification
  - the proposed zoning district classification
  - the date and time of the hearing
- If the proposed rezoning involves land that abuts other municipalities or unincorporated areas of the county or a portion thereof, copies of the notice for the public hearing should be transmitted to the planning agency of the abutting jurisdiction(s).
- If the rezoning is not initiated by the property owner, notice must be sent by first class mail to each real property owner of the area to be rezoned, as shown on the last assessment of the property, and to all property owners within 300 feet of the property to be rezoned.
- If the rezoning involves land that is within the territory in the vicinity of a military airport as defined in A.R.S. § 28-8461, then the municipality must send copies of the notice for the public hearing by first class mail to the military airport (1995 amendment).

Some rezoning proceedings are subject to additional requirements (note that these criteria and requirements also apply to counties), if the following changes are proposed:

- A ten percent or more increase or decrease in the number of square feet or units that may be developed
- A ten percent or more increase or reduction in the allowable height of buildings
- An increase or reduction in the allowable number of stories of buildings
- A ten percent or more increase or decrease in setback or open space requirements
- An increase or reduction in permitted uses

If these criteria are met, then the municipality must provide notice to the real property owners pursuant to at least one of the following notification procedures:

- First class mail to each real property owner whose property is directly governed by the changes.
- Notice may be included with utility bills or other mass mailings to each property owner directly involved in the changes.
- Prior to the first hearing on proposed changes, the municipality may publish such changes in a newspaper of general circulation. The changes should be published in a "display ad" covering not less than one-eighth of a full page.

If notice is provided via one of the last two methods described above, the municipality should also send notice by first class mail to persons who register their names and addresses with the city as being interested in receiving such notices. A municipality or county may charge a fee not to exceed five dollars a year for providing this service and may adopt procedures to implement this provision.

If the municipality's planning commission (or hearing officer) has held a public hearing on the proposed changes, the governing body may adopt the recommendations of the hearing body without holding a second public hearing if there is no objection, request for public hearing, or other protest. Please note that the meeting to adopt the proposed changes must still conform to Open Meeting Law requirements.

County Notice Provisions ■ Any applicant petitioning for changes or amendments to the county zoning regulations changing the zoning district boundaries within an area previously zoned must file an application with the county. Upon receipt of the application, the board of supervisors must submit it to the commission for a report.

Prior to reporting to the board, the planning commission shall hold at least one public hearing after giving at least fifteen days notice in a newspaper of general circulation in the county seat and by posting in the area of the proposed change. In the case of a rezoning, the posting must be in no less than two places with a least one notice for each quarter mile of frontage along perimeter public rights-of-way. The notices should be visible from the nearest public right-of-way. The commission shall also send notice by first class mail to 1) each real property owner within 300 feet of the proposed change, and 2) county and municipality who is contiguous to the area of the amendment or change. If the commission initiated the proposed change, then notice must be sent via first class mail to each real property owner of land whose property would be governed by the proposed change as well.

The notice referenced above must include the following information:

1. The date, time, and place of the public hearing
2. A general explanation of the matter to be considered
3. A general description of the area of the proposed amendment or change
4. How the real property owners within the zoning area may file approvals or protests to the proposed rezoning
5. Notification that if 20% of the property owners (by area and number) within the zoning area file protests, then an affirmative vote of at least three-fourths of all members of the board of supervisors would be required to approve the rezoning

Some rezoning proceedings are subject to additional requirements, similarly to municipalities. The same criteria and

requirements apply to counties and municipalities.

The county board of supervisors may adopt the amendment after holding a public hearing. If the planning commission or hearing officer has held a public hearing, the board may adopt the commission's recommendations through use of a consent calendar without holding a second hearing if there is no objection, request for a public hearing, or other protest. The board then may adopt the amendment after the hearing; however, if 20% of the owners of the property within the zoning area (by area and number [26]) file a protest to the proposed change, approval of the change would require affirmative votes from at least three-fourths of the board members.

4.3 SUCCESSFUL PUBLIC MEETINGS

Planning commissions and boards of adjustment spend the majority of their working time in public meetings. The community's impression of the commission or board depends largely on their conduct and professionalism. Following are tips for conducting a successful public meeting:

- Keep the meeting on track. The chair plays a very important role in ensuring that the meeting is conducted smoothly and that the agenda is adhered to. The commission or board should have a set meeting procedure to follow.

- Keep the meeting under control. Do not allow members of the public to clap, cheer, whistle, etc.; the chair should "gavel down" this kind of behavior. The chair should prevent commissioners or members of the board from accusing or overtly challenging each other, staff, members of the public, or persons testifying.

- Commissioners or members of the board should never bring up the pros and cons of an agenda item before all testimony and evidence have been presented. Then the discussion should focus on the facts presented, not on the presenters.

- All applicants and members of the public providing testimony should be afforded the same courtesy, attention, and time before the commission or the board. Communication should be formal; joking and use of nicknames may be considered disrespectful.

- The commission or the board should avoid becoming bogged down in petty details or endless requests for additional data just to avoid decision-making. The chair should move the meeting along by summarizing the facts and the positions presented by commission or board members, and bringing matters to a vote.

- If absolutely necessary, the commission or the board may postpone making a decision until after an especially heated hearing, thereby allowing clearer thinking to prevail.

- If the meeting gets out of control and it is necessary to stop proceedings, the agenda item under discussion may be continued to a specified date and time.

- When in doubt as to how to proceed, the commission or the board should seek an opinion from their attorney.

[26] In calculating the owners by area, only that portion of the lot or parcel of record that is within 300 feet of the property to be rezoned shall be included. In calculating the owners by number or area, county property and public rights-of-way should not be included [A.R.S. § 11-829 (D)].

Making Decisions ■ All formal actions (voting) taken by the commission or board are initiated by motion. For example, a commissioner might say, "I move that the commission recommend the rezoning of the subject property from R1-6 single family residential to R2 multi-family resident." Stating a motion places a matter before the commission or board 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. Discussion must be pertinent to the motion that is under consideration. Following discussion on the motion or during a roll call vote, members should give their reasons for supporting or not supporting the motion as stated.

If the commission or board is lacking enough information to make a decision on an application, they should request that the applicant provide them with aerial or topographic maps of the area, surveys, engineering studies, reports or whatever is needed to make an informed decision. The commission or board has a right to reasonable requests for information; however, the additional time and expense to the applicant should be considered.

A short statement explaining the commission's or board's vote provides the applicant, the public, and the elected body with the reason for an action. For example, a commissioner may say: "I'm voting against this proposal because it clearly conflicts with our general plan, and the evidence presented does not provide sufficient justification to amend the general plan". This will be important to support the commission's or board's position if a decision is appealed.

Public Hearing Protocol ■ Public hearings must be opened with a motion. When all testimony has been heard, the hearing must be closed with a motion, and the meeting resumed.

A typical hearing process includes the following steps:

1. Call to Order by Chair - If a study session is held, the board members review agenda items. The chair closes the study session, typically takes a 5-minute break, then calls to order the regular meeting. Chair can review the format of the hearing and lay the ground rules for those in attendance at this time.

2. Quorum - Chair notes if a quorum is present

3. Call to Public or Communication from Citizens - Board hears comments from the public. Discussion does not occur on items raised. However, a board or commission member may make a motion to place an item on a future agenda for discussion, so that the item may be properly noticed.

4. Consent Calendar - Typically items for action by motion with minimal discussion. For example, a consent item may be to review, amend, edit, or revise minutes from the last meeting. Projects may be placed on the consent calendar that have been deliberated in detail at previous meetings. A motion to accept the consent calendar is given, seconded, and the board votes. Chair verbalizes the outcome of the vote for the record.

5. Public Hearings - Each agenda item is taken through steps (a) to (g):

   a) Staff reviews project - Board may ask questions through the chair. At this time, the chair may declare time limits for presentations by applicant and those speaking in favor or opposing the project.

   b) Applicant presents evidence - Staff or board may ask questions through the chair.

c) Chair opens the public hearing - Chair asks if any members of the public wish to speak.

d) Rebuttal - Chair asks the applicant if he wishes to respond to any of the public's comments.

e) Chair may ask board members for comments or questions.

f) Chair asks if there are any more public comments and, if there are none, closes the public meeting.

g) Chair asks the board for discussion, then a motion - Board members may discuss all information at hand, review stipulations, consider additional conditions, and/or consider continuance. A board member (in most communities it is someone other than the chair) makes a motion to grant, grant with stipulations, deny, or continue the proposal. After a board member (typically, someone other than the chair) seconds the motion, the board may discuss the motion, and make amendments if desired. The chair restates the contents of the motion (if needed) and a vote is taken. The result of the vote is announced.

h) All items in Step 4 are repeated for each case on the agenda.

6 Announcements - Staff or board may announce information, request a concern be passed on to council, request information, etc.

7 Adjournment - Meeting can end by vote or general consent.

Note: Some communities hold a worksession immediately prior to the hearing. The worksession is noted on the agenda and announcement that is posted. The applicant and public can attend the worksession; however, any and all communication with the board/commission/council is reserved for the public hearing.

The purpose of public hearings is to help answer the following questions:

Were the issues clearly defined and fully addressed?

Did the evidence provide sufficient information to reach a decision?

How does the proposal match the goals and objectives of the general or comprehensive plan? Did the testimony provide sufficient reason for deviating from the plan?

Before the commission or board votes on the case the chair may allow anyone in the audience wishing to speak to the issue the opportunity to do so. Sign in sheets outlining meeting protocol and the order of agenda items should be available to those wishing to speak. The form should ask for the speaker's name, address, and position on the particular issue they will be addressing (in support of, or opposed to, the item). A time limit should be set for those wishing to speak (3 or 5 minutes maximum per person). Speakers representing a group may be allowed more time than individuals. The form may also allow for the submittal of written comments, so that people not comfortable public speaking still have opportunity to provide comments (instead the chair or commission secretary could read the comments into the record). The meeting procedure should be outlined in the commission's and board's bylaws.

Before speaking to the issue the speaker should state their full name and address for the record. Individuals holding the floor should be allowed to direct relevant questions through the chair to anyone they wish if the response will provide information that will be of assistance to the commission or board in reaching a decision. If

expert witnesses (planners, real estate appraisers, traffic engineers, etc.) testify, the commission or board should attempt to make certain the evidence presented is unbiased. Although cross-examination of witnesses is usually not appropriate, especially in the less formal format of planning commission hearings, it may be appropriate and advisable to question witnesses in the quasi-judicial setting of a board of adjustment hearing.

Rebuttals should be allowed only if the speakers present new and relevant information for the commission's or board's benefit. The chair should not allow anyone to filibuster, harangue the audience, engage in personal insults or exchanges, or read long documents like the names on a petition (instead, the petition may be entered into the record).

4.4 COMMUNITY INVOLVEMENT TECHNIQUES

The commission's most significant tool for successful public interaction is communication with community members. The commission should select one of its most articulate members, preferably the chair, as spokesperson, to represent and speak for the commission regarding its decisions. The spokesperson should also be accessible to reporters and have the authority to prepare news releases with staff and commission. The city or county planning director and staff, who have public presentation skills, may also aid the community's planning and public information goals by speaking to organizations, writing clear, lucid reports, and providing accurate information to the media.

Commissioners should be sensitive to public opinion and concerns regarding development-related issues. Public hearings do not necessarily provide an accurate gauge of public sentiment. For broad efforts such as the development of an ordinance or the general or comprehensive plan, individual meetings with people representing special interests such as homeowners associations, parent-teacher organizations, the chamber of commerce, and civic groups can provide an excellent opportunity to exchange ideas, discover their wishes and concerns for the community's future, and gain support and understanding of the commission's goals and purpose. Public participation in formulating goals and policy is one of the purest forms of democracy.

Citizen Committees ■ Citizen planning committees may be appointed by the planning commission, the city or town council, or the board of supervisors to augment and assist with special projects such as the development of the general or comprehensive plan, specific plans, redevelopment plans, or the preparation of an ordinance. These committees identify the issues, study information prepared by staff, make findings, and develop policy recommendations for submittal to the elected officials through the commission. Citizen planning committees are different from council or board appointed standing committees that answer directly to the elected body.

To avoid the duplication of efforts by special committees or boards, and to ensure coordination with the staff and commissioners, the following steps should be taken:

1. Establish a close working relationship between the appointing body, the staff, and the citizen committee. Make each group's role and responsibilities completely clear from the outset. Depending on the purpose of the committee, it might improve communication to have at least one board or council member appointed to serve on the committee as a liaison between the groups.

2. The committee should present its findings and recommendations to the appointing body, which should review and comment

before passing it on to the elected body if necessary.

3 The committee should serve for the project duration and, upon completion of its mission, members should be thanked, and the committee promptly disbanded.

Other Techniques ■ There are numerous other methods for facilitating community education and involvement in the planning process. These include public meetings or open houses, community newsletters, or community surveys. Some communities will also conduct focus groups and interviews to interact either one-on-one or in small groups to discuss an issue intensively and openly. Visioning workshops are often an early step in the general or comprehensive plan process, and are a forum for brainstorming a vision for the future of the community. The goals and policies in the plan emanate from the broad, overall vision statement developed by community members in this setting.

A more detailed discussion of community involvement techniques and tools is outside the scope of this Handbook. The Community Planning Office can provide expertise and maintains a library that houses a growing body of literature on the subject. Please call 602-771-1191 if you are interested in more information.

ROLE OF PUBLIC OFFICIALS

CHAPTER 5

ROLE OF PUBLIC OFFICIALS

Planning Commission, Board of Adjustment, Council, Board of Supervisors, Economic Development Commission, and Design Review Board

City and town councils and county boards of supervisors exert great influence over the planning and zoning process. They are the legislative body for the jurisdiction and, as such, make the final decisions on many planning and planning-related issues. However, other public bodies, including the planning and zoning commissions, boards of adjustment, design review boards, economic development commissions, historic preservation boards, and many other appointed committees also have a tremendous impact on the quality of their respective towns, cities, or counties. These entities are charged with interpreting information and making specific decisions or recommendations that can greatly affect the planning process.

A successful board or commission will have dedicated members who work well together, as well as with local officials, other public bodies, and the general public. While much of the information of this chapter is written with planning commission and board of adjustment members in mind, the advice on communication, effective teams, and proper codes of conduct are applicable to other public bodies as well.

5.1 ROLE OF PLANNING COMMISSION

The job of the planning and zoning commissioner is comprehensive. Commissioners participate in the planning process for the immediate needs and future growth of the community. The duties range from being an advisor on long range planning projects to evaluating the impacts of a site plan for development to begin in less than a year. Some of the qualities that an effective commissioner should possess include:

- ✓ Civic-mindedness
- ✓ An interest in bettering one's community
- ✓ An interest in planning and development
- ✓ And open mind and objectivity
- ✓ A team player
- ✓ The ability to express oneself clearly and concisely in public
- ✓ Enough "free" time to prepare for meetings
- ✓ Have few potential conflicts of interest

As a commission, key skills for the group to possess include the ability to:

- **Identify the fundamental issues and any underlying motives:**
  It's vital to know beforehand what it is you have to decide. Your planning staff should give you guidance on what the main issues are on any matter and the options before you in making a decision.

- **Condense and analyze written and oral information, and recommend actions or policies based on findings of fact:**
  Recommendations should rely on adopted plans and policies that represent community values, rather than personal opinions.

- **Examine issues with regard to their long-term impact on the community:**
  Despite an apparent short-term need, a good analysis should balance such requests against longer-term desires, needs, and impacts.

5.1.1 Legal Authority

Municipal Commissions ■ A.R.S. § 9-461.02 provides the authority for a municipality to create a planning and zoning commission that must have at least five members. A local ordinance determines the organization, number of members, terms, and method of approval or removal for its commission.

County Commissions ■ The authority for counties to create a planning and zoning commission is provided in A.R.S. § 11-803. The number of supervisorial districts in the county determines the required number of commission members. The State Statutes require that terms shall be for four years, except for new commissions, on which terms may be staggered to allow for more continuity as the group is established.

5.1.2 Responsibilities

Within the broad charge of assisting local elected officials in the decision-making process, the exact functions of the commission will vary from one community or county to another. The planning commission's role depends in part on the planning staff, budget, the experience and activities of elected officials; the community's planning policy; and the level of activity with which the commission is comfortable. The commission may:

- **Assist in the preparation of the general plan**.
  In small communities with little or no staff, the commission may be responsible for

developing the plan. In all cases, however, commissions will advise and involve elected officials and the public in the development of community planning goals, policies, and programs.

- **Assist in the preparation of development tools** such as the zoning code, subdivision ordinance, sign code, landscape ordinance, design guidelines, and other regulations the community may have to govern such as density, aesthetics, and the treatment of environmentally sensitive areas.

- **Review development proposals, recommend changes to ordinances, and recommend changes to planning policies** Development proposals may involve an amendment to the general plan, rezoning, or the approval of a subdivision plan. Decisions on these proposals require that commissioners have a working knowledge of the local development requirements and ordinances. Once a jurisdiction has established standards for local development, they should not be changed without substantial cause.

  All development applicants should be treated equally. Exceptions set a precedent for others and open the commission to possible charges of favoritism. Official policy should be adhered to and regulations uniformly enforced.

- **Hold public hearings and meetings** The commission should, as part of its rules and procedures, adopt a set format and procedure for conducting its meetings. Chapter 4 discusses meeting procedures in more detail.

- **Assist in the preparation of a capital improvements program (CIP) for the community** - A CIP establishes priorities for new public facilities such as streets, parks, water, sewer, and other services to be provided by the jurisdiction. The CIP enables the city or county to plan and budget for future needs.

- **Make recommendations** on possible community boundary changes through annexation or changes in the planning area.

- **Provide liaison with other governmental units** such as adjoining municipalities, county or state agencies, other planning commissions, and school boards.

5.1.3 Working with Other Public Officials and Private Organizations

In order to make its job easier, the commission should have a good working relationship with the planning staff, the council, board of supervisors, the management staff, and the other departments and agencies or boards involved in planning.

Commission/Staff Relationship ■ If the jurisdiction has a planning staff, the relationship between the commission and the staff should be clearly defined. Most often the planning director is hired by the county or municipal manager (chief administrator) with the approval of the council or board. The council or board also sets local policy and maintains budgetary control for the jurisdiction. The manager or administrator is responsible for policy implementation, programs, and budget management. The commission should not get involved in the administrative details of policy implementation or day-to-day management. This is the function of the staff. If desired, commissions could request update briefings on town business as an agenda item at regular meetings.

The planning staff is usually responsible for processing zoning and subdivision applications, negotiating with applicants, overseeing community development projects, advertising

public hearings, conducting research studies, preparing staff reports, making meeting arrangements, taking commission minutes, keeping records, and handling all other general administrative duties. The planning staff is there to assist by answering commissioners' questions or researching needed additional information. Staff usually has extensive knowledge of planning and zoning issues and diverse professional experience. Open communication regarding roles and expectations will ensure that each commission and staff find the right balance for working together efficiently.

Commission/Community Relationship ■ An important function of the commission is to provide a forum for citizens to voice their opinions and concerns about matters that the commission is considering. Citizen participation plays a vital role in projects like development of a downtown or general plan. The appointment of a committee comprised of community leaders as part of a particular effort (such as a general plan update) often helps to disseminate information, provide community input and feedback, and gain support for the project.

Commission/Elected Officials Relationship ■ It is important to remember that the commission is an **advisory** body only. Its duty is to study, review proposals, prepare plans and **advise** the council or board on planning and development matters. By making policy and project recommendations, the commission provides information and advice to the elected body, citizens, and agencies that play a role in the community's development. By soliciting the cooperation and input of the public and organizations interested in projects under review, the commission may gain credibility and support from the elected officials. It also helps to provide the elected officials with more than a yes or no vote tally for the item in question. The staff can provide the legislative body a summary of the discussions and decisions of the commission. This summary will highlight the findings of fact for approval or denial by the commission. To be most effective, a commission should have periodic meetings with the governing body to set goals, establish or clarify policies, and discuss major development issues.

Commission/Municipal or County Attorney Relationship ■ The basic rule on legal matters is: when in doubt about how to proceed legally, get an opinion from the city or county attorney. The jurisdiction's attorney is there to protect and advise the commission. When a controversial issue is being considered which may lead to litigation, counsel should be present and ready to offer advice. The attorney and planning staff should be a resource to the commission on state planning and zoning legislation, new ordinances adopted in other jurisdictions, and court decisions that have a bearing on the operations and scope of the commission's duties and responsibilities.

Commission/Consultant Relationship ■ Sometimes a municipality or a county may have a planning consultant to supplement the staff, provide additional technical skills, or to analyze issues and recommend how to deal with them. If the community does not have a professional planning staff, the commission may work closely with the consultant.

Before preparing a request for qualification (RFQ) or a request for proposals (RFP) to solicit responses from different consulting firms, the community must determine exactly what services they want provided, how much they want to spend, and what the final project or service should be. The RFP should provide sufficient information about the project that the consultant can prepare a scope of work, schedule, and tentative budget. The commission may solicit assistance in RFP or RFQ preparation from the Arizona Department of Commerce. A database of professional consultants throughout the state is also available on the Arizona Department of Commerce website at www.azcommerce.com. For more information on hiring a consultant, please refer to Chapter 6.3.3.

5.1.4 Becoming an Effective Commission

Many commissions are overwhelmed by the work facing them. The following are recommendations to increase the group's effectiveness:

Role ■ Understand the limits of a commissioner's role and do not get involved with the roles of others. Staff works with the applicant and prepares a staff report for the commission. A zoning administrator or hearing officer is responsible for the enforcement of the zoning ordinance. The board of adjustment hears appeals from these administrative actions.

Improve your Planning Knowledge ■ There are many courses, conferences, and special workshops offering basic training for commissions. The Arizona Department of Commerce hosts an annual training conference for planning and zoning commissioners, board of adjustment members, elected officials and staff, and conducts local training workshops with individual boards and commissions; the Arizona Planning Association hosts an annual conference; and, there are many books, videos, and web sites available on planning and zoning issues.

Look Beyond the Meetings ■ Attend meetings of other planning commissions to observe techniques for holding effective and productive meetings. Invite staff from adjacent municipalities, counties, the regional planning agency, the League of Arizona Cities and Towns, the Arizona Bar Association, Arizona Attorney General's Office, Arizona Department of Commerce, and other state and federal offices to update the commission on new programs, projects, legislation, regulatory devices, and recent court decisions affecting planning.

Take Stock ■ Get out in the community for field trips before and after a project has been completed. Evaluate the success of the project vis-à-vis the commission's recommendations and expectations.

Annual Retreat ■ Hold an annual meeting to reflect on the commission's performance and take inventory of the community's progress and development. Revise goals, set objectives, and prepare a work program for the upcoming year. An honest evaluation should elicit suggestions for changes and improvements.

Worksessions ■ Informal worksessions prior to a hearing are a good way to review a comprehensive or controversial project. Worksessions also allow ample time for staff or the applicant to provide additional information to address questions or concerns raised by the commission.

14 *Ways to Build a Better Commission*

1. Develop and adopt bylaws and procedures, and stick to them.
2. Develop reliable information, data and maps, and make them available to the public.
3. Prepare and maintain a general plan; refer to it and make decisions consistent with plan policies and further its implementation.
4. Annually re-examine the progress of the commission. Make recommendations for improvements.
5. Prepare an annual work plan with strategies.
6. Participate in preparing the annual budget or capital improvement program. Use the general plan to help identify priorities.

7 Meet periodically with elected officials to exchange ideas and assess mutual objectives.

8 Consider a public forum every year or so to ask residents how things are going and what they want done.

9 Work with staff to fine-tune the format, content, and timing of staff reports.

10 Attend seminars and read publications on planning techniques and land use law that is pertinent to the community.

11 Visit other commissions' meetings to learn what techniques are used to maintain a fair and friendly process.

12 Appoint a commission representative to attend regular legislative meetings as a liaison.

13 Lobby for good planning.

14 Take time to orient new commissioners to the job.

5.2 ROLE OF BOARD OF ADJUSTMENT

Since it is impossible to draft a zoning ordinance that will cover every conceivable combination of circumstances, boards of adjustment were created to provide a means to deal with unanticipated hardships as they arise. A board of adjustment is a quasi-judicial, not a policy-making body. The board must interpret the meaning and spirit of the zoning ordinance as enacted by the governing body. **It does not have the authority to make law or change zoning law.** Only the city council or board of supervisors has this power and cannot delegate it to the board of adjustment or to any other body or official. When the board feels that changes should be made in the zoning ordinance or policies, it should recommend these changes to the planning commission or to the elected body.

5.2.1 Legal Authority

Municipal Boards of Adjustment ■ A.R.S. § 9-462.06 requires each city or town to establish a board of adjustment and grants it the authority to:

- Hear and decide appeals in which it is alleged there is an error in an order, requirement, or decision made by the zoning administrator in the enforcement of an adopted zoning ordinance.

- Hear and decide appeals for variances from the terms of the zoning ordinance. Variances may only be granted if, because of special circumstances applicable to the property such as its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district. Any variance granted is subject to conditions to ensure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.

- Reverse or affirm, wholly or partly, or modify the order, requirement, or decision of the zoning administrator appealed from, and make such order, requirement, decision or determination as necessary.

The statute also says that a board of adjustment may not:

- Make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance provided that this restriction shall

7 Meet periodically with elected officials to exchange ideas and assess mutual objectives.

8 Consider a public forum every year or so to ask residents how things are going and what they want done.

9 Work with staff to fine-tune the format, content, and timing of staff reports.

10 Attend seminars and read publications on planning techniques and land use law that is pertinent to the community.

11 Visit other commissions' meetings to learn what techniques are used to maintain a fair and friendly process.

12 Appoint a commission representative to attend regular legislative meetings as a liaison.

13 Lobby for good planning.

14 Take time to orient new commissioners to the job.

5.2 ROLE OF BOARD OF ADJUSTMENT

Since it is impossible to draft a zoning ordinance that will cover every conceivable combination of circumstances, boards of adjustment were created to provide a means to deal with unanticipated hardships as they arise. A board of adjustment is a quasi-judicial, not a policy-making body. The board must interpret the meaning and spirit of the zoning ordinance as enacted by the governing body. **It does not have the authority to make law or change zoning law.** Only the city council or board of supervisors has this power and cannot delegate it to the board of adjustment or to any other body or official. When the board feels that changes should be made in the zoning ordinance or policies, it should recommend these changes to the planning commission or to the elected body.

5.2.1 Legal Authority

Municipal Boards of Adjustment ■ A.R.S. § 9-462.06 requires each city or town to establish a board of adjustment and grants it the authority to:

- Hear and decide appeals in which it is alleged there is an error in an order, requirement, or decision made by the zoning administrator in the enforcement of an adopted zoning ordinance.

- Hear and decide appeals for variances from the terms of the zoning ordinance. Variances may only be granted if, because of special circumstances applicable to the property such as its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district. Any variance granted is subject to conditions to ensure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.

- Reverse or affirm, wholly or partly, or modify the order, requirement, or decision of the zoning administrator appealed from, and make such order, requirement, decision or determination as necessary.

The statute also says that a board of adjustment may not:

- Make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance provided that this restriction shall

not affect the authority to grant variances pursuant to this article.

- Grant a variance if the special circumstance applicable to the property is self-imposed by the property owner.

A municipality may wish to require staggered terms to ensure continuity of experience. The ordinance may establish the city or town council as the board of adjustment, but this can create difficulties in process since the board's quasi-judicial role is different from the council's legislative role. State Statutes also grant authority to create a hearing officer to hear and decide adjustment applications, but there must be a right of appeal from the decision of the hearing officer to the board of adjustment.

County Boards of Adjustment ■ Each county may have a single board of adjustment or one board for each supervisorial district in the county. For consistency in interpretation and policies, it is preferable that there be only one board.

County boards of adjustment are granted powers in A.R.S. § 11-807 to:

- Interpret the zoning ordinance when the meaning of any word, phrase or section is in doubt, when there is dispute between the appellant and enforcing officers, or when the location of a district boundary is in doubt.

- Allow a variance from the terms of the ordinance when, owing to peculiar conditions, a strict interpretation would cause an unnecessary hardship, if in granting such variance the general intent and purpose of the zoning ordinance will be preserved.

Although criteria for variances are vague in the statutes, case law indicates that the criteria for counties to grant variances are substantially the same as in municipalities.

5.2.2 Responsibilities

A board of adjustment has only those powers that are delegated to it by state law, but these powers may be detailed in individual zoning ordinances. The board's responsibilities typically include the following:

- **Review Actions of the Administrative Officer** ■ Even with the most careful drafting of a zoning ordinance, unforeseen complications can arise. Zoning ordinances are often long and complex, and even with an experienced and well-trained enforcement officer or zoning administrator, disagreement regarding interpretations could occur. To reduce error and ensure consistency, the zoning official (staff person responsible for enforcement of the zoning code) should be more familiar with the zoning ordinance than anyone else. He or she should base interpretations on the community's planning and development policies, the general or comprehensive plan, and current applicable case law.

  If the applicant thinks the administrative official is wrong, he or she can file an appeal to the board of adjustment that has the power to hear and decide appeals. When reviewing the actions of an administrative official and interpreting the ordinance, the board should 1) determine the facts of the case, and 2) apply what it conceives to be the meaning of the ordinance to these facts.

Reverse, Affirm, or Modify a Decision ■ The board has authority to reverse, affirm, or modify the decision of the zoning administrator.

Grant Variances ■ Variances are described in detail in the next chapter subsection.

5.2.2.1 Variances

Zoning law should apply uniformly to everyone. However, the application of general regulations to all building and land use situations may not fit because of unique or other special circumstances. By granting variances, or exceptions from the terms of the ordinance, the board of adjustment can provide flexibility so that a property owner will not be unfairly deprived of the use of their property. In this way, the provision of a variance insulates the zoning ordinance from constitutional attack by relieving a particular landowner from unique hardship because his or her parcel is different from others in size, shape, topography, or location.

A variance is appropriate only to bring the applicant to parity with other owners in the zone and not to give applicants an advantage over their neighbors. For example, a lot may be so shallow relative to other lots in the neighborhood, such that there is insufficient space to build a house and provide the required front and rear yard setbacks. In this case, the board of adjustment may grant a variance allowing the property owner to develop the lot with a rear yard having a lesser depth than that required by the zoning ordinance.

In evaluating whether a variance is warranted, board members should consider

four key criteria:

1. A variance may be warranted if the property in question is associated with *special circumstances that are inherent to the lot* – such as its size, shape, topography, location, or surroundings – that deprive the property of privileges enjoyed by other property of the same classification in the same zoning district.

2. A variance may be granted if its authorization is necessary to ensure the *preservation of privileges and rights enjoyed by other property* of the same classification in the same zoning district, without constituting a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located.

3. The special circumstances applicable to the property may not be *self-imposed* or created by the owner or applicant in order to receive a variance.

4. The granting of a variance should not *be materially detrimental* to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general.

Limitations on Granting Variances ■ The variance is often viewed as a device permitting the flexible exercise of discretion to approve projects felt to be desirable even if they don't meet the strict letter of the zoning law. The benefits, attractiveness, or social desirability of a project are irrelevant, however, to the variance issue. *The special circumstances and hardships justifying a variance must apply to the property, not to the applicant.* The needs of the applicants or the economic hardship to them do not legally justify a variance. Sometimes, board members have to make difficult decisions when a personal hardship comprises the applicant's argument for a variance, and the criteria for the variance don't fit. However, it is the quasi-judicial responsibility of the board to ensure that the law is applied to all owners in a zoning classification equally, and that special conditions are not granted to one owner based on personal – rather than property – considerations.

Variances should be granted sparingly. If a board finds itself granting variances frequently or hearing many similar cases, it may be an indication that the zoning ordinance needs to be

reviewed or the board should reevaluate its policies.

Hypothetical Case
Examples or case studies are often helpful in illustrating the intent of the law. Here is a hypothetical case regarding an application for variance:

> ***Joan Benefactor, who consistently makes large charitable contributions to your town, wants to build her dream home on a lot she recently purchased in the most exclusive residential neighborhood in your community. This neighborhood was almost entirely built-out in the 1940's and 50's except for a few remaining vacant lots. A new zoning ordinance was adopted for your town in the early 1970's that changed the setback requirements and height limit applicable to Joan Benefactor's neighborhood. Approximately 60% of the existing older homes do not conform to the new setback and height restrictions.***
>
> ***Joan Benefactor wants a variance so that she can build in conformance with the old setback requirements as 60% of her neighbors did. Joan Benefactor also wants a height variance so that she can have additional sleeping quarters for the many orphans she cares for. The following issues arise at the board of adjustment hearing:***

Assuming Joan's lot and her neighbor's lots are similar, can the setback variance be granted?

?

Will the fact that Joan is performing a tremendous public service justify the height variance?

The answer to both of those questions is no. As required by statute and case law the unique circumstances required for a variance must apply to the lot itself. If Joan Benefactor's lot is similar to her neighbor's lots and hers qualifies for variance, then so would her neighbor's. If everyone were entitled to build in a fashion similar to what their neighbors had built under previous zoning, rezonings would be completely ineffective.

The purpose of such rezonings is to gradually bring neighborhoods into compliance with new criteria. In this case, Joan Benefactor's house and all other building on the remaining vacant lots must comply with current criteria to gradually be brought into compliance as they redevelop.

As to the public service that Joan is doing, there is no unique circumstance applicable to the lot that justifies the height variance. Case law specifically rejects the "social benefit" argument as support for the grant of a variance. A variance is designed to bring substantial parity to an applicant, not to grant special privileges to applicants, even if they make significant contributions to the community.

5.2.3 Findings and Decision-Making

Findings are a statement by the board of the evidence and reasoning it used to arrive at a decision. Given the board's quasi-judicial status, it is particularly important to consider the basis and documentation of findings. One of the most common reasons the courts overrule board decisions is that the board has failed to prepare findings.

Findings are necessary to:

- ✓ Facilitate judicial review
- ✓ Ensure careful deliberation and accurate decisions
- ✓ Assist the parties in preparing for review

No particular form is required for findings. They can be discussed at length or adopted upon the motion of a member of the board. They can be drafted by a member, by staff, or by one of the parties. Findings should contain the following:

- **Identity of the parties, property, and relief requested.** This will ensure that everyone has reached a decision on the same subject.
- **List the witnesses, documents, and exhibits relied upon.** Use only evidence that was introduced at the hearing. Personal knowledge may be used if others commonly share that knowledge in the community. Knowledge that is not widely shared may be used if it is announced at the public meeting and the parties are given an opportunity to rebut it (see also the discussion on ex parte contacts in Section 5.3.5.
- **Identify the standards established by ordinance for the action requested by the applicant.**
- **Explain, 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 judgment, it is likely to uphold the decision if it feels that the evidence was thoroughly examined and evaluated based on established criteria such as an existing ordinance.
- **If the relief is granted, describe it clearly with any attached conditions.** This is valuable for the parties and staff. If the proceedings are recorded (such as with minutes), the findings don't have to be written down; that can be done later. Written findings can be prepared after a decision is made and adopted at the next meeting.

Findings are important in helping the public understand why the board reached the decision it did. Even if members of the public disagree with a board decision, they may not become as upset or angry if they understand the reasoning that led to a decision.

5.2.4 Appeal Procedures

Appeals to the board of adjustment may be requested by any person aggrieved or by any officer, board, or department of the municipality or county affected by a decision of the zoning administrator. An individual who wants to appeal to the board of adjustment must file a notice of appeal with the zoning administrator and with the board specifying the grounds of the appeal, within a reasonable time of the initial decision. The process through which the board of adjustment reviews and decides appeals includes the following steps:

- **Action of Administrative Officer.** Although interpretations, and appeals for variances may be made directly to the board of adjustment, most appeals are made to the board after the administrative official has taken some official action as provided for in the zoning ordinance. An appeal may result from the official's refusal to grant a permit, or upon a citation of a zoning violation.
- **Transfer of Materials to Board**. After the notice of appeal is received, the administrative officer transmits the complete record of the action that is being appealed to the board of adjustment.
- **Stay of Proceedings**. An appeal stays all proceedings in the matter appealed unless the zoning administrator certifies to the board that, in his or her opinion by the facts stated in the certificate, a stay would cause imminent peril to life or property. Proceedings shall then be stayed, unless a

restraining order is granted by the board or by a court of record on application and notice to the zoning administrator.

- **Public Hearing**. The board of adjustment must hold a public hearing on all appeals, within a reasonable time. Many Arizona communities specify that the hearing must be held within 30 days after the appeal is filed. Notice of the hearing must be provided by both publication in a newspaper of general circulation in accordance with A.R.S. § 9-462.04 and posted in conspicuous places close to the property affected (see discussion of Open Meeting Law in Chapter 4). The statutes should be consulted to ensure that the community's public notice procedures comply with statutory requirements.

- **Decision.** The board may decide to grant, modify, or deny any appeal. The board may also defer action on any appeal when it decides that additional evidence is needed or that alternative solutions need further study.

Appeal to the Courts ■ Although the board of adjustment is a quasi-judicial body specifically established to handle appeals in connection with the zoning ordinance, it is not a court of last resort. Within 30 days after the board has made a decision and has filed this decision, a person aggrieved by the decision or a municipal officer may file a complaint for special action in the Superior Court for review of the board's decision. (Note: cities with populations over 100,000 first send appeals to the city council and then, if appealed again, to the Superior Court) Filing the complaint does not stay proceedings on the decision appealed. The Court may, however, grant a stay upon application and on final hearing may affirm or reverse, in whole or in part, or modify the decision reviewed.

In appeals to Superior Court from municipal boards of adjustment, the Court reviews the record of proceedings before the board to determine if there was a manifest error. In other words, the decision-making process is reviewed for errors rather than the merits of the decision itself. An appeal from a county board of adjustment is a trial de novo in Superior Court. "De novo" means "anew" or "once more", and means that the judge will hear the case arguments again and decide the matter independently of the board's decision.

Appeal to the Legislative Body ■ In 1988, the Arizona Legislature amended A.R.S. § 9-462-06 providing for appeals from a decision by the municipal board of adjustment to the city council. The legislation only affects municipalities with populations over 100,000 and states that:

> …a person aggrieved by a decision of the board or a taxpayer, officer or department of the municipality affected by a decision of the board may file, at any time within fifteen days after the board has rendered its decision, an appeal with the clerk of the legislative body. The legislative body shall hear the appeal in accordance with procedures adopted by the legislative body and may affirm or reverse, in whole or in part, or modify the board's decision.

CAUTION

It should be emphasized that this text does not represent a substitution for the counsel, guidance or opinion of the city or county attorney, who should be consulted for an interpretation of the law as applied to any given set of facts.

5.3 RULES AND PROCEDURES

The process and protocols used by commissions and boards may be based on statutory requirements, local ordinances, or good practice. This section addresses several key areas of rules and procedures and applies to both commissions and boards of adjustment. Overall, it is suggested that boards and commissions develop and adopt a set of bylaws to guide the conduct of the group, so long as it does not create conflict with existing statutes or ordinances.

5.3.1 Meetings and Records

Arizona's Open Meeting Law sets the parameters for noticing, conducting, and recording public meetings. Please refer to Chapter 4 for more detailed information. Boards and commissions are required to keep minutes of the proceedings that record the vote of each member, records of its examinations, and other official actions. These minutes and records are public and must be available on a timely basis. Accuracy and sufficient detail are important since these records will constitute the major evidence in any litigation, a particular consideration for board of adjustment decisions that may be appealed to Superior Court.

5.3.2 Due Process

When reviewing planning and zoning cases, the courts focus on "due process", or the protection of an individual's rights and property. In legal disputes, procedural due process is often an area of controversy. Legal requirements for due process include:

- **Adequate Notice:** Published notice of all meetings that meet the requirements of the Arizona Statutes, including frequency and location of notice. Staff is responsible for this activity.
- **Advance Disclosure/Full Disclosure:** Convenient public access to all pertinent information such as exhibits, studies, and staff reports, well in advance of the meeting date.
- **Opportunity to be Heard:** Opportunity for favorable or opposing public comment before the commission, board, or council makes a decision.
- **Findings of Fact:** Staff reports, exhibits, and proceedings from public meetings should be documented in official minutes. Decisions and actions should be based on relevant, factual information and refer to policies, ordinances, and plans as appropriate. The action a commission or board takes should be based on specific reasons relating to the zoning ordinance or general plan and should be detailed in the record. (This is not a legal requirement in Arizona, although it is required in other states.)
- **Avoid the Appearance of Impropriety:** According to the State's Conflict of Interest Law A.R.S. § 38-501(A):

> any public official or employee who has, or whose relative has, a substantial interest in any decision or a public agency must make this interest known on public records, and must refrain from discussing or influencing the decision in any way.

It is illegal to fail to declare a substantial conflict of interest, or to participate in any way in decision-making if there is a conflict. See Section 5.3.4 for additional discussion on conflicts of interest.

5.3.3 Code of Conduct

In addition to rules and procedures for operation, a code of conduct may be agreed upon and incorporated as part of the official bylaws. Guidelines for appropriate conduct might include the following:

. . . .Avoid public charges of conflict of interest by dealing with them upfront. Seek advice from the jurisdiction's attorney when there is uncertainty.

. . . .Gifts of cash, liquor, company products, or anything of value should be declined or returned to the sender. Public officials should not accept trips or entertainment paid for by applicants.

. . . .Don't string people along. Make decisions promptly. If a proposal needs modification before approval, the commission has an obligation to be specific about what it wants, to avoid unnecessary delays and expenses to the applicant. If the basis for making a decision on a case is lacking because, for example, the applicant is unprepared, the project is premature, the proposal requires passage of an ordinance first, or there are conflicts with the general or comprehensive plan, deny the application rather than stringing the applicant along.

When should a commissioner or board member resign? Individual motives differ for serving in an unpaid job involving long hours, hard work, and lots of pressure. Effective public officials are honest, objective, and conscientious. They are not swayed, manipulated, or pressured into backing down from their convictions. A commissioner or board member should resign when he or she feels ineffective or ceases to work for the best, long-term interests of the community. Some communities also set limits on how many terms can be served.

5.3.4 Conflicts of Interest

There are specific legal definitions of conflict of interest, which typically relate to a public official having a direct or indirect financial interest in the outcome of a decision that he or she influences. The best advice for a commissioner or board member who is considering whether a conflict exists is to discuss the matter with the jurisdiction's attorney. If it is determined that a conflict of interest does exist for a particular case, the commissioner or board member must disclose the conflict and should not participate in the discussion or vote for the case. It is recommended that the individual with a conflict actually leave the room, so that there is no question that he or she is not influencing the discussion through body language or his or her presence generally. To ensure that due process occurs – that individuals receive the fair hearing from impartial public officials that they are entitled to – conflicts of interest must be handled in an appropriate manner.

If the attorney advises that a legal conflict does not exist in a particular case, it may be that the commissioner or board member still feels uncomfortable. Certainly, the public may perceive a conflict exists even if, legally, it does not. In these situations, it is suggested that the commissioner or board member disclose his or her concern to the group before discussion of the item. Public officials may still opt to recuse themselves from the discussion of an item based on the perception of a conflict or personal ambiguity over the correct course of action. Another option is to ask the group to make the determination as to whether the individual should be excused from the discussion of the item.

Some boards and commissions have established a process for dealing with potential conflicts of interest in their bylaws. This makes it easier for an individual to know what to do if there is a potential conflict. To do this, the group may want to have a worksession with staff and the jurisdiction's attorney to discuss the legal aspects

of conflict of interest and the best process to establish. It may be easier to discuss these issues in the abstract and in advance of a specific incident.

5.3.5 Ex Parte Contacts

Ex parte contacts are defined as those made "from or on one side only" and are made without notice to, or knowledge of, others involved in the matter under discussion. An example of an ex parte contact for a commissioner is a communication from an applicant to a public official one-on-one without a public forum. This could include telephone calls, informal meetings, lunches, or even a casual encounter on a street corner. Such contacts may be a source of pertinent information not otherwise available, but the key concerns are 1) that these communications might influence one individual's decision-making before deliberations begin, and 2) that the entire group would not be making their decision based on the same information. Since a board of adjustment is a quasi-judicial body, members should be especially careful of ex parte contacts, to avoid being influenced outside the public forum and without the benefit of hearing all sides of an issue.

The law on the subject indicates that boards and commissions are not prohibited from ex parte contacts but such communication must be disclosed for the record at the hearing to enable interested parties to hear and rebut the substance of the communications. If not made part of the records, an ex parte contact may provide the grounds for voiding a board of adjustment decision. The following guidelines should be considered in dealing with ex parte contacts:

. . . .If someone contacts a board member or commissioner to discuss a matter currently or soon to come before the board, refrain from stating your position and invite the person to present testimony before the entire group.

. . . .Written information on a pending action should be sent to staff for review and possible inclusion in the board packets. If approached by someone who wants to discuss a case, suggest the person write a letter stating his or her position or send additional materials to staff so that it can be distributed to the entire group.

. . . .If someone persists in offering information but is unwilling to testify before the group, tell the person the information will be put on the record. If the person is unwilling to have the information placed on the record, then refuse to have further contact with him or her on the subject.

Don't take private field trips or tours with applicants or their representatives. It is best to announce the time and place for such field trips at a public meeting where it can be recorded in the minutes and interested parties may attend. It is best if the entire board can make field trips, but at least three members should go as a subcommittee appointed by the chair. (Remember that noticing or other Open Meeting Law requirements will apply if a quorum of the group will be attending the site visit.) It is usually a good idea to take a field trip or visit a site; in fact, these types of site visits can be extremely help in evaluating a proposal.

How to handle ex parte contacts is another topic that a board or commission may opt to address in bylaws. Some communities prohibit ex parte contacts, and others lay out a suggested process for responding to them. However the group decides to approach the issue, written procedures will help new members become oriented and will clarify the situation for all members in the event of a problem. Again, it is suggested that any policy on ex parte contacts be drafted with the assistance and input of staff and the jurisdiction's attorney.

5.4 ROLE OF THE COUNCIL OR BOARD OF SUPERVISORS ON PLANNING AND ZONING ISSUES

The elected body in the jurisdiction has the authority to make the final decisions on planning and zoning issues. The council or board of supervisors is responsible for adopting the general/comprehensive plan and ordinances, as well as approving plan amendments and development proposals. This body is also responsible for adopting the jurisdiction's capital improvements plan and budget, which are often key to how and whether planning efforts will be implemented. Councils and boards also appoint other public officials and oversee the activities of the boards and commissions to ensure that the public's interest is being served.

The planning commission is advisory to the council or board. The commission may also make recommendations on planning and land use policy or changes to existing ordinances. It is recommended that commissions meet with the elected body on an occasional basis, to promote philosophical consensus between the two groups and to keep the elected officials up-to-date on recent planning issues, with which commissioners are often more intimately familiar.

Boards of adjustment are different from commissions in that their function is more quasi-judicial than legislative or advisory. However, boards would also benefit from sessions with the elected officials and/or the commission to discuss the community's process and progress on planning issues. In addition, the board may submit recommendations to the commission to reevaluate ordinances or plans in response to recurring cases or other concerns raised in board hearings.

The city, town, or county manager is hired by the elected officials to manage the administrative functions of the jurisdiction. The manager works with all the department heads (including planning or community development) and serves as the key liaison to the council or board. The manager often advises the elected and appointed officials and prepares the budget, and is generally charged with implementing the policies adopted by the council or board.

5.5 OTHER COMMISSIONS AND BOARDS

Jurisdictions may opt to convene other commission and boards to focus on key issues in a community. The elected body would be responsible for appointing members and determining the scope and mission of the new group. Members of planning commissions and boards of adjustment should have a clear understanding of the role of other groups whose actions may overlap with their normal functions (and vice versa), to allow for better communication and efficiency in working together. Economic development and design review are two of the most common issues to warrant a focused group, and are discussed briefly below.

5.5.1 Economic Development Commissions

Economic development commissions may be formed to bring together the various interest groups to support economic development efforts in the community. Ties to planning issues may include available land for development, sufficient zoning for industrial or commercial uses, and the provision of infrastructure in a timely and cost-efficient manner. Some communities opt to include an economic development element in their general plans to ensure that land use, infrastructure, and economic development goals are mutually supportive. The mission for an economic development commission may be

outlined differently in each community, but this group can provide valuable input to the general/comprehensive plan process or discussions of ordinance updates.

5.5.2 Design Review Boards

A design review board typically would be charged with providing direction and recommendations to ensure aesthetically pleasing or desirable projects. Adopted design guidelines are typically the key tool used by the board to determine "aesthetically pleasing or desirable". These guidelines are developed in a participatory manner to facilitate the implementation of community plan goals and objectives (such as downtown or neighborhood revitalization, historic preservation, or landscaping improvements). The board provides a mechanism for ensuring that proposed projects comply with the established design standards and guidelines. Design review hearings occur in public forums that are subject to the Open Meeting Law, and would supplement the review of plans conducted by planning commissions.

5.6 WORKING EFFECTIVELY AS A GROUP

Commissioners and board members, especially new ones, need to know how to be effective group members. To work effectively, the group must be well organized and interact cooperatively. Organization and high morale contribute to group productivity, a sense of well-being, and the capacity to make well-informed, comprehensive decisions.

Three standards to measure a good work group are:

- **Effectiveness:** Does the commission function as a deliberative study committee providing informed advice to the elected body? Does the board/commission debate excessively without properly evaluating the issues placed before it? Is the group "fact finding" for the decision at hand?

- **Continuity:** Are recommendations based on established policy, ordinances, and the general plan, or does the group "fly by the seat of its pants" on each new agenda item? An effective board/commission has direction, and each of its decisions is linked to fundamental principles.

- **Capacity for improvement:** As conditions change and new demands are made on the group, it must be able to adapt and respond to change. A particular challenge to commissions, for example, is the emergence of alternative lifestyles such as group homes, hospice centers, etc. A commissioner may find these lifestyles strange, but must consider them with care and sensitivity, and not let personal feelings interfere with fair and objective decision-making.

Long rambling meetings and the habitual continuance of agenda items diminish motivation and sense of purpose. A dysfunctional commission or board might have these symptoms:

- **Loss of spirit:** Due to a lack of direction, loss of support from elected officials, poor relations with staff, a hostile public, the group may become apathetic or disillusioned.

- **Poor attitudes:** Absenteeism, disorganization, and lack of leadership contribute to the disintegration of the group.

- **Structural disorganization:** Lack of cooperation within the group may be so disruptive that it becomes ineffective and often unable to reach agreement.

Leadership ■ The chair is responsible for providing leadership, being a liaison to the elected body, directing staff interaction, maintaining morale, and assuring the effective performance of the commission's duties. Sometimes the elected officials select the chair, and sometimes the job is rotated within the group. The commissioner selected as chair should have the following qualities:

- **Strength of Character:** ensure that meetings are fair and friendly, and are run by the rules in the face of opposition, competing viewpoints, and intense emotions.
- **Fairness:** allow members of the public an opportunity to be heard, even if they represent unpopular views.
- **Ability to concentrate on the issue:** review and summarize information, and identify the issue in order to keep the meeting on track.
- **Mediation skills:** have the patience and commitment needed to seek fair and reasonable compromises and find common ground before calling for a possibly decisive vote.

Decision-Making ■ Group decisions are often reached by polling the members under majority-rules voting procedures. The minority must be made to feel that they have been given fair treatment and that their views are respected. Some groups take the time to reach a consensus, feeling that compromise is important. A more reasonable (in some cases where consensus is difficult) approach is to vote by roll call, and allow each person to state the basis for his or her decision, whether that means citing the motion or staff report, or stating reasons for a minority view.

Common examples of poor decision-making include:

- **Scatterbrainstorming:** Every time someone offers an idea, someone else offers another before the first one is discussed. The result is confusion. This process reduces the initiative of participants and dilutes the effectiveness of the discussion.
- **Looking to authority:** Commissions or boards that make decisions based only on staff recommendations, or in response to the wishes of the governing body, avoid responsibility and serve no real purpose.
- **Railroading:** Group members who force decisions without the consent of the majority, by making a motion and pushing it through before discussing the issues, sabotage the credibility of the group.
- **Short-term outlook:** making decisions that benefit only the landowner or a few residents versus the community at large over the long-term.

5.6.1 Orientation for New Members

Relatively few of the people appointed to commissions or boards have a professional planning background, or the full range of technical skills necessary to review the development proposals and complex issues that come before them. Yet very few communities have developed orientation or education programs for new public officials. Although planning experience is absolutely not required for commissioners or board members, an open mind, interest in planning issues, and a willingness to learn and listen to a variety of opinions are. Still, the development application process, planning terminology, and other key knowledge areas may be confusing to new members. Staff or fellow members in a variety of ways could provide an orientation to community planning.

Consider...

- Conducting annual worksessions for all members to review processes or to discuss local planning issues
- Establishing orientation visits for new members with the planning staff to understand the purpose of the general/comprehensive plan and zoning code
- Requesting attendance at several hearings before appointment to the group
- Conducting a study session for new members with a planner to review the contents of a staff report and how to read a site plan
- Compiling a packet of information and guidance for the new member to review, including bylaws, this handbook, interesting articles from the Planning Commissioners' Journal (see www.plannersweb.com for subscription information), etc.
- Establishing a citizen's academy. These have been used successfully in several Arizona communities in educating people on municipal organization, state laws, and planning issues – these programs are often a source of well-prepared new public officials

Topics that should be covered in a new member orientation (or reviewed as a group) include discussion of staff recommendations and reports, how to request information from staff or ask questions, and the jurisdiction's development policies. It is important that the line of authority between staff, chief administrator or city/county manager, legislative body, and commission/board is clearly understood. The chair or vice-chair may brief new members on the rules and procedures. Matching new members with experienced members in a "buddy system" enables the new appointee to learn, feel a part of the group, and gain confidence in their new role more quickly.

Some key questions that new (or veteran) members should consider include:

How do the commissioners/board members work together?

What role does the chair play?

Is it a formal or informal atmosphere?

Do the group members talk to each other, or mostly to staff?

How do they arrive at decisions?

How does the discussion lead to changes in the project or stipulations that are part of the motion?

Do they question staff, applicants, or other people testifying?

What happens when a hearing is closed?

How are motions made?

Finally, there are the "tools of the trade" for commissions and boards that should be distributed to each commissioner or member. Particularly with new members, staff should clarify the purpose and how to use each of the following "tools":

Tools...

- The general or comprehensive plan with all amendments, including a statement of community goals and issues relating to planning and development
- Copies of planning reports and related studies
- A legible, easy-to-use base map
- Copies of regulatory ordinances (zoning, subdivision, sign, design, etc.)
- The planning agency's work program for the year
- An executive summary of the annual budget or capital improvement program (CIP)
- The board/commission's bylaws and written procedures
- Copies of regional or state policies or programs to which they may be expected to refer on occasion
- Copies of any current agreements the planning agency has with other agencies or with consultants
- Copies of the rules, regulations, and forms that applicants must comply with in order to obtain permits
- A list of all the available planning resources
- A flow chart of how typical projects make their way through the different boards, commissions, and legislative body

Planning & Zoning HANDBOOK

THE MUNICIPAL GENERAL PLAN

CHAPTER 6

CHAPTER 6

THE MUNICIPAL GENERAL PLAN

Local government planning in Arizona (as in most other states) is carried out through specific powers and authority delegated to the local governments from the State by planning enabling legislation. Urban planning has occurred in Arizona since at least the 1920's under enabling legislation that was modeled on the Standard Planning and Zoning Enabling Acts, which were developed by the U.S. Department of Commerce in the 1920's. In August 1973, the Urban Environment Management Act was passed and specifically authorized cities and towns to prepare general plans. Enabling legislation for counties has developed in a more piecemeal manner. Growing Smarter and Growing Smarter Plus legislation, passed in 1998 and 2000 respectively, significantly changed the requirements to amend and prepare a general or comprehensive plan.

The plan-making process is first described for municipalities in the following sections. Portions of this discussion are referenced in the next chapter covering county planning because, despite differences in enabling laws, the process is largely the same for city, town, or county.

6.1 FUNCTIONS OF THE PLAN

Arizona law refers to municipal plans as general plans and to county plans as comprehensive plans. The plan contains a community's goals and policies on development, its aspirations for the future, strategies for implementation to achieve future goals, and a proposed map of the jurisdiction that typically includes land use, transportation, and public facilities and services. Growing Smarter/Plus legislation requires the inclusion of elements to address areas such as open space, environmental planning, growth areas, cost of development, and water resources. Communities may opt to include additional elements to address issues of local significance, such as an economic development element. (Elements are covered in more detail in Section 6.2.)

The Plan as a Statement of Policy ■ As a statement of policy, the plan serves as a guide to elected bodies responsible for adopting land use controls and to the courts that must judge their fairness and reasonableness. Throughout the planning process, conflicts among the goals of competing interest groups must be resolved to adequately represent the community as a whole; yet goals and objectives must be measurable and specific enough to be implementable. This requires an effective public participation program to gain community support for the final plan goals, objectives, and policies. Policy outlined in the plan can provide stability and consistency through political and administrative changes.

The Plan as Part of a Process ■ Planning is a continual process. No plan can be the "last word" on a community's future development. A single planning document cannot provide solutions to all the economic and social problems facing a changing community. Conditions, resources, and goals could change, making it necessary to amend the plan.

An important purpose of developing a plan is to work through the process – to create a basis for continuing activity designed to produce the best possible decisions about the community's future. Planning processes should be participatory, and provide the opportunity to bring the public and other stakeholders into a common forum to talk about a community vision and goals.

The essence of the plan is that it is a statement of policy, and an expression of community intentions and aspirations.

An effective process will ensure that the plan is an accurate and complete summary of the community's vision at a particular time, and the stakeholders will be familiar with and supportive of its goals due to their participation.

Policy as Strategy ■ The plan will contain policies on land use, transportation, public services, housing, environmental or resource conservation, and whatever else is important in the community. These policies should support the community's overall development goals and their priority. In growing cities, policy may be directed to maintaining, stimulating, or managing new development, or to controlling the location and type of development occurring. In cities with stable or declining populations, policy may focus on infill development, effective use of public resources, and maintenance of existing facilities and services. Large cities, and counties with substantial regional differences, may prepare their plan incrementally. Another benefit to planning is to coordinate policy and priorities among the various elements (such as land use, circulation, etc.) so that decisions made by different government entities are mutually supportive and not conflicting.

The Plan as a Guide to Decision-Making ■ Clear, concise policies provide the means for implementing the general plan. A capital improvements program (CIP) and municipal or county budget provide the schedule and

resources for the jurisdiction's part in accomplishing these goals. The most common way in which the land use element of the plan is used for decision-making is through the zoning process. The zoning map and proposed land use map are graphic depictions of land use policy. Subdivision regulations, like the zoning ordinance, also should be designed and administered in accordance with the development policies outlined in the plan.

6.2 LEGAL REQUIREMENTS FOR THE GENERAL PLAN

By law, the plan should be developed, updated, or readopted at least every ten years. A.R.S. § 9-461.05 contains the requirements for municipal general plans, and states:

- Each planning agency shall prepare and the legislative body of each municipality shall adopt a comprehensive, long-range general plan for the development of the municipality. The planning agency shall coordinate the production of its general plan with the creation of the state land department conceptual land use plans under title 37, chapter 2, article 5.1 and shall cooperate with the state land department regarding integrating the conceptual state land use plans into the municipality's general land use plan. The general plan shall include provisions that identify changes or modifications to the plan that constitute amendments and major amendments. The plan shall be adopted and readopted in the manner prescribed by Section 9-461.06.
- The general plan shall be so prepared that all or individual elements of it may be adopted by the legislative body and that it may be made applicable to all or part of the territory of the municipality.
- The general plan shall consist of a statement of community goals and development policies. It shall include maps, any necessary diagrams and text setting forth objectives, principles, standards and plan proposals.

The statutes also describe the contents for each of the required elements, which are summarized in the sections below. Appendix E is a flow chart of the required general plan elements relative to population size and growth rate.

6.2.1 General Plan Elements for All Communities

The statutes require that each municipal plan include land use and circulation elements with certain components.

Land Use Element ■ This element is typically the basis for the remainder of the plan, and would include a planned land use map. The statutes require that the land use element:

- Designates the proposed general distribution, location, and extent of such land uses as housing, business, industry, agriculture, recreation, education, public buildings and grounds, open space, and such other categories of public and private uses of land as may be appropriate to the municipality
- Include a statement of the standards of population density and building intensity recommended for the various land use categories covered by the plan
- Include consideration of access to incident solar energy for all general categories of land use
- Include policies to address maintaining a broad variety of land uses including the range of uses existing in the municipality when the plan is adopted, readopted, or amended
- For cities and towns with territory in the vicinity of a military airport (as defined by A.R.S. § 28-8461), include consideration of military airport operations

- For large and fast growing municipalities, the general plan must be ratified by a vote of the public to become effective. (See page 31 under "Ratification" heading.)

Circulation Element ■ This element should include the general location and extent of existing and proposed freeways, arterial and collector streets, bicycle routes, jogging paths, and any other modes of transportation as may be appropriate, all correlated with the land use element of the plan.

6.2.2 General Plan Elements for Large and Fast Growing Communities

The following elements are required for all communities with populations greater than 10,000, and communities with populations between 2,500 and 10,000 AND a population growth rate that exceeded an average of 2% for the previous ten-year period. In calculating population totals and growth rates, the statutes direct communities to use the most recent U.S. decennial census.

Open Space Element ■ This element addresses open space and recreational resources in the community, and typically is closely tied to the land use element. State Statutes require the following be included in this element:

- A comprehensive inventory of open space areas, recreational resources, and designations of access points to open space areas and resources
- An analysis of forecasted needs, policies for managing and protecting open space areas, and resources and implementation strategies to acquire additional open space areas and further establish recreational resources
- Policies and implementation strategies designed to promote a regional system of integrated open space and recreational resources, and consideration of any existing regional open space plans

Growth Area Element ■ This element should also be closely tied to the land use element, and is intended to identify areas (if any) that are particularly suitable for planned multimodal transportation and infrastructure expansion and improvements designed to support a planned concentration of a variety of land uses. The statutes direct that this element should include policies and implementation strategies that are designed to:

- Make automobile, transit and other multimodal circulation more efficient, make infrastructure expansion more economical, and provide for a rational pattern of land development
- Conserve significant natural resources and open space areas in the growth area and coordinate their location to similar areas outside the growth area's boundaries
- Promote the public and private construction of timely and financially sound infrastructure expansion through the use of infrastructure funding and financing planning that is coordinated with development activity

Environmental Planning Element ■ This element contains analysis, policies and strategies to address anticipated effects, if any, of plan elements on air quality, water quality and natural resources associated with proposed development under the general plan. The policies and strategies to be developed under this element shall be designed to have community-wide applicability and shall not require the production of an additional environmental impact statement or similar analysis beyond the requirements of state and federal law.

Cost of Development Element ■ This element should include policies and strategies that the municipality will use to require development to pay its fair share toward the cost of additional

public service needs generated by new development, with appropriate exceptions when in the public interest. Per the statutes, this element shall include:

- A component that identifies various mechanisms that are allowed by law and that can be used to fund and finance additional public services necessary to serve the development, including bonding, special taxing districts, development fees, in lieu fees, facility construction, dedications and service privatization
- A component that identifies policies to ensure that any mechanisms that are adopted by the municipality under this element result in a beneficial use to the development, bear a reasonable relationship to the burden imposed on the municipality to provide additional necessary public services to the development and otherwise are imposed according to law

In developing this element, it is recommended that each community define "fair share" and identify all the services that would require expansion and therefore incur costs as a result of new development (i.e. roads, water and sewer systems, parks, police and fire protection, etc.).

Water Resources Element ■ To address the connection between water resources and development, this element should include discussion of:

- The known legally and physically available surface water, groundwater and effluent supplies
- The demand for water that will result from future growth projected in the general plan, added to existing uses
- An analysis of how the demand for water that will result from the future growth projected in the general plan will be served by the currently available water supplies, or a plan to obtain additional necessary water supplies

6.2.3 Additional General Plan Elements for Communities over 50,000 in Population

The following additional elements are required for large communities – with populations over 50,000 – but other communities may opt to include one or more of the elements below as needed to address important local issues.

Conservation Element ■ This element is intended to address the conservation, development, and utilization of natural resources, including forests, soils, rivers, and other waters, harbors, fisheries, wildlife, minerals and other natural resources. The conservation element may also cover:

- ✓ Reclamation of land
- ✓ Flood control
- ✓ Prevention and control of the pollution of streams and other waters
- ✓ Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan
- ✓ Prevention, control, and correction of the erosion of soils, beaches and shores (the last two are for after "the big one," when California tumbles into the sea)
- ✓ Protection of watersheds

Recreation Element ■ This element should show a comprehensive system of areas and public sites for recreation including the following and, if practicable, their locations and proposed development:

- ✓ Natural reservations
- ✓ Parks
- ✓ Playgrounds and playing fields
- ✓ Parkways and scenic drives
- ✓ Beaches

- ✓ Open space
- ✓ Bicycle routes
- ✓ Other recreation areas

Circulation Element ■ In addition to the requirements described in Section 6.2.1, for larger communities this element shall also include recommendations concerning parking facilities, building setback requirements and the delineation of such systems on the land, a system of street naming, house and building numbering and such other matters as may be related to the improvement of traffic circulation. The circulation element may also include:

- A **Transportation Element** showing a comprehensive transportation system, including locations of rights-of-way, terminals, viaducts and grade separations. This element of the plan may also include aviation and related facilities.

- A **Transit Element** showing a proposed system of rail or transit lines or such other mode of transportation as may be appropriate.

Public Services and Facilities Element ■ This element must show general plans for police, fire, emergency services, sewage, refuse disposal, drainage, local utilities, rights-of-way, easements and facilities for them.

Public Buildings Element ■ This element must show locations that have civic and community centers, public schools, libraries, police and fire stations, and other public buildings.

Housing Element ■ This element shall consist of standards and programs for the elimination of substandard dwelling conditions, for the improvement of housing quality, variety, and affordability, and for provision of adequate sites for housing. This element shall contain an identification and analysis of existing and forecasted housing needs, and be designed to make equal provision for the housing needs of all segments of the community regardless of race, color, creed or economic level.

Conservation, Rehabilitation and Redevelopment Element ■ This element shall consist of plans and programs for:

- The elimination of slums and blighted areas
- Community redevelopment, including housing sites, business and industrial sites, and public building sites
- Neighborhood preservation and revitalization
- Other purposes authorized by law

Safety Element ■ This element provides for the protection of the community from natural and manmade hazards including features necessary for such protection as evacuation routes, peak load water supply requirements, minimum road widths according to function, clearances around structures and mapping in areas of known geologic hazards.

Bicycling Element ■ This element shall consist of proposed bicycle facilities such as bicycle routes, bicycle parking areas and designated bicycle street crossing areas. It is recommended that this element be tied to the circulation element.

Although these elements are required by Arizona Statutes, please note that it is not an exhaustive list of possible elements for a general plan. If some topic is especially important in a community, it may make sense to devote a specific element to it. Additional elements that have been included in Arizona general plans include economic development, historic preservation, and arts and cultural resources.

6.2.4 Public Participation Requirements

Arizona Statutes do address the public participation that should accompany the general plan process. These are discussed in more detail in Section 4.2.1 in Chapter 4. Overall, the law indicates that, in developing a general plan, the community must consult with, advise, and provide an opportunity for official comment to at least the following groups: public officials and agencies, the county, school districts, associations of governments, public land management agencies, the military airport if the municipality has territory in the vicinity of a military airport as defined in A.R.S. § 28-8461, other appropriate government jurisdictions, public utility companies, civic, educational, professional and other organizations, property owners and citizens generally [A.R.S. § 9-461.06(B)(2)]. As discussed in Chapter 4, written procedures for a public involvement program to accompany general plan development must be adopted by the legislative body.

At least sixty days before the planning commission hearing on the general plan (or a major amendment) is noticed, a review copy of the proposed plan or amendment must be transmitted to the planning commission, governing body, and the following entities for further review and comment:

- The planning agency of the county in which the municipality is located
- Each county or municipality that is contiguous to the corporate limits of the municipality or its area of extraterritorial jurisdiction
- The regional planning agency within which the municipality is located
- The Arizona Department of Commerce or any other state agency that is subsequently designated as the general planning agency for the state
- The Arizona Department of Water Resources for review and comment on the water resources element, if a water resources element is required
- If the general plan or a portion, element or amendment of the general plan is applicable to territory in the vicinity of a military airport as defined in A.R.S. § 28-8461, the military airport.
- Any person or entity that requests in writing to receive a review copy of the proposal

After considering the recommendations from the review period described above, public hearings before the planning commission and governing body are required to be held on the proposed general plan plan update, or major amendment as described in Chapter 4 (Section 4.2.1) and in accordance with the Open Meeting Law (Section 4.1). More information on major and minor amendments is provided below in Section 6.2.5.

6.2.5 Major and Minor Amendments

State Statutes require that communities identify criteria to determine major and minor amendments to the general plan. In general, a major amendment may be defined as "a substantial alteration of the municipality's land use mixture or balance as established in the municipality's existing general plan land use element." [A.R.S. § 9-461.06(G)] Each city or town must identify the specific criteria for defining a major amendment; often communities will use a combination of characteristics such as acreage of the proposed amendment area, proposed density change, or type of proposed land use change (i.e., from residential to commercial).

Proposed major amendments can only be considered for adoption by the governing body once a year, at a single public hearing to be held within the same calendar year as the proposal is made. It is suggested that a schedule for the annual hearing be determined and followed consistently, so that a schedule of annual deadlines for necessary steps in the application process can be established for applicants and staff.

There are also hearing requirements associated with the consideration and adoption of major amendments that are very similar to those for the adoption of the general plan (see Section 4.2.1 for this information). In addition, major amendments are subject to the same 60-day review as general plans (see Section 6.2.4).

6.3 THE PLANNING PROCESS

Who Initiates The Process? ■ The local public authority most often initiates the development of a general or comprehensive plan: the city council, board of supervisors, planning commission, city or county manager, or community development/planning director. The initiation of a comprehensive planning effort in response to public concern over the future of the community is an ideal circumstance for this undertaking. One of the most important ingredients to a successful process is to have a public participation plan that encourages a variety of techniques to include residents and other stakeholders.

Who Directs The Work? And Who Else Should Be Involved? ■ While a comprehensive planning effort may be financed and directed wholly outside the public sector, this is the exception and not the rule. Many Arizona municipalities and counties have planning departments or commissions whose task is to prepare plans for their communities. The responsibility for planning will vary from one community to another. The city manager's role in the planning function is especially prominent in smaller cities and towns, where the manager is most likely to have a major responsibility due to small planning staffs.

If the plan is to be effective, it is essential that those expected to use it be involved in its preparation. Elected and appointed officials deciding on land use issues should be familiar with how the land use element of the plan was developed, population trends, housing patterns, and key development issues. Likewise, officials responsible for developing and adopting the capital improvements program should be familiar with the community's long-range public facilities goals. Finally, community residents are the most important investors in the plan and must be involved in its preparation and implementation, however difficult and time-consuming this task may become.

Relationship To Metropolitan And Regional Planning ■ Most communities are affected by changes occurring in surrounding areas: annexations, economic cycles, and development patterns. Municipal plans should identify the city's role in the region relative to economic growth or decline. Communities may be members of councils of governments (COGs), or enter into intergovernmental agreements for the provision of services. Issues of regional importance include transportation, transit, wildlife and nature conservation, tourism, recreation, air quality, water quality and supply, solid waste disposal, and flood control/drainage.

Who Does The Technical Work In Plan Preparation? ■ A professional planning staff is often responsible for preparing the plan. However, given the diverse technical skills necessary to adequately address environmental, transportation, utilities, and other needs, most planning staffs will require input and assistance from other departments such as public works or engineering. Consultants are frequently used for preparation of some components of the plan, or the entire plan.

In small communities or rural counties, consultants may be employed to undertake all of the technical work under the direction of the planning staff, planning commission, or city or county manager. When consultants are used, it is important that staff and policy-makers remain closely involved in development of the plan to examine data, formulate policy, and review alternatives (see Section 6.3.3 for more information on hiring consultants).

How Much Money Is Needed? ■ The cost of a plan generally depends on the number and types of elements in the plan, the number of meetings and public presentations held, the level of detail demanded, and the final products desired. Because the payoffs from planning are not seen as immediate and tangible, the planning budget may be a low priority. However, planning is a vital component of resource management, and will assist the administration in determining the most effective use of funds and their projected impact.

Deadlines Should Be Set ■ At the outset of the planning process, a schedule should be set specifying the completion of particular work products, team meetings, and public meetings. A schedule should be developed for the planning process that incorporates the adopted public participation procedures, sufficient time for data collection efforts, the mandated 60-day review period, hearing notification requirements, and any other local considerations. Many communities require between twelve to twenty-four months to develop a plan.

What Should The Plan Look Like? ■ Plans come in various sizes and shapes because of the budget and needs of a particular community. General and comprehensive plans may be printed as a series of documents for easy use or summarized in short pamphlets for public distribution. Loose-leaf notebooks are popular because individual plan components may be added or deleted as they are completed or updated. Many plans are published in summary versions for mass distribution and complete versions for those wanting all the background data, standards, etc.

Should Maps Be Used? ■ Maps are indispensable to good planning, and provide a method to communicate the spatial relationships of land use categories. Maps also provide a means to illustrate other planning goals such as future circulation systems and future public facilities and services, especially when they are shared regionally.

6.3.1 Preparing the General Plan

One of the suggested first steps to begin work on the general plan is to put together an advisory team. The makeup of the team depends on whether a consultant is involved and the willingness and experience of staff, public officials, and others. A good mix might include the consultant, planning staff, one or two planning commissioners, one or two council members, a major landowner representing the interests of property owners, a local merchant representing business concerns, and representatives for the local utilities, schools, or public land holdings. This team will be responsible for initiating the project, coordinating information from concurrent activities, and providing direction to those ultimately responsible for writing the text and preparing supporting maps. The team should strive for consensus; however, it is not the responsibility for team members to make final decisions. The governing body ultimately adopts the plan through a public process.

6.3.1.1 Phase I

Discovery and Analysis

Phase I focuses on data gathering, so that the community can inventory existing resources and understand current opportunities and challenges. Necessary data typically will include:

- ✓ Population statistics and projections
- ✓ Economic characteristics and statistics
- ✓ Existing land uses
- ✓ Environmental characteristics
- ✓ Existing public facilities
- ✓ Existing transportation network

Housing, recreation, resource conservation, downtown redevelopment, etc. may require additional studies, depending on data gaps identified and what is needed.

Population Studies ■ Two types of population studies are usually employed in the planning process. Current population studies describe the existing population of the planning area in terms of its stratification and composition. The U.S. Bureau of the Census collects population figures each decade, which provide a good starting point from which to estimate the local population during non-census years. Councils of government (COGs) also may have estimates for non-census years.

Population projections forecast future population levels in order to predict land use requirements, public facilities needs, and the general composition of the city or county in the years to come. The validity of long-range planning depends partly on the accuracy of the population forecasts. As much as planning deals with providing community services and facilities, significant fluctuations in population size and composition can render the plan obsolete if changes are unforeseen. Determining the size of the study area (the area to be planned) will depend upon the growth expectations of the community. The Arizona Department of Economic Security "Arizona Workforce Informer" website, www.workforce.az.gov, can be helpful here. Some communities in Arizona experience seasonal populations. Organizations to assist in forecasting these populations include tourism offices and the local chamber of commerce.

Economic Studies ■ Economists have developed numerous strategies for economic analyses of urban areas. Economic base studies, the determination of the size and segment of local industry and commerce devoted to "exports" from the community, are perhaps the most commonly used. Excellent techniques have also been developed for gathering data on employment, occupations, income, value added by manufacturing, volume of production, and other useful information. This provides an understanding of the economic composition of the community and forms a basis for projecting future demands on both the public and private sectors. Much of this information is documented in the Arizona Community Profiles and the Arizona Economic Base Studies, which are prepared by the Arizona Department of Commerce (see www.azcommerce.com).

Physical and Natural Resource Inventory ■ An inventory and analysis of soils, topography and slope, geology, drainage patterns, vegetation, lakes, rivers, and wetlands is necessary to understand the environmental setting and identify sensitive areas.

Existing Land Use Surveys ■ A land use survey is conducted to identify the variety of land uses existing in the community. Data collected from this inventory is tabulated and analyzed statistically with regard to location, size, frequency, and density. The information can be summarized to include the amount of land

devoted to specific uses, a table depicting frequency of lot sizes, and an analysis of major impacts associated with certain land uses. The data is evaluated along with projected community needs and serve as a framework for preparing long-range plans.

Transportation and Circulation Studies ■ The existing level of service of all (public and private) modes of transportation within the planning area should be benchmarked to assist with prioritizing short- and long-range capital improvements. Information on projected traffic volumes, the size, location, and capacity of existing and planned facilities, efficiency of circulation patterns, and other relevant data should be included.

Public Facilities ■ A community's growth policies may be translated through the capital improvements plan (CIP). The timing, location, and availability of public facilities, utilities, and services shape urban development patterns. The extension of water and sewer service, construction of major roads, schools, parks, and a host of other physical improvements determine when and where development will occur.

6.3.1.2

Phase II

Goals and Policy Formulation

Perhaps the most important, and yet most difficult, stage of the planning process is the establishment of goals, objectives, and policies for future development. The need for revision of existing goals and policies, or identification of new ones will emerge during the data evaluation and public input. An important point to remember is that objectives must be measurable so that progress towards meeting community goals can be monitored. The importance of including the community throughout the process via a public information and participation program is essential to the identification and acceptance of goals and policy by community members. The value of public input to the planning process cannot be underestimated.

6.3.1.3

Phase III

Alternatives Development

Based on the data inventory and community goals, alternative land use scenarios may be generated to present to the community. Often these alternatives will provide for different growth rates or different policy emphases to illustrate the various outcomes that might result. The alternatives may be a tool for provoking community discussion about its vision of the future, and often one of the alternatives will be the basis for the land use map that is included in the general plan. During this period, the elements of the plan may be drafted. In addition, public involvement activities may be occurring as prescribed in the public participation program.

6.3.1.4

Phase IV

Review, Revisions, and Adoption

During this phase, a draft review copy of the plan is completed and distributed for 60-day review. In accordance with the statutes, certain agencies and groups must receive the draft (see Section 6.2.4) and this may also be a good time to continue a public information program or other activities that may be included in the public participation program.

Upon completion of any revisions, the hearings for the planning commission and council to recommend and adopt the plan may occur in accordance with the Open Meeting Law and any other statutory requirements (see Chapter 4).

6.3.1.5

Phase V

Implementation

Any effective plan must include accepted and feasible implementation measures. Common tools for implementation include land use regulations, a capital improvements program, and special funding programs. Land use regulations may take the form of:

- Building codes
- Zoning and subdivision ordinances
- Permitting procedures
- Public review processes
- Development agreements

After setting the goals and policies, the plan should identify "next steps" – ideally, the priorities, timelines, and responsible parties for the efforts and projects that are discussed in the plan. In addition, a method for monitoring or reporting back to council on progress toward plan goals could be outlined. Some ideas for the role of various entities in implementation may include:

The Staff...

- Recommend to the council ways of implementing the plan that may include zoning code or other ordinance updates, design guidelines, a sign ordinance, or specific plans.
- May make an annual report to the council on the status of the plan and its implementation.
- May consult with public and private organizations on the implementation of the plan.
- Shall, on orders from the council, prepare specific plans and regulations.
- Recommend that projects and priorities in the plan be reflected in the capital improvements plan (CIP) and municipal budgets.

The Council...

- May direct the planning agency to prepare specific plans and regulations.
- Adopt other measures to implement the general plan including procedures to administer the specific plans and regulations. Please note: the jurisdiction's attorney should review all proposed regulations before they are enacted.
- Ensure that projects and priorities in the plan are reflected in the capital improvements plan (CIP) and municipal budgets.

The Planning Commission...

- Participate in the development of and hold public hearings for specific plans or regulations.
- Continue to discuss progress toward plan goals and emerging planning issues in worksessions with staff and in joint sessions with council.

6.3.2 Keeping the Plan Current

The development of a plan is only the beginning of a continual planning process; the plan must be examined and probably revised periodically. Frequent amendments to the general plan, a specific plan, or to development ordinances may indicate the need for revision of these documents.

When revising a plan, official maps, the zoning ordinance, subdivision regulations, etc., the following procedure is suggested:

- ✓ Analyze and review the goals, policies and programs in the plan and determine specific areas in need of revision.
- ✓ Rewrite appropriate areas of the plan to incorporate any changes. Since the elements of a plan should be interrelated, be aware that changes to one part may require changes in others.
- ✓ Rewrite appropriate sections of the development ordinances to be adopted at the same time that the plan is amended.

6.3.3 Choosing a Consultant

Communities often retain the services of a consultant to draft or update their general plans. Typically, this process would begin with the development of a Request for Proposals (RFP) or Request for Qualifications (RFQ) to generate responses from interested firms. For assistance in developing these documents, please contact the Community Planning Office of the Arizona Department of Commerce (602-771-1191). A database of professional consultants in Arizona is also available on the Commerce website at www.azcommerce.com.

To select a consultant, a community may opt to convene a selection panel to review and discuss the proposals and interview candidate firms. The panel could include the planning director, a planning commissioner, a council member or county supervisor, interested citizens, representatives of different departments that will be participating in plan development and non-staff individuals with planning knowledge and experience. When reviewing proposals submitted by consultants, consider the following criteria:

1. Does the consultant appear to be well qualified and experienced in the particular field you need help with? Do the people assigned to the project, not just the firm, have the necessary experience and qualifications?
2. How does the firm propose to deal with your particular concerns? Does the firm propose a realistic time schedule and budget? How well does this consultant understand your community's situation?
3. Does the proposal respond directly to your needs in a clear, well-thought-out fashion?
4. What techniques will be used to gather input and receive community support?

The two or three firms with the best proposals should be called for a face-to-face interview with the selection panel. Each interview should be held with the proposed project manager and team leaders from each consulting firm that has made the "short-list".

The consultants should be asked to elaborate on:

What knowledge does the consultant have of the town?

What special qualifications can the project team provide?

Are team members experts in the necessary fields and disciplines?

How will the work be done?

What is the proposed schedule of activities?

How will public input be solicited?

How will the final product be implemented to benefit the community?

In selecting a consultant for the project, one of the most important things a community can do is **check references**. Call at least three of the consultant's most recent clients of similar projects to the one you are contemplating, and ask at a minimum the following questions:

Has the consultant's work been useful?

How well did the consultant work with the public, staff, and public officials?

Did the consultant's services meet your expectations?

Would you hire this consultant again?

Did they complete the project on time and within the budget?

Inquiries to other jurisdictions also can help to establish a range of costs for the desired consulting services. Consultants should know the amount of money budgeted for the project before they prepare a proposal. If the consultant's proposal exceeds your budget, they should be prepared to present a strong case as to why more money will be needed. A consultant should be chosen on the basis of who will do the best job, however, not just who will charge the least.

Further negotiation typically occurs after the consultant is tentatively selected and prior to contract finalization to make sure both sides understand what will, and will not, be completed as part of the project. Your goal is to choose the consultant who seems most suited to working with your community; the one you feel can understand your problems and offer realistic, workable, imaginative alternatives to help your community decide where it wants to go and how to get there.

6.4 SPECIFIC PLANS

A specific plan may be prepared for a specific geographic area which:

- ✓ Has special site characteristics (i.e. historic, recreational, natural resources) that may be targeted for development or preservation
- ✓ Is experiencing rapid growth or economic change
- ✓ Has the potential for development of new or expanded economic activities
- ✓ Requires special planning for other reasons

A.R.S. § 9-461.08 states:

The planning agency may, or if so directed by the legislative body shall, prepare specific plans based on the general plan or drafts of such regulations, programs and legislation as may in the judgment of the agency be required for the systematic execution of the general plan. The planning agency may recommend such plans and measures to the elected officials for adoption.

In addition to zoning ordinance and subdivision regulation amendments, specific plans may include:

- ✓ Regulations determining the location of buildings and other improvements with respect to existing rights-of-way, floodplains, and public facilities.
- ✓ Regulations for the use of land, buildings and structures, the height and bulk of buildings and structures, and the open spaces surrounding buildings and structures.
- ✓ Street and highway naming and number plans in order to establish the official names of streets and highways, which will remove conflicts, duplication and uncertainty among such names, and provide an orderly system for the addressing of buildings and properties.
- ✓ Measures required to ensure the execution of the general plan.
- ✓ Other matters which will accomplish these purposes including procedures for the administration of such regulations.

Municipalities lacking the resources may request that an applicant prepare, or fund the preparation of, a specific plan that would encompass their project. The procedure for adoption of specific plans is similar to that for general plans. The city council may establish administrative procedures for the application and enforcement of specific plans and regulations, assigning these functions to the planning agency.

THE COUNTY COMPREHENSIVE PLAN

CHAPTER 7

CHAPTER 7

THE COUNTY COMPREHENSIVE PLAN

Most of the discussion of the municipal general plan in the previous chapter also applies to counties, including the functions of the plan (Section 6.1), public participation requirements (Section 6.2.4 and Chapter 4), and the planning process (Section 6.3). This chapter addresses the legal requirements for county comprehensive plans and items that are specific to counties, such as rural planning areas and specific zoning plans.

7.1 LEGAL REQUIREMENTS FOR THE COMPREHENSIVE PLAN

County planning authority is provided in A.R.S. § 11-802:

> The board of supervisors of a county…shall plan and provide for the future growth and improvement of its area of jurisdiction, and coordinate all public improvements in accordance therewith, form a planning and zoning commission to consult with and advise it regarding matters of planning, zoning, and subdivision platting and…adopt and enforce such rules, regulations, ordinances and plans as may apply to the development of its area of jurisdiction.

It also states in A.R.S. § 11-806(B):

> The commission shall prepare and recommend to the board a comprehensive plan of the area of jurisdiction of the county in the manner prescribed by article 2 of this chapter. The purpose of the plan is to bring about coordinated physical development in accordance with the present and future needs of the county. The comprehensive plan shall be developed so as to conserve the natural resources of the county, to insure efficient expenditure of public funds, and to promote the health, safety, convenience, and general welfare of the public. Such comprehensive plan may include but not be limited to, among other things, studies and recommendations relative to the location, character and extent of highways, railroads, bus and other transportation routes, bicycle facilities, bridges, public buildings, public services, schools, parks, open space, housing quality, variety and affordability, parkways, hiking and riding trails, airports, forests, wildlife areas, dams, projects affecting conservation of natural resources, air quality, water quality and floodplain zoning. For counties with territory in the vicinity of a military airport as defined in Section 28-8461, the commission shall also consider military airport operations. Such comprehensive plan shall be a public record, but its purpose and effect shall be primarily as an aid to the county planning and zoning commission in the performance of its duties.

In addition, the statutes require that the county plan:

- Shall provide for zoning, shall show the zoning districts designated as appropriate for various classes of residential, business and industrial uses and shall provide for the establishment of setback lines and other plans providing for adequate light, air and parking facilities and for expediting traffic within the districts
- May establish the percentage of a lot or parcel which may be covered by buildings, and the size of yards, courts and other open spaces
- Shall consider access to incident solar energy
- May provide for retirement community zoning districts
- May provide for the regulation and use of business licenses, adult oriented business manager permits and adult service provider permits

Similarly to the municipalities, Arizona law requires for counties:

- That the board of supervisors adopt written procedures for public involvement throughout the planning process, as described in Section 4.2.1 [A.R.S. § 11-806 (D)]

- A 60-day review period (see Section 6.2.4)
- Coordination with the Arizona State Land Department regarding integration of conceptual land use plans [A.R.S. § 11-821(A)]
- Coordination with cities and towns within the county, "… for the purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the county, of zoning districts, of urban growth and of public improvements and utilities which do not begin and terminate within the boundaries of any single city or town." [A.R.S. § 11-806(F)]

7.1.1 Required Elements for County Comprehensive Plans

The statutes require that counties with populations over 125,000 must include at least the three elements described below, and that smaller counties may include these elements. Appendix F is a flow chart depicting the required comprehensive plan elements based on population size.

1. Land Use Element

This element typically contains a land use map, and should designate the proposed general distribution, location, and extent of uses of the land for housing, business, industry, agriculture, recreation, education, public buildings and grounds, open space and other categories as appropriate. The statutes require that the following components be included:

- Statement of the standards of population density and building intensity recommended for the various land use categories covered by the plan
- Specific programs and policies that the county may use to promote compact form development activity and locations where those development patterns should be encouraged
- Consideration of air quality and access to incident solar energy for all general categories of land use
- Policies that address maintaining a broad variety of land uses including the range of uses existing in the county at the time the plan is adopted, readopted or amended.

2. Circulation Element

This element must include the general location and extent of existing and proposed freeways, arterial and collector streets, bicycle routes and any other modes of transportation as appropriate, and be correlated with the proposed land uses.

3. Water Resources Element

This element should address:

- The known legally and physically available surface water, groundwater, and effluent supplies
- The demand for water that will result from future growth projected in the county plan, added to existing uses
- An analysis of how the demand for water that will result from future growth projected in the comprehensive plan will be served by the currently available water supplies or a plan to obtain additional necessary water supplies

Counties with populations larger than 200,000 according to the most recent decennial census must also include in the comprehensive plan:

Open Space and Preservation ■ This element must include:

- A comprehensive inventory of open space areas, recreational resources and designations of access points to open space areas and resources
- An analysis of forecasted needs, policies for managing and protecting open space and resources and implementation strategies to acquire additional open space areas and further establish recreational resources
- Policies and implementation strategies designed to promote a regional system of integrated open space and recreational resources and consideration of any existing regional open space plan

Planning for Growth Areas ■ This element should also be closely tied to the land use element, and is intended to identify areas (if any) that are particularly suitable for planned multimodal transportation and infrastructure expansion and improvements designed to support a planned concentration of a variety of land uses. The statutes direct that this element should include policies and implementation strategies that are designed to:

- Make automobile, transit and other multimodal circulation more efficient, make infrastructure expansion more economical, and provide for a rational pattern of land development
- Conserve significant natural resources and open space areas in the growth area and coordinate their location to similar areas outside the growth area's boundaries
- Promote the public and private construction of timely and financially sound infrastructure expansion through the use of infrastructure funding and financing planning that is coordinated with development activity

Environmental Planning Element ■ This element contains analysis, policies and strategies to address anticipated effects, if any, of plan elements on air quality, water quality and natural resources associated with proposed development under the general plan. The policies and strategies to be developed under this element shall be designed to have community-wide applicability and shall not require the production of an additional environmental impact statement or similar analysis beyond the requirements of state and federal law.

Cost of Development Element ■ This element should include policies and strategies that the municipality will use to require development to pay its fair share toward the cost of additional public service needs generated by new development, with appropriate exceptions when in the public interest. Per the statutes, this element shall include:

- A component that identifies various mechanisms that are allowed by law and that can be used to fund and finance additional public services necessary to serve the development, including bonding, special taxing districts, development fees, in lieu fees, facility construction, dedications and service privatization
- A component that identifies policies to ensure that any mechanisms that are adopted by the municipality under this element result in a beneficial use to the development, bear a reasonable relationship to the burden imposed on the municipality to provide additional necessary public services to the development and otherwise are imposed according to law

In developing this element, it is recommended that each community define “fair share” and identify all the services that would require expansion and therefore incur costs as a result of

new development (i.e. roads, water and sewer systems, parks, police and fire protection, etc.).

Smaller counties may opt to include these elements as well. As with cities, counties may choose to include other elements that address particular issue areas, such as economic development.

7.1.2 Adopting and Amending the Comprehensive Plan

Once drafted, the planning commission, if one exists, would recommend the proposed comprehensive plan to the board of supervisors. The board shall adopt the plan in whole or in part and subsequently amend or extend the adopted plan or portion thereof. Before adoption or amendment, the board must hold at least one public hearing. For more information on plan adoption, see Section 4.2.1.

The county must identify the criteria for major and minor amendments in the same manner as municipalities. Amendments are discussed in Sections 6.2.5. and 4.2.1.

7.2 RURAL PLANNING AREAS

The purpose of rural planning areas is to allow for unincorporated communities to voluntarily assist in planning efforts, to ensure a sound factual and policy basis for those efforts. Rural planning areas may be formed in counties with populations under 400,000, and are created by petition to the county of owners of real property in any specific portion of the county outside corporate boundaries. According to state statutes, rural planning areas shall emphasize voluntary, nonregulatory incentives for compliance and accommodation of continuing traditional rural and agricultural enterprises. Rural planning areas would transmit their recommendations to the board of supervisors for consideration for inclusion in the county comprehensive plan.

As of Fall 2004, two rural planning areas had been formed in Arizona, one in Coconino County for ranch land preservation, and one in Yuma County for an agricultural irrigation district. For information about these rural planning areas, contact Coconino County Community Development at (928) 226-2700 and the Yuma County Development Services Department at (928) 329-2300. The organization of rural planning areas may continue to evolve as more areas opt to form them.

The State Statutes also allow cities, towns, and counties that share multi-jurisdictional areas and have a combined population of between 50,000 and 100,000 persons to form rural planning zones to develop coordinated and comprehensive regional plans. This is possible if the county has a population of less than 400,000.

7.3 SPECIFIC ZONING PLANS

All counties with a population of less than one million are authorized by A.R.S. § 11-825 to have "specific zoning plans." Don't confuse them with municipal specific plans, as they are quite different. Specific zoning plans are essentially a way of reviewing and approving a fairly detailed development plan for large projects. Although no minimum or maximum parcel sizes are stipulated, the terms of the law imply a sizeable project. The plan "shall include text and maps of a land use plan and specific zoning, sign, street, and other regulations for [the] implementation of the county master plans."

A.R.S. § 11-825(C) requires that a specific zoning plan shall include text, maps, and illustrations specifying all of the following:

- ✓ The distribution, location and extent of land uses, including open space
- ✓ The distribution, location, extent and intensity of [the] major components of public and private transportation, sewage and sold waste disposal, drainage and other facilities necessary
- ✓ Standards by which development shall proceed and, if applicable, requirements for [the] conservation, development and utilization of natural resources
- ✓ A statement of whether the specific zoning plan is consistent with the comprehensive plan
- ✓ Any other matters necessary or desirable

Information on zoning and subdivision regulations as they apply to counties are discussed in Chapters 8 and 9.

ZONING

CHAPTER 8

CHAPTER 8

ZONING

A zoning ordinance allows a local government to regulate the height, size, and location and density of buildings, and the uses to which buildings and land may be put. Several key legal decisions (notably *Hadacheck v. Sebastian*[27], and *Euclid v. Amber Realty Co*[28].) upheld the legality of separating buildings and land uses, thereby validating zoning practices early in the century.

[27] 239 U.S. 394 in 1915

[28] 272 U.S. 365 in 1926

8.1 PURPOSE AND OBJECTIVES OF ZONING

Zoning is intended to promote the health, safety, and general welfare of the community. Often this is achieved by grouping compatible land uses together in districts and separating or buffering incompatible uses. Historically, zoning was initiated largely to buffer nuisances related to some uses from other uses, such as industrial processes from residential uses. Zoning ordinances today may address numerous purposes, including:

- Conserving the value of neighborhoods
- Stabilizing neighborhoods
- Assuring orderly growth
- Managing densities
- Moving traffic efficiently and safely
- Protecting cultural, historical, natural, or environmentally sensitive areas
- Controlling aesthetics
- Preserving the community health, safety, or other values through the establishment of special zones and regulatory development standards

Overall, zoning seeks to preserve the planned character of a neighborhood by excluding uses and structures inappropriate to the area and eliminating non-conforming uses. Zoning ordinances also regulate development in accordance with safety considerations.

Zoning Should Not Be Used To:

- Provide economic opportunity or advantage to one parcel of property without extending that opportunity to all property similarly situated
- Artificially increase the value of land
- Make housing more expensive in some districts than in others through the use of unreasonable and restrictive development standards
- Promote economic or racial segregation through exclusionary practices.

The objectives of zoning legislation are to establish regulations, provide for all essential uses of land and buildings, and to ensure that each use is in an appropriate place. While zoning helps to reduce blight, zoning should not be thought of solely as a means of nuisance avoidance. Legitimate business operations, which may be undesirable in one location, may be appropriate land uses in another area.

There have been critics of traditional zoning practices that separate land uses. Arguments against the strict separation of uses include increased traffic congestion, as people must commute to different areas, lack of pedestrian opportunities, and loss of character in neighborhoods and commercial or downtown areas that have become more homogeneous. In response, some communities are incorporating mixed-use zoning and overlay districts to address the negative effects of separated uses and to achieve other community goals.

8.2 RELATIONSHIP TO THE GENERAL OR COMPREHENSIVE PLAN

Section 3 of the Standard Zoning Enabling Act of 1922 provides that a zoning ordinance be prepared "in accordance with a general [or comprehensive] plan." In general, the plan provides policy guidance and the zoning ordinance is a legally binding tool to implement the plan. Preparing a plan concurrently with, or prior to, the adoption of a zoning ordinance is not only good planning practice, but also is the best legal defense of a zoning ordinance.

The courts usually will not question the policies and programs contained in a general or comprehensive plan or an ordinance based on such a plan unless the particular zoning provision is clearly arbitrary or exceeds the police powers. If a community fails to adopt a plan, the courts are less likely to uphold a legally challenged zoning provision since there is no explicit policy to guide it.

In Arizona, statutes require the following for municipalities**:**

- All zoning and rezoning ordinances or regulations adopted under this article shall be consistent with and conform to the adopted general plan of the municipality, if any, as adopted under article 6 of this chapter. In the case of uncertainty in construing or applying the conformity of any part of a proposed rezoning ordinance to the adopted general plan of the municipality, the ordinance shall be construed in a manner that will further the implementation of, and not be contrary to, the goals, policies and applicable elements of the general plan. A rezoning ordinance conforms with the land use element of the general plan if it proposes land uses, densities or intensities within the range of identified uses, densities and intensities of the land use element of the general plan [29].

The county enabling legislation is more ambiguous. A.R.S. § 11-821(A) requires the commission to formulate and adopt a comprehensive plan for the development of the county and says that the plan: "shall show the commission's recommendations for the development of the area of jurisdiction together with the general zoning regulations." Section 11-821(B) says that: "The county plan shall provide for zoning, and shall show the zoning districts designated as appropriate for various classes of … uses … ". Section 11-824 states that: "upon adoption [by the board of supervisors] the plan … shall be the official guide for the development of the area of jurisdiction."

All this clearly implies that zoning should be consistent with the county plan.

One of the most frequently quoted judicial statements on this topic is from an opinion of the New York Court of Appeals:

> *"The [general or] comprehensive plan is the essence of zoning. Without it there can be no rational allocation of land uses. It is the insurance that the public welfare is being served and that zoning does not become anything more than just a Gallup Poll."*

To be valid, zoning regulations (including rezoning or map amendments) must be adopted in conformance with the notice and hearing requirements prescribed by statute and the jurisdiction's zoning ordinance (see Sections 4.1

[29] (A.R.S. § 9-462-01(F)).

on the Open Meeting Law and 4.2.2 on notice for zoning hearings).

8.3 LEGAL AUTHORITY TO ZONE

8.3.1 Municipal Zoning Authority

Cities, town, and counties depend on authority granted to them by their state for their powers. A.R.S. § 9-462.01 authorizes zoning regulations to conserve and promote the public health, safety and general welfare as follows:

- Regulate the use of buildings, structures, and land as between agriculture, residence, industry, business, and other purposes.
- Regulate signs and billboards.
- Regulate location, height, bulk, number of stories and size of buildings and structures, the size and use of lots, yards, courts and other open spaces, the percentage of a lot that may be occupied by a building or structure, and the intensity of land use.
- Establish requirements for off-street parking and loading.
- Establish and maintain building setback lines.
- Create civic districts around civic centers, public parks, public buildings or public grounds and establish regulations therefore.
- Require, as a condition of rezoning, public dedication of rights-of-way as streets, alleys, public ways, drainage, and public utilities as are reasonably required by or related to the effect of the rezoning.
- Establish floodplain zoning districts and regulations to protect life and property from the hazards of periodic inundation. Regulations may include variable lot sizes, special grading or drainage requirements, or other requirements deemed necessary for the public health, safety or general welfare.
- Establish special zoning districts or regulations for certain lands characterized by adverse topography, adverse soils, subsidence of the earth, high water table, lack of water or other natural or man-made hazards to life or property. Regulations may include variable lot sizes, special grading or drainage requirements, or other requirements deemed necessary for the public health, safety or general welfare.
- Establish districts of historical significance.
- Establish age specific community zoning districts in which residency is restricted to a head of a household or spouse who must be of a specific age or older and in which minors are prohibited from living in the home. Age specific community zoning districts shall not be overlaid on property without the permission of all owners of property included as part of the district unless all property in the district has been developed, advertised, sold or rented under specific age restrictions. The establishment of age specific zoning districts is subject to all the public notice requirements and other procedures prescribed by this article. [See the Federal Fair Housing Amendments Act of 1988.]
- Establish procedures, methods, and standards for the transfer of development rights (see Section 3.2.1 on transfer and purchase of development rights).

To achieve these goals, the statutes allow the legislative body to divide a municipality, or portion thereof, into zones of the number, shape

and area it deems best suited to carry out the purpose of the statutes. In addition, the law indicates that zoning regulations shall be uniform for each class or kind of building or use of land throughout each zone. The regulations in one type of zone may differ from those in other types of zones as follows:

- Within individual zones, there may be uses permitted on a conditional basis wherein additional requirements must be met, including requiring site plan review and approval by the planning agency. Such conditional uses are generally characterized by:
  - Infrequency of use
  - High degree of traffic generation
  - Requirement of large land area.
- Within residential zones, the regulations may permit modifications to minimum yard lot area and height requirements.

To carry out the purpose of the statutory provisions, the legislative body may adopt overlay zoning districts and regulations applicable to particular buildings structures, and land within individual zones. An overlay zoning district means a special zoning district that includes regulations that modify regulations in another zoning district with which the overlay zoning district is combined. Overlay zoning districts and regulations must be adopted pursuant to rezoning hearing requirements (see Section 4.2.2).

The statutes also allow the legislative body to approve a change of zone conditioned upon a schedule for development of the specific use or uses for which rezoning is requested. If at the expiration of this period the property has not been improved for the use for which it was conditionally approved, the legislative body, after notification by certified mail to the owner and applicant who requested the rezoning, shall schedule a public hearing to take administrative action to extend, remove or determine compliance with the schedule for development or take legislative action to cause the property to revert to its former zoning classification.

8.3.2 County Zoning Authority

County authority to zone unincorporated areas is contained in the general delegation of planning authority received from the State Legislature. The statute provides that the comprehensive plan shall provide zoning. However, the provisions for zoning are not extensive. County zoning authority is found in A.R.S. § 11-821(B), which states that the county plan:

> Shall provide for zoning, shall show the zoning districts designated as appropriate for various classes of residential, business and industrial uses and shall provide for the establishment of setback lines and other plans providing for adequate light, air and parking facilities and for expediting traffic within the districts.

> May establish the percentage of a lot or parcel that may be covered by buildings, and the size of yards, courts and other open spaces.

> Shall consider access to incident solar energy.

> May provide for retirement community zoning districts.

The scope of the zoning powers under these provisions is somewhat imprecise, although zoning may be used to obtain all of the objectives outlined in the comprehensive plan. However, special provisions protect certain activities. For example, a county must establish districts where such uses as canneries, fertilizer plants, refineries,

feedlots, packing plants, and tallow works may be located.[30] In addition, a county cannot regulate or restrict the use of land for railroad, mining, grazing or agricultural purposes if the tract involved is five or more contiguous commercial acres [A.R.S. § 11-830(A)(2)].

As in the statutes governing municipal zoning authority, the county enabling legislation expressly exempts existing uses from regulation. The statute not only establishes the right to continued uses, repair and alteration of nonconforming property, but also provides that a nonconforming business may expand up to 100 percent of the area of the original business [A.R.S. § 11-830(B)]. The county may enforce its zoning ordinance by withholding building permits [A.R.S. § 11-808(A)]. Additionally, county officials and neighboring property owners who are "especially damaged" may bring an action to enjoin, prevent, or remove structures or uses that violate the ordinance [A.R.S. § 11-808(H)].

8.3.3 Adopting Zoning Ordinances

Procedures for adopting and amending county zoning parallel those for adopting municipal ordinances [A.R.S. § 11-829]. The zoning ordinance is adopted by the governing body, subject to prior review and recommendation by the planning and zoning commission. Before taking action, both the commission and the board or council are required to hold public hearings and comply with any other procedures required by the adopted citizen review process.

8.4 LEGAL ISSUES

Historically, local governments have had considerable flexibility in establishing zoning classifications. The legal test is a vague one: only if the zoning classification appears to be arbitrary and unreasonable and without any substantial relation to the public health, safety, and general welfare will the regulation be declared unconstitutional.[31] Moreover, in determining reasonableness, the courts have deferred to local judgment because they have viewed zoning classification as a legislative rather than a judicial matter.[32] Even though the regulation diminishes the value of the property, the zoning will be sustained if the property "can be reasonably used for the purpose for which it is zoned…" "Reasonable use" has been interpreted to mean a use that is economically viable. [See *Ranch 57 v. City of Yuma*, 152 Ariz. 218, 731 P.2d 113 (App. 1986)].

Successful challenges to local zoning have been infrequent in Arizona because of these broad tests. The lack of successful challenges does not indicate, however, that the courts will uphold all local zoning. However, if the ordinance discriminates against a particular property owner or if it is especially tailored to regulate a particular piece of property, the ordinance may be struck down as "spot zoning."[33]

In resolving questions of discrimination or spot zoning, the courts have been assisted by the existence of an overall, comprehensive land use plan. Where zoning conforms to a reasonable plan, the zoning will likely be upheld since the plan provides a rational basis for making classifications. Prior to 1973, Arizona enabling legislation did not require that zoning regulations conform to a general plan.

Many communities face the problem of nonconformance: when structures and uses

[30] For example, the planning provision refers to parks and wildlife areas, but there is no indication that zoning may be used for these purposes or that the county may reserve land for such purposes.

[31] *City of Tucson v. Arizona Mortuary*, 34 Ariz. 495, 272 P.923 (1928).

[32] See, e.g., *City of Phoenix v. Fehlner*, 90 Ariz. 13, 363 P.2d 607 (1965).

[33] See *Klensin v. City of Tucson*, 10 Ariz. App. 399, 459 P.2d 316 (1969) and *City of Phoenix v. Felner*, 90 Ariz. 13, 363 P.2d 607 (1961).

conflict with current regulations, but were legally established before the regulations became effective. In Arizona, the typical case involves existing uses previously outside the boundaries of a regulating municipality and subsequently annexed.

The Arizona Statutes provides that zoning regulations shall not "affect existing property or [the] right to its continued use for the purpose used at the time…regulation takes effect, [or] to any reasonable repairs or alternation…" [A.R.S. § 9-462.02]. But until the property is put to some lawful use, there is no right to a continuation of the former zoning or to the absence of zoning.[34] A property owner can acquire a "vested right" to develop his or her property based upon the expenditure of substantial amounts of money in good faith reliance on a building permit or a conditional use permit.[35] The current Arizona zoning enabling act prohibits the elimination of nonconforming uses by amortization and protects existing uses, reasonable repairs or alterations made to them.

In the case of annexation, a municipality may enact an ordinance authorizing county zoning to continue in effect for up to six months, until municipal zoning is applied to the land previously zoned by the county, and annexed by the municipality. However, the municipality annexing an area must initially adopt zoning classifications which permit densities and uses no greater than those permitted by the county immediately before annexation and which can be changed later [A.R.S. § 9-471(L)].

Once zoning regulations are established, only two methods exist for making changes to them:

1. Amendment of the zoning ordinance or rezoning
2. Granting of a variance

Amendments ■ In 1988, the Arizona Legislature amended sections 9-462.04 and 11-829 of the Arizona Revised Statutes to require more stringent public notice provisions of municipalities and counties. The legal notice requirements should be consulted when advertising applications for amendment to the municipal or county zoning code. (See Chapters 3 and 4 for discussions on public notice and Open Meeting Law requirements).

A zoning amendment is subject to the same procedural limitations as the original ordinance. Unfortunately, no reported cases in Arizona indicate when a rezoning might be appropriate. Some jurisdictions elsewhere in the country require the showing of substantial change in circumstances before a rezoning is granted but this question of "change in circumstance" or the "Maryland rule" has been specifically rejected in Arizona. (See *Dye v. City of Phoenix*, 542 P.2d 31 [1975]).

Variances ■ In Arizona, variances from the terms of the zoning ordinance are heard and granted by a board of adjustment. Variances are to be granted only if special circumstances exist relative to the property's size, shape, topography, location or if the strict application of the zoning ordinance would deprive the property owner of privileges enjoyed by other property of the same classification in the same zoning district.

Statutes require that any variance granted is subject to such conditions as will ensure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located. Variances may be granted when the property owner demonstrates that the application of the zoning ordinance to the property will create a special property hardship. Both Arizona case law (*Nicola v. Board of Adjustment*, 101 P.2d 199 [1940]), and the present statute, A.R.S. § 9-

[34] See *City of Tucson v. Arizona Mortuary*, 34 Ariz. 495, 272 P.923 (1928).

[35] See *Town of Paradise Valley v. Gulf Leisure Corp*. 557 P.2d 532 (1976).

462.06(H)(1), prohibit the granting of "use variances" because they are, in effect, rezonings. (See Chapter 5 for a discussion on the role and responsibility of the board of adjustment).

The book, *Arizona Land Use Law,* concludes that the statutory and case law in Arizona have established these standards:

1. A variance may be granted only where there are special circumstances applicable to the property.

2. Any hardship that would justify the granting of a variance must relate to the use of the land as opposed to the owner. A personal hardship does not justify a variance.

3. A hardship which as been … intentionally created does not justify a variance.

4. Need for an "adequate financial return" is not a legitimate basis for a variance.

For cities and towns, these standards are either in the statutes or have been established by judicial interpretations. The county enabling laws are not as detailed and there is little or no case law in Arizona to amplify them. But, the four standards listed above have been solidly established across the country and it is likely that the actions of county boards of adjustment would be subject to them if taken to court. Requests for variances that do not meet all these standards should be denied.

8.5 PREPARING THE ZONING ORDINANCE

The zoning ordinance should designate the zoning districts to be established and enumerate the particular regulations within each one. The ordinance should require that zoning boundaries be delineated on an official zoning map and that no building or structure shall be erected, altered, or used for a purpose other than that permitted in the zone as indicated on the map. Since the application of zoning is prospective rather than reactive, policies addressing the adjudication of nonconforming uses should be included in the ordinance.

How many districts should the zoning ordinance include? This is a question often asked, but to which there is no fixed answer. The number may range from two districts to forty, depending on the size and complexity of the jurisdiction. Enough districts should be established to adequately serve the community's development goals, and no district should be established for trivial reasons. The traditional basic categories of districts are residential, commercial, and industrial.

Zoning ordinances should specify clearly the functions of those individuals and agencies responsible for carrying out policy. For example, the role of the planning commission in the development of the ordinance and amendments should be distinguished from the functions of the board of adjustment in grating variances and hearing administrative appeals.

Zoning deals with both what exists and, when applied to vacant land or land to be redeveloped, with desired future uses of land. Since the zoning ordinance implements a general or comprehensive plan, development policies established in the plan must be examined to ensure that the zoning ordinance will incorporate community land use goals. The following studies and information should be used along with the

general or comprehensive plan to prepare the zoning ordinance:

- Existing land use maps
- Soil and topography maps
- Floodplain maps
- Studies identifying geological hazards
- Population studies
- Economic base studies
- Housing inventories and construction projections
- Studies of the capacities of public facilities and utilities
- Assessed valuation of properties
- Location and characteristics of vacant land
- Size of lots, width of front lot lines, and the dimensions of existing front, side, and rear yards for residential developments.

Use the knowledge and skills of planners and zoning enforcement officials as much as you can when drafting the zoning ordinance. The ordinances should be drafted under the direction of the planning commission and legislative body. Before sending the draft ordinance to the commission for their review and recommendation, your attorney should review the document with special attention to the enabling statutes and legal form.

If the attorney approves the ordinance, it should be given to the planning commission with a letter so stating for their review and public hearing. The ordinance is then sent on with the commission's recommendations to the council or the board of supervisors for their public hearing and action.

Describing and Locating the Districts ■ Great care should be taken in describing the boundaries of zoning districts on the official zoning map. Generally, district boundaries follow property lines, centerlines of streets, the perimeter of large bodies of water, railroad rights-of-way, or other clearly definable physical features. Ideally, the pattern of land use created by the districts should provide buffers to mitigate potential adverse impacts. In order to separate zones generating undesirable impacts such as noise, glare, odor, etc. natural buffers such as parks, lakes, rivers, cemeteries, educational institutions, government buildings and churches may be used as transitional areas.

The inclusion of statements of intent for the zoning ordinance as a prelude to each zoning district provides explanations of the purpose and function of districts, the reason for their establishment, and their characteristics. Statements of intent relate regulations to defensible public purposes, i.e. reducing traffic congestion and noise, limiting density, protecting the public health and safety, providing open space, and conserving property values. They also serve as a guide to the courts, elected officials, planning commissions, boards of adjustment, and developers.

Zoning Overlays ■ Zoning ordinances usually establish sub classifications for agriculture, residential, commercial, office, industrial, open space, and other districts. Zones may be cumulative or exclusive as to the number of permissible uses, and include conditional, accessory (incidental to the primary permitted use), or special uses requiring additional restrictions or performance standards. Overlay regulations restrict particular uses to special areas with boundaries different from those in regular zoning districts. Overlay zones may be superimposed on districts to establish additional regulations, or to reduce or extend existing uses. One example is a historic overlay district, which may be superimposed over portions of a residential and neighborhood commercial area to preserve the character of the area. Revised in

1992, A.R.S. § 462.01(D), clearly gives municipalities the authority to use overlay zones.

8.6 ZONING ADMINISTRATION AND UPDATES

How fair is the zoning process? Zoning is a unique administrative process allowing applicants the opportunity to petition for relief or to request amendments to the zoning ordinance. Within the broad limits established in the Arizona enabling acts, each municipality or county fashions its own standards. Decisions are made (or influenced by) many sources including the planning commission, the board of adjustment, the city council or board of supervisors, the planning staff, developers, and the public.

Historically, the responsibility for considering requests for changes in zoning regulations was divided among three groups:

Elected Body

Planning Commission

Board of Adjustment

City Council/Board of Supervisors ■ The city council or board of supervisors are the elected bodies responsible for adopting amendments to the zoning ordinance or approving changes to the official zoning map.

Planning Commission ■ Generally, the planning commission holds the required public hearings on text amendments and rezoning of land, and makes a recommendation to the legislative body. The legislative body is not obliged to follow the planning commission's recommendations.

Board of Adjustment ■ The board of adjustment has two basic functions: to grant variances from the zoning regulations in cases of hardship, and to hear appeals from interpretations of the ordinance in cases where application for a permit has been denied. The board may also hear and decide requests for conditional use permits.

Zoning Administrator ■ According to State Statutes, a city or town council shall establish by ordinance the office of zoning administrator to enforce the zoning ordinance. The municipal zoning administrator may process building permits, serve as staff to the board of adjustment, and publish and post the required notices. The county zoning inspector position is established to enforce the code. [A.R.S. § 11-808]

Hearing Officer ■ According to A.R.S. § 9-462.08, city councils may establish the position of hearing officer, and may delegate to that position the authority to conduct hearings and make findings as required by A.R.S. § 9-462.04. Hearing officers shall be appointed on the basis of training and experience, which qualify them to hear cases, conduct public meetings, and make decisions.

Neighborhood Zoning Authority ■ Over the past decades, neighborhood action groups have grown in stature and influence. The establishment of a neighborhood group often begins with a zoning dispute. Changes to the statutes in 1998 added the requirement for municipalities to adopt ordinances that clearly define local processes for citizen involvement.

A.R.S. § 9-462.03 requires that the governing body of the municipality shall adopt, by ordinance, a citizen review process that applies to all rezoning and specific plan applications that require a public hearing. At a minimum, the ordinance must include procedures that will be used to achieve the following:

- ✓ Notify adjacent landowners and other potentially affected citizens of the application
- ✓ Inform adjacent landowners and other potentially affected citizens of the substance of the proposed rezoning.
- ✓ Provide an opportunity for adjacent landowners and other potential to express any issues or concerns that they may have with are opposed rezoning before the public hearing.

Changes to Zoning

Possible changes to the zoning ordinance include text amendments, rezonings (changes in the zoning district boundaries), variances, and conditional uses, all of which are discussed below.

Text Amendments ■ These are changes in the provisions of the ordinance itself. There are many reasons for such amendments being proposed. Some of them are: changes in case law or statutory law, the need to deal with new land uses or types of development, problems in administering or enforcing some parts of the current ordinance, and the wishes or special interests of developers or other citizens. No text amendment should be approved unless the commission and legislative body are convinced that it is in the best interest of the municipality or county as a whole.

Variances ■ The creators of traditional zoning were concerned about the difficulty of developing general rules for land uses and recognized the need for a mechanism to allow deviation in particular cases. A variance is a permit to vary from the terms of the zoning ordinance because the property has unusual characteristics and cannot be developed in a productive way if zoning regulations are strictly applied. Variances are a way of providing relief in hardship cases. (See the discussion under "Legal Issues" earlier in this chapter).

Conditional Use Permits ■ A conditional use permit is a discretionary permit for a particular use that is not automatically allowed within the zoning district. The purpose of the use permit is to allow specific land uses that may be acceptable but because of their nature and impact (i.e., noise, traffic) are not suitable for every location within a zone. The conditional use permit protects neighborhoods and prevents negative impacts on the community as a whole. Requirements of street dedication and improvement, landscaping and screening walls, special architectural features, and restrictions on hours of operation are common. Schools, churches, group homes, utility stations, and daycare centers are examples of conditional uses. It is common for some uses to be permitted in some zones but to need a use permit in other zones.

Conditional Zoning ■ Conditional zoning occurs when an applicant receives a rezoning for a specific use from among the uses permitted in the district. However, as there may be many other permitted uses in that district, the community has no assurance of the proposed project occurring. A similar situation occurs when applicants state that they will provide specific amenities on the site upon rezoning. Administrative difficulties may arise unless the zoning map identifies special restrictions or requirements placed on the parcel as a condition of rezoning. The developer's "contract" may be unenforceable unless stipulated by ordinance or by a development agreement (development agreements between developers and municipalities were authorized by the Arizona Legislature in 1988 [A.R.S. § 9-500.05] and are discussed in Chapter 3).

Arizona's municipal zoning statute authorizes the granting of a rezoning subject to the fulfillment of specific conditions. The conditions authorized are as follows:

- Dedication of rights-of-way related to the effects of the rezoning
- Site plan or use permit approval
- Approval subject to a schedule of development of the requested use

Nonconforming Uses ■ The early proponents of zoning were troubled by one inevitable consequence of adopting zoning in a substantially developed community: What happens to nonconforming but pre-existing uses? Municipalities in Arizona are allowed by statute to "acquire by purchase or condemnation private property for the removal of nonconforming uses and structures."

However, as stated previously in this chapter, the municipality cannot: "affect existing property or the right to its continued use of the purpose used at the time the [zoning] ordinance or regulation takes effect, nor to any reasonable repairs or alterations in buildings or property used for such existing purpose." [A.R.S. § 9-462.02]

Allowing the continuance of nonconforming uses as "grandfathered" uses is an option. However, expansion of the use or an increase in its intensity might harm the neighborhood that the ordinance was designed to protect. A compromise allows nonconforming uses to remain but provides restrictions on expansion, prohibits change to another nonconforming use and, upon abandonment, prevents their re-opening, reconstruction or re-use except in a manner and for a purpose permitted in the district in which they were located. The theory was that the nonconforming use, with all the restrictions placed on it, would eventually disappear. There is little data to demonstrate that this approach has been effective in solving the nonconforming use problem.

A.R.S. § 11-830 limits the power of counties to regulate nonconforming uses.

They ***CANNOT***...

1. Affect existing uses of property or the right to its continued use or the reasonable repair or alteration thereof....
2. Prevent, restrict or otherwise regulate the use or occupation of land or improvements for railroad, mining, metallurgical, grazing or general agricultural purposes, if the tract concerned is of five or more contiguous acres.

AND FURTHER MORE...

> "A nonconforming business use within a district may expand if such expansion does not exceed one hundred percent of the area of the original business."

A district containing more nonconforming than allowable uses may create a legal quandary. If, for example, 50 percent of the dwellings in a single-family residential district are duplexes, a property owner wishing to convert their house into a duplex may successfully challenge the single-family classification. Any time an amendment is made to the zoning ordinance involving a substantial revision and delineation of new district boundaries, nonconforming uses may be created. Substantial pressures will be exerted on the city council and board of supervisors to leave the official zoning map intact and legal challenges may follow.

The failure of nonconforming uses to disappear has led communities in other states to take action requiring, by ordinance, the gradual amortization of nonconforming uses without compensation to the property owner. Amortization in a zoning context describes a procedure by which the discontinuance of certain nonconforming uses, usually nuisance uses or signs, is required within a specified time period. The amount of time allotted is often tied to the value of the nonconforming use.

For example, all nonconforming signs in a jurisdiction must be removed in two or three years, all nonconforming junk yards or gas stations must be dismantled in four or five years. If the nonconforming use is located in an otherwise conforming building the time span may be short. Arizona law does not authorize communities to amortize nonconforming uses. In the case, *Scottsdale v. Scottsdale Associated Merchants,*[36] the Arizona Supreme Court held that the City's powers to regulate signs derived from the states' zoning enabling law, and the only method available to discontinue signs, even for charter cities, was payment.

Down-zoning ■ "Down-zoning" may be defined as a change in a zoning classification that results in a real or perceived reduction in the value of the property. It is used by municipalities to correct inappropriate zoning of tracts of vacant land. There is no vested right in the continued enjoyment of a zoning classification unless the developer has made a start in substantial site improvements or other construction after receiving a building permit. (A vested right is a right given to an individual that cannot be changed or withdrawn).

[36] [583 P.2d 891 (1978)]

Hints for Better Zoning

The following is basic information that will help a city, town, or county administrator in its zoning regulations.

Periodically Review and Update the Zoning Ordinance ■ For example, many communities have commercial zone requirements that were designed for the old downtown or strip commercial developments. When mixed use project (offices, stores, and residences integrated on one large site) and regional shopping malls arrived, local ordinances were entirely inadequate for handling the parking, design, sign control, height, and land use problems presented. The same situation occurred in many jurisdictions with the boom in mobile home parks and condominium conversions. As the traditional family structure changes and our population ages, the community evolves and development regulations must adapt to social change as well. Group living arrangements, amenities for the disabled, daycare facilities, and ancillary housing are becoming important features of urban design.

Control Negative Land Use Impacts with Buffer Zones Between Residential Districts and Other Uses ■ A buffer zone allows for "transitional" uses such as professional offices, churches, and mortuaries which are more compatible with residential areas because of minimal noise, odor, light, or traffic impacts. Building standards: heights, bulk, design, and screening within buffer zones should be compatible with the neighborhood. Some communities are moving towards "performance" zoning, evaluating the impacts of the use on surrounding property, in addition to considering the uses identified as compatible in that zone classification.

Increase Hillside Lot Sizes ■ As development creeps onto hillsides, minimum lot sizes should be increased on a scale proportional to the steepness of the slope. Building coverage of the lot and height should be carefully controlled to minimize

disruption of natural features and to mitigate adverse visual impacts.

Control the Use of Signs ■ The purpose of a sign code is to:

- Preserve the public safety
- Promote the effectiveness of signs by preventing their concentration, improper placement, and excessive size
- Enhance the flow of traffic and protect travelers from injury as a result of distraction or obstruction of signs
- Encourage the development of private property in harmony with the character of the community
- Improve the appearance of the community

Hearing Officers ■ A.R.S. § 9-462.08 allows municipalities to establish a zoning hearing officer who can hold the first public hearings on any zoning ordinance and make a recommendation to the city or town council. A hearing officer can relieve the planning commission of much of the burden of public hearings so that they could devote more time to planning and policy matters.

Establish Design or Architectural Review Boards ■ One purpose of development control is the protection and improvement of community appearance and amenities. Architectural and site plan review may consume a great deal of the commission's time and in many cases the commission cannot provide the necessary guidance to the applicant so the project can be improved. A design review board comprised of professionals can review development projects and provide the applicant with direction. A well-rounded board should include an architect, landscape architect, building contractor, and attorney, planner – or any combination of these. This is particularly important in communities where the professional staff has no design training or where there is no professional staff.

---

[27] 239 U.S. 394 in 1915

[28]272 U.S. 365 in 1926

[29] [A.R.S. § 9-462-01(F)].

[30] For example, the planning provision refers to parks and wildlife areas, but there is no indication that zoning may be used for these purposes or that the county may reserve land for such purposes.

[31] *City of Tucson v. Arizona Mortuary*, 34 Ariz. 495, 272 P.923 (1928).

[32] See, e.g., *City of Phoenix v. Fehlner*, 90 Ariz. 13, 363 P.2d 607 (1965).

[33] See *Klensin v. City of Tucson*, 10 Ariz. App. 399, 459 P.2d 316 (1969) and *City of Phoenix v. Felner*, 90 Ariz. 13, 363 P.2d 607 (1961).

[34] See *City of Tucson v. Arizona Mortuary*, 34 Ariz. 495, 272 P.923 (1928).

[35] See *Town of Paradise Valley v. Gulf Leisure Corp*. 557 P.2d 532 (1976).

[36] [583 P.2d 891 (1978)]

Planning & Zoning HANDBOOK

SUBDIVISION REGULATIONS & SITE PLAN REVIEW

CHAPTER 9

CHAPTER 9

SUBDIVISION REGULATIONS & SITE PLAN REVIEW

The act of splitting a tract of land into separate parcels is considered land subdivision. Most often, subdividing is done to promote development. Subdivision regulations seek to ensure that subdivisions are appropriately related to their surroundings.

In Arizona, subdivisions are treated differently within municipalities than they are in unincorporated areas of the county. For example, the real estate and county planning and zoning statutes are so interrelated that they must be construed together. According to real estate statute A.R.S. § 32-2101, "subdivision" or "subdivided lands" means improved or unimproved land, divided or proposed to be divided for the purpose of sale, lease, or for cemetery purposes, into six or more lots or fractional interests. This excludes the division of land into parcels of thirty-six or more in area.

Generally, cities and towns have greater authority and can regulate minor lot splits, a power that is not allowed in counties. Differences between municipal and county legal authority, and procedures governing the subdivision of land, are discussed below.

9.1 MUNICIPAL AUTHORITY

Pursuant to the provisions of A.R.S. § 9-463.01, the governing body of every municipality shall regulate the subdivision of all lands within its corporate limits. The governing body shall exercise this authority by adopting an ordinance prescribing:

1. Procedures to be followed in the preparation, submission, review and approval or rejection of all final plats.
2. Standards governing the design of subdivision plats.
3. Minimum requirements and standards for the installation of subdivision streets, sewer and water utilities, and improvements as a condition of final plat approval.

The Urban Environment Management Act established the requirements for regulations. Each community is required by ordinance to establish the procedures for obtaining approval to subdivided property and to designate the public agency to review and approve subdivision plans [A.R.S. § 9-463.01(B)]. Land may not be subdivided without an approved subdivision plat, and approval of the plat may be conditioned upon the requirements authorized by the Act [A.R.S. § 9-463.01].

Subdivision Design ■ The Arizona Revised Statutes permit municipalities to adopt ordinances governing the design of subdivisions. "Design" means street alignment, grades and widths, alignment and widths of easements and rights-of-way for drainage and sanitary sewers, and the arrangement and orientation of lots [A.R.S. § 9-463]. The design and location of buildings are not within the scope of subdivision regulations, and the municipality may not refuse approval because of building location [A.R.S. § 9-463.02(B)]. However, it may regulate the location of buildings in its zoning ordinance, although the zoning ordinance may not give authority for extensive site plan review.

In addition, subdivision regulations may establish minimum requirements for the installation of streets, sewers, and water lines, and may require the dedication of streets, utility easements, and rights-of-way [A.R.S. § 9-463.01(B)(3) and (C)(6)]. The ordinance may also require performance bonds or other assurances of utility installation [A.R.S. § 9-463.01(C)(8)]. Municipal subdivision regulations may contain provisions that effectively allocate the costs of public facilities between the subdivider and local taxpayers; counties lack this authority. Commonly, regulations require subdividers to dedicate land for streets and to install, at their own expense, a variety of public facilities to serve the development. These often include streets, sidewalks, storm and sanitary sewers, and streetlights. If the subdivision is within an Active Management Area (AMA) as defined by the Arizona Groundwater Code (45-4502), it must meet an additional requirement before it can be approved. The final plat must be accompanied by a certificate of assured water supply issued by the Arizona Department of Water Resources (ADWR) or from a water provider designated by ADWR as having an assured water supply.

Reservation of Land ■ Under [A.R.S. § 9-463.01(D)] municipalities are authorized to require that land areas within a subdivision be reserved for parks, recreational facilities, school sites, and fire stations subject to the following conditions:

- The requirement may only be made upon preliminary plats filed at least thirty days after the adoption of a general or specific plan affecting the land area to be reserved.
- The required reservations are in accordance with definite principles and standards adopted by the legislative

body (these should be the principles and standards from the adopted general plan).

- The land area reserved shall be of such a size and shape as to permit the remainder of the land area of the subdivision to develop in an orderly and efficient manner.
- The land area reserved shall be in such multiples of streets and parcels as to permit an efficient division of the reserved area in the event that it is not acquired within the prescribed period.

Moreover, the reservation will be effective for only one year after the recording of the final subdivision plat. During this time the municipality must acquire it at a price, which reflects the fair market value, accrued taxes, and the developer's cost of holding it, including interest on any loan [A.R.S. § 9-463.01(E)]. No mention is made of the power of eminent domain if an agreement cannot be reached, but such power exists by implication or by construing the general grant of eminent domain authority [A.R.S. § 12-1111].

Special Regulatory Powers ■ The statute gives municipalities special regulatory powers over areas of adverse topography; for example, areas subject to flooding, earth subsidence, lack of water, and other hazards. Development may be prohibited or special regulations established providing it is not a "taking" [A.R.S. § 9-463.01(C)(4)]. (See Chapter 3.4 for a discussion of case law on the subject of takings.) The municipality may adopt its own procedures for the preparation and review of subdivision plats.

The law specifically allows municipalities to require the submission of preliminary plats [A.R.S. § 9-463.01(C)(1) and (2)]. Although no reference is made to procedures requiring development in stages, the authority to require preliminary plats may generate review procedures which allow preliminary consideration of an entire development area, but which grant final approval to smaller sections of phases, as the development proceeds. The law does not say that the approval of a preliminary plat binds the municipality to final plat approval.

Subdivision Procedures ■ A subdivision, as defined for cities and towns in A.R.S. § 9-463.02, means improved or unimproved land or lands divided for the purpose of financing, sale or lease, whether immediate or future, in one of four ways:

1. Into four or more lots, tracts, or parcels of land.
2. If a new street is involved, property which is divided into two or more parcels of land.
3. Any parcel which has been defined in a recorded plat, which is divided into more than two parts.
4. Any condominium, cooperative, community apartment, townhouse, or similar project containing four or more parcels (plats of such projects need not show the buildings or the manner in which the buildings or airspace are to be divided).

Subdivision Plats ■ According to A.R.S. § 9-474, when a property owner intends to plat and subdivide land, all or part of which is in an unincorporated area within three miles of the limits of a municipality, which has a subdivision ordinance, the property owner shall first give written notice of his intent to the municipality, providing a tentative plat.

To ensure continuity and compatibility with existing and planned development, the municipality may submit to the owner a written report recommending changes in the submitted plat regarding the location or dimension of streets, alleys, parks, easements for rights-of-way,

or property intended to be devoted to the use of the public. One copy of the report shall be delivered to the board of supervisors of the county. If the owner gets such a report within 30 days, he or she will revise the plat so as to accurately conform to the report.

The plat shall particularly set forth and describe:

- The dimensions, boundaries and courses of land within the subdivision to be used for public purposes or offered for dedication for public uses.
- The dimensions, boundaries and courses of lots intended for sale, or reserved for private use, identified by number or letter.
- The location of the subdivision into lots with reference to adjacent subdivisions, the maps or plats of which have been previously recorded, or if none, then with reference to corners of a United States survey, or if on land unsurveyed by the United States, then to some prominent artificial monument established for such purpose.

9.2 COUNTY AUTHORITY

Under A.R.S. § 11-806.01, the county boards of supervisors are granted the power to regulate the subdivision of lands within their boundaries, except for those subdivisions that are regulated by municipalities. The purpose of this provision is to ensure that consumers who purchase lots in residential developments are provided with adequate streets, utilities, drainage, and generally pleasant, healthy and livable surroundings.

Counties have express power to approve subdivision plats as paraphrased from A.R.S. § 11-806.01:

No plat of a subdivision of land within the jurisdiction of the county shall be recorded until it has been approved by the board, in writing on the plat, and includes specific approval of the assurances required by this section. Where a county planning and zoning commission exists, the plat shall first have been referred to the commission for its consideration and recommendation. If the subdivision is within a groundwater active management area, as defined in A.R.S. § 45-402, the plat shall not be approved unless accompanied by a Certificate of Assured Water Supply issued by the Director of Water Recourses, unless the subdivision is located within an area designated as having an assured water supply … pursuant to A.R.S. § 45-576 or is exempt from the requirement, to be noted on the plat.

The reason for refusal or approval of any plat shall be stated upon the record of the board. The commission shall recommend to the board, and the board shall adopt general rules and regulations of uniform application governing plats and subdivisions within its jurisdiction. The regulations adopted shall secure and provide for the proper arrangement of streets, utilities, drainage, access of fire fighting apparatus, recreation, adequate light and air. The board may adopt general rules and regulations to provide for the proper arrangement of hiking and equestrian trails in relation to existing or planned streets or highways. The general rules and regulations may provide for modification by the commission in planned area developments (PADs) or specific cases where unusual topographical or other exceptional conditions may require such action. The regulations shall include provisions for installing water, sewer and other facilities on the plat as a condition of approval of the final plat.

This provision is broad enough to permit the adoption of subdivision regulations. It authorizes the review of subdivision plans to determine the adequacy of proposed streets, utilities, drainage, physical placement of structures, and open spaces for recreation. However, there are no express provisions for design review, the reservation of land for public facilities, the dedication of land, or for staged development. Although the statute refers to planned area development, it does not identify the procedures or standards for planned area developments.

The county platting provisions neither define "subdividing" nor require the approval of a plat before land can be subdivided. State law, however, requires that the State Real Estate Commissioner be given notice before subdivided lands may be sold and notice will not be effective unless accompanied by a recorded map of the subdivision [A.R.S. § 32-2181(A6)]. Since the board of supervisors' approval is required before the plat can be recorded, the statute's failure to require subdivision plat approval should not be significant.

Counties too are able to require that sites within a subdivision for parks, recreational facilities, schools, and fire stations be set aside and reserved for a year [A.R.S. § 11-806.02]. The provisions are similar to those for municipalities described earlier.

9.3 PREPARING SUBDIVISION REGULATIONS

Subdivision regulations require a more sophisticated administrative process than do conventional zoning regulations. In addition to prescribing the precise location of future lot lines, subdivision regulations provide specific design standards. The local planning commission or governing body then applies these standards to preliminary and final plats.

Like the zoning ordinance, subdivision regulations are a tool to implement the general or comprehensive plan. There are common elements to most codes, but they should reflect the need and character of each community. Preferably, the code should be written for the user in clear, concise language. Proposed regulations must be formulated carefully to ensure that they complement and reinforce existing development ordinances and should be reviewed by the city or county engineer.

Applicability of Regulations ■ In preparing subdivision regulations, purpose, intent, and administration must be considered. Where possible, regulations, standards, procedures, and guidelines from neighboring communities and counties should be reviewed for standardization. Saving of time and money may be achieved where communities with contiguous boundaries standardize their development requirements.

The planning commission and elected officials should be kept informed and review the draft ordinance, but need not be actively involved in preparing the document unless policy decisions are required.

When drafting regulations, the following should be considered:

Be critical

How will the particular requirement improve the product or process? Will it provide only necessary information? It is clear? Is it subject to abuse?

Provide flexibility

Make it possible for new concepts or alternative techniques such as creative treatment of cul-de-sacs, or clustering of residential units allow for more effective use of open space to be considered.

Build in time limits and due process

Impose time restrictions on reviews, within the staff's ability to respond, to avoid administrative delays. Require that all decisions and conditions be reduced to writing and recorded with the plat.

Develop a companion set of engineering Improvement specifications

Include engineering standards such as the MAG (Maricopa Association of Governments) specifications for public works construction with cross-sections and other details for streets, drainage areas, water lines, sewer lines, concrete work, bicycle paths, and other improvements. This will ensure uniform construction standards for public facilities.

Make use of support documents

It may be necessary to develop specific guidelines to assist a subdivider in achieving the community's development goals such as landscape and architectural design standards, a hillside ordinance, and manufactured home subdivision requirements.

Provide a checklist to guide project review

With a checklist the developer, staff, public, elected body, and planning commission will all know what is to be considered in the project review.

Assurance of Project Completion ■ In case of default by the developer requiring the jurisdiction to build project improvements, the city or county should require a financial guarantee from all subdivision applicants. Some communities require funds, based on a percentage of the cost of site improvements, to be placed in escrow for the duration of the project. Others require performance bonds.

A financial guarantee, such as a letter of credit from the banking institution financing the development, provides the community with financial security that project improvements will be installed. The city or county should always review the assurance documents to make certain they are in legal form and will protect the jurisdiction. A financial guarantee should be released only on final approval of the council or board.

The assurance or guarantee should be made for a specific time period, typically one or two years for a recorded project phase. If no improvements are made, the financial assurance can be used or the subdivision vacated. The community also has the option of withholding building permits or certificates of occupancy until all improvements are in place. However, this should be stated as a condition of original project approval.

Special Cases ■ An administrative section on variances and planned area developments (PADs) should be included in the subdivision regulations. The submittal requirements for PADs and subdivisions should be identical to simplify and streamline the process so that the developer may obtain a PAD and subdivision review simultaneously.

Economic hardship should not be a valid consideration for approval of a variance; it is the purchaser's obligation to obtain property at a price that reflects it usability. The practice of pleading hardship should not be used to convert a marginal investment into a profit. In the end, the community pays the long-term costs of substandard subdivisions. (For more discussion on variances see Chapter 8).

Development Fees ■ A municipality may assess development fees to offset costs associated with providing necessary public services to a project, according to A.R.S. § 9-463.05. Development fees assessed by a municipality under this section are subject to the following requirements:

- Development fees shall result in a use beneficial to the development.
- Money received from development fees shall be placed in a separate fund and accounted for separately and may only be used for the purposes authorized by this section.
- The municipality shall provide the fee schedule. The developer of residential dwelling units shall be required to pay development fees when construction permits are issued.
- The amount of any development fees assessed must bear a reasonable relationship to the burden improved upon the municipality to provide additional necessary public services to the development.
- Development fees shall be assessed in a non-discriminatory manner.

A municipality must give at least thirty days notice of intent to assess a new development fee, or increase an existing development fee. The municipality must also conduct a public hearing at least fourteen days prior to the scheduled date of adoption of the new or increased fee. A development fee shall not be effective until ninety days after its formal adoption by the city or town council.

Miscellaneous Requirements ■ The subdivision process should also include the following:

- ✓ Dedication statements for inclusion on the final plat.
- ✓ Reservation agreements for public land.
- ✓ Owners' signature blocks.
- ✓ Engineers' and surveyors' signature blocks.
- ✓ Public officials' signature blocks.
- ✓ Sample work for any improvement or landscaping agreements.
- ✓ Sample letters of financial support.
- ✓ Street design elements including cross-sections, intersections, cul-de-sac alternative designs, etc.
- ✓ List of allowable street vegetation.
- ✓ Examples of sketch plans, preliminary plats, and final plats.
- ✓ Development guidelines, landscape guidelines.

Administrative Provisions ■ This section includes penalty clauses, disclaimers, amendment procedures, public hearing procedures, a sever ability clause, and resubdivision procedures.

Appendices ■ This section may include sample application forms, review checklists, flow charts of administrative procedures, design graphics, and fee schedule.

9.4 PLAT REVIEW PROCEDURES

The review process provides adequate opportunity for negotiations and changes before project plans are finalized and the applicant makes considerable expenditures. There are usually three stages of plat review:

Preapplication Conference

Preliminary Plat Review

Final Plat Review

9.4.1 Requirements

The process of plat review should specify:

1. Information to be submitted (i.e. the plats, support data, legal descriptions, fees, etc.)

2 The way in which materials should be submitted (i.e. number of copies, scale, format, size of sheets, etc.)

3 Who will participate in the reviews.

4 The sequence and time available for the process.

5 Engineered improvement plans for streets, utilities, drainage, etc.

9.4.2 Conditions of Approval

According to A.R.S. § 9-463.01(H), municipal approval of preliminary and final plats is conditioned upon compliance by the subdivider with:

Requirements...

- of the Arizona Department of Transportation relating to safety provisions in accessing property abutting a state highway.

Requirements...

- of the county flood control district relating to construction of streets on land subject to periodic flooding.

Requirements...

- of the Arizona Department of Environmental Quality or the county health department relating to the provision of domestic water supply and sanitary sewage disposal.

If the subdivision is within a groundwater Active Management Area (AMA), as defined in A.R.S. § 45-402, the preliminary plat shall not be approved unless accompanied by a certificate of assured water supply issued by the Director of Water Resources; unless the subdivision is located within an area designated as having an assured water supply by the Director of Water Resources pursuant to A.R.S. § 45-576, subsection D, E, G or I; or its exempt from such requirement pursuant to A.R.S. § 45-576(K)

The governing body shall note on the face of the preliminary plat that a Certificate of Assured Water Supply has been submitted with the plat or that the proposed subdivision is within the designated area.

Final Plat ■ Every municipality is responsible for the recording of all approved final plats. The municipality receives the county recording fee and transmits the plat and fee to the county. The planning commission need not review final plats if the plat complies with the conditions attached to the preliminary plat. To save time and free the planning commission from rubber stamp chores, the final plat can be reviewed by staff and sent directly to the legislative body for their review and acceptance. Only the elected body can accept streets or other dedications to the public; therefore the city council or the board of supervisors must take the final action.

9.4.3 Pre-application Conference

It is essential that the staff (i.e. the planning director and the city or county manager) meet with developers to discuss design concepts before any planning is undertaken. This is the time to provide the developer with a copy of all pertinent community development requirements, goals, and policies and encourage them to purchase a copy of the general and comprehensive plan and the zoning and subdivision ordinances. The purpose of the pre-application conference is to communicate. The developer provides the community with information about the proposed project: the desired land use, the overall design concept, location of the property, and general infrastructure needs such as extension of utilities, roads, drainage improvements, etc. In turn, information and feedback should be provided to

the developer from the municipal or county staff responsible for:

- Planning and design
- Public works and engineering
- Utilities: water and sewer
- Flood control and drainage
- Waste disposal
- Public safety: police and fire
- Finance
- Transportation
- Parks, recreation, and library

To streamline the process, the city or county manager may form a development review team made up of staff from planning, engineering, and other development-related disciplines to answer questions, coordinate the plan or plat review, and generally assist the applicant through the process. If the community lacks professional staff, the city council or board of supervisors may direct the planning commission to appoint a development subcommittee from their members or hire a part-time professional planner or registered engineering consultant to meet with applicants and review proposed development projects.

Some municipalities and counties involve the elected officials early in the process to review a "sketch plan" of the proposed project submitted by the developer. This requires the same information as a preliminary plat (but a lesser degree of detail) and in some jurisdictions, is reviewed by both the planning commission and the legislative body. Thus elected officials can voice their opinions regarding the project without taking an official action and before money is spent.

This approach takes more time but may be desirable where a full staff is not available, the area's policies are not well defined, or when the project is a new concept or very complex. In some jurisdictions the planning commission may review and approve the preliminary plat without action by the legislative body. If the commission recommends the final plat for approval, the council or board must still hold a public hearing to review and approve or disapprove the subdivision.

9.4.4 Preliminary Plat Review

At one time the preliminary plat review served the same purpose as the pre-application conference. However, with the increased cost, complexity, and scale of master planned projects, the flexibility to alter the preliminary plat after its completion has been substantially reduced.

The preliminary plat is a detailed mapping of the project as discussed at the pre-application conference. Upon its review by the city council or board of supervisors, the preliminary plat may be rejected, conditionally approved subject to modifications, or approved outright. The approved preliminary plat should be effective for a limited period of time, for example one year, to encourage the timely development of the site.

It may be undesirable or infeasible for a developer to subdivide the entire property at one time, especially if large tracts will be sold to other builders. For example: a developer may purchase a 500 acre site, subdivide it into seven tracts of land, further subdivide and develop two of the tracts, and sell the remaining five tracts to other builders who will further subdivide the land. In this situation, it is almost essential that the developer prepare a master land use and circulation plan for the property to coordinate development. Therefore, to allow the developer the flexibility to respond to market demands, communities accept partial or phased plat submittals, which will make up the final plat like pieces completing a puzzle.

The community's plan review process should include written comments from agencies

responsible for serving the proposed development project such as:

- Local school districts
- Local power company
- Telephone company
- Water and sewer utilities
- Waste collection service
- Fire district
- Irrigation district
- Public safety agencies
- County flood control district
- County health department
- State and county highway department
- Adjacent municipal or county governments (if the area is unincorporated and lies within three miles of a municipality).

A meeting with representatives from these agencies to evaluate proposals can greatly assist the staff in the review process.

9.4.5 Final Plat Review

At the final plat stage, legal commitments, dedications, financial guarantees, and any other special agreements must be completed. All agreements between the subdivider and the county or community should be in writing and recorded with the plat. Approval of the final plat by the elected body releases the city or county from further control over the process, with the exception of construction plan review and construction inspections to ensure compliance with improvement plans. When approval of a plat is denied, the reasons should be stated and recorded in the minutes of the public hearing.

9.5 SITE PLAN REVIEW

Site planning is very important. It establishes the character of that neighborhood or commercial area. Site plan review is the systematic assessment of land development proposals in terms of a community's land development policies and regulations, and commonly accepted site design practices.

Site plan review encourages...

- Conformance to the general or comprehensive plan
- Conformance to zoning and zoning processes
- Adherence to community design policy
- Resolution to technical planning issues

Sources of site design regulations may be found in a community's plan, zoning and subdivision ordinances, site plan review manual, or building code. The design standards in a subdivision code usually prescribe treatment of open space, slopes, floodplains, drainage ways, and other environmentally sensitive areas reflecting the community's goals, image, and lifestyle. Design standards are intended to ensure safe and convenient circulation for pedestrians, bicycles, and vehicles; adequate parks and recreational services; provision of quality water and sanitary sewer service; and storm drainage facilities.

Site plan review examines the impact of the project on its surroundings at various levels:

- Community-wide (with reference to the general or comprehensive plan)
- Within a sub-area or neighborhood
- In the immediate vicinity
- The site itself

The six elements to be reviewed are:

1. Land use characteristics
2. Circulation system both vehicular and non-vehicular
3. Utilities
4. Architectural design
5. Public facilities and services
6. Open space

The review may be broken down further into **"off-"** and **"on-"** site factors.

Off-Site Factors

Land Use
- General or comprehensive plan
- Area development trends
- Zoning
- ...

Utilities
- System capacity
- Oversizing needs
- Off-site drainage
- Relationship to capital improvements program
- ...

Circulation
- Accessibility
- Roadway capacity

Design
- Community form (image)
- Open space linkages
- ...

Public Facilities & Services
- Public safety
- Parks
- Schools
- Library

On-Site Factors

Land Use
- General, comprehensive, and specific plans
- Natural features
- Adjacent land uses
- ...

Utilities
- Availability and quality of water
- Storm water management
- Access to underground utilities
- Access to sewer or septic tanks
- Solid waste disposal
- ...

Circulation
- Roadway access (service and operations)
- Street categories
- Continuity
- Parking
- Transit access
- Pedestrian and bicycle paths
- Equestrian system
- Street cross sections (rural or agrarian)

Design

- Preservation of site features
- Screening and buffering
- Landscape design
- Signs
- Architecture and layout
- Lighting
- ...

Public Facilities & Services

- Dedication requirements
- Open spaces
- Access for and availability of public safety services
- Fiscal impact

9.5.1 Land Use Guidelines

- Locate compatible land uses to each other.
- Buffer incompatible uses from each other.
- Locate uses close to that part of the circulation system that is best suited to serve them.
- Locate uses so as to minimize changes in existing topography and vegetation.
- Locate uses according to the general or comprehensive plan.

9.5.2 Circulation Guidelines

- Establish categories of streets according to their purpose.
- Strive to minimize pavement.
- Separate parking from access drives.
- Separate the movement of goods from the movement of people.
- Separate pedestrians from vehicular routes.
- Keep the distance from parking place to structure to no more than 600 feet.
- Access roads should line up at intersections such that four-way intersections are created. Offset or "dogleg" intersections should be avoided. If doglegs are necessary, ensure a distance between offsets of a least 150 feet.
- Roads should intersect at as close to 90 degrees as possible. Cul-de-sac streets should have a limited length of, for example, 150 feet. Diagonal parking bays are easier to use than those perpendicular to the aisles.

9.5.3 Basic Site Design Guidelines

- Buildings should not be in floodplains.
- Minimize changes to the natural terrain.
- Preserve healthy, attractive tree stands.
- Make open space accessible to the user.
- Link open spaces through the site and to adjacent areas.
- Design drainage retention basins to reflect site aesthetics as well as utility of function.
- Separate housing from major noise-producing sources.
- Buffer incompatible or conflicting land uses from one another. (A buffer is open space or materials that create visual or physical separation between the uses).
    - Open space
    - Landscaping
    - Fences or walls
    - Earth berms
    - Compatible, transitional land uses.
- Restrict development on sensitive lands such as:

- Steep slopes
- Marshlands/wetlands
- Landfills
- Areas of unique vegetation or forestation.

There is usually a catch-all clause that identifies and requires other improvements that are not specifically mentioned but are needed because of the peculiarities of the site. In all, the subdivision application process should require: (1) the submittal and review of on- and off-site improvement plans, (2) inspection of improvements during all phases of construction, and (3) submittal of as-built plans for municipal or county records.

9.6 PLANNING COMMISSION'S RESPONSIBILITY

The principal responsibilities of the planning commission in subdivision regulations are:

1 Protection of public interest in seeing that:

- new developments pay for the costs they create.
- the project does not disrupt existing services i.e. overburden existing roads, utilities, schools or diminish the environmental quality of the area (excessive cuts on hillsides, removal trees, pollution of streams and lakes, and destruction of wildlife habitats).
- the subdivision doesn't create health or safety hazards by building in landslide areas, floodplains, or on soil with poor percolation when septic tanks are proposed.

2 Provision for the future in that:

- the subdivision should provide rights-of-way for the major street network and set aside appropriate sites for public facilities such as schools, parks, and fire stations to serve the occupants of the development. The general location of these sites should be designated in the community's general or comprehensive plan.
- urbanization should not occur with rural standards. Unpaved roads, failing wells, septic tanks, and open drainage ditches will not support increasingly dense development. The cost of providing improvements after the area has been built up will be more than it would have been in the initial stages of development.

3 Need and timing:

The economic feasibility of the proposed project should be considered to a certain extent. Premature or speculative subdivisions result in isolated streets, scattered housing, failing homeowners' association facilities; they place a financial burden on the entire community and inflate the price of land. All of this adds to the tax burden of the community without offsetting revenues.

4 Location:

The proposed subdivision should fit into the existing pattern of streets and utilities to reduce traffic circulation problems. Avoid the high cost of extending roads, utilities, and urban services to "leapfrog" development.

Lot splits: In counties it is possible to evade compliance with subdivision requirements

by splitting land into five parcels because the statutes define a subdivision as consisting of six or more lots. Cumulatively, lot splits can transform an area into a checkerboard of unimproved lots lacking dedicated access, paved roads, utilities, or assured water supply. Residents of these pseudo-subdivisions must bear the cost of improvements because the community is unable or unwilling to pay for the basic services that should have been provided by the subdivider.

According to A.R.S. § 9-463.01 city or town councils may, by ordinance, regulate land splits within their corporate limits, require proof of sufficient potable water supply, and dedication of rights-of-way. Land splits, (often called lot splits) as used in this article, means the division of improved or unimproved land whose area is two and one-half acres or less, into two or three parcels, for the purpose of sale or lease. A lot-split ordinance should require subdividers to record these splits with the city and pay for their share of public improvements rather than passing these costs on to the rest of the community. It also allows the municipality to check that the lot is of legal size and shape, has the required street frontage, and so on.

The lack of authority for counties to regulate such lot splits is one of the most important deficiencies in county authority to regulate development.

9.7 SOLAR SITE PLANNING

Arizona is well known for its abundant sunshine. Considering solar access in land use planning, and using construction techniques to take advantage of solar energy can reduce the need for outside sources of energy and improve living conditions.

Arizona's Solar Laws ■ Solar planning considerations were first enacted by the Arizona Legislature in 1979. The Legislature gave local governments the power to allow solar access and to adopt solar building codes. The 1980 Legislature passed laws voiding the prohibition of solar energy devices by future deed or covenant restrictions. The Arizona Department of Administration was also required to consider the use of solar energy in all new, large state buildings.

The statute providing for municipal general plans [A.R.S. § 9-461.05] specifically states that

> "the land use element shall include consideration of access to incident solar energy for all general categories of land use"

Conventional land use controls may be used to provide for and protect solar access in new residential development for space heating, cooling, domestic hot water, and electrical generation. Unless communities plan now for the future use of solar energy, uncontrolled development could make it impossible for solar energy development to occur.

Providing for and protecting solar access means regulating development in such a way that streets, lots, buildings, and vegetation provide the maximum access to sunshine. It also means allowing for the prevention of non-beneficial sunshine. Whereas the position of the sun at any given time or date is predictable, planning and protecting solar access means regulating the direction and length of shadows. This is closely related to traditional land use and building regulation for protection of access to light, air, and views.

Land Use Regulation ■ Solar access can be protected by using the existing police power

authority or through private development agreements using covenants or easements. Zoning, subdivision regulations, environmental impact statements, and transportation planning can also be used to protect solar access. The directional placement, width, surface material, and landscaping of streets and rights-of-way can have a substantial impact on protecting solar access, as well as reducing the amount of heat generated by streets.

Solar planning, like many other forms of planning, frequently involves political decisions. Communities must choose the level of regulation suitable for local policies and develop alternatives within a solar access plan that ensure the appropriate balance of police power and property rights while accomplishing energy conservation and solar energy utilization. The best way to plan for and protect solar energy is to incorporate a concern for solar access into the regular planning procedure.

Planning is absolutely necessary to support the regulatory activities that are certain to be required for protecting solar access (or solar rights). Land use control decisions must be consistent with the general or comprehensive plan. As in other regulations that benefit some landowners while placing restrictions on others, court challenges are expected. A well-documented plan for solar access is necessary to show that there is a rational and fair basis for imposing the regulations.

Data Collection ■ Basic information must be gathered before sound solar access protection measures can be developed. For example, the latitude and elevation of the community as well as the topography and prevalent vegetation have a distinct impact on tailoring guidelines and regulations. The types of solar design techniques and equipment applicable to the specific site, as well as size, weight, spatial needs, and other questions must be answered before solar access protection can be implemented.

Public Participation ◆ Because solar access regulations may affect the use of some property, it is wise to involve the community in developing policies. Education and training of key staff and community leaders in the early stages is essential. Early public involvement is also necessary to make final implementation much easier. The more the community understands how the regulation of solar energy will benefit both individuals and the community itself, the more effective guidelines and regulations will be.

Evaluation ◆ Preliminary planning can provide a base of information to measure the success of a solar energy program. For example, in order to know how much energy is saved by promoting solar planning, it is necessary to know how much energy was used before the program was in effect. The preliminary planning stage is the time to develop a base of information from which to make comparisons and analyze the results of the program.

For further information on solar energy programs contact…

Arizona Solar Center
4309 E. Marion Way
Phoenix, AZ 85018
www.solar center.com

APPENDICES

APPENDIX A

GLOSSARY

The following material has been compiled from ***The Planning Commissioner's Guide*** by David J. Allor (Chicago: Planners Press, 1984) and ***The Job of the Planning Commissioner*** by Albert Solnit (Chicago: Planners Press, 1987).

Many people who come into a group dealing with the terminology of planning and zoning are often as unable to handle the "language barrier" as a traveler in a foreign country. The following terms are among the most commonly used in planning work. An understanding of their meaning should allow the new commissioner or board member to communicate with planners, zoning administrators, and veteran commissioners and board members.

Abandonment
(1) A situation where a residential building is abandoned by its owner. There are two typical situations in which this occurs. The first is the case of an old apartment building requiring extensive and costly renovations and occupied by poor families who cannot pay higher rent to recompense the owner for the renovations. The second is the case of the single-family home financed under federal mortgage insurance programs and abandoned because of inability to pay or because of poor quality, with lending institutions and builders profiting and the government and taxpayer losing. In either case, abandonment leads to a cycle of further deterioration, vacancies, and vandalism. A mortgagee is often unwilling to foreclose in situations where mortgages are not insured, because foreclosure may simply mean assumption of the unprofitable dilemma from which the owner has fled. After a number of years of the owner's failure to pay taxes, the city may be forced to foreclose and thus inherit the problem. In the case of insured mortgages, HUD assumes ultimate responsibility. (2) The giving up of a public right-of-way to the adjoining property owner.

Abatement
Any action taken to reduce, relieve, or suppress another continuing action. There are two relevant forms: a summary abatement, which is a legal action taken to suppress the continuation of an offensive land use; and a tax abatement, which is a release or forgiving of a certain tax liability for a specific period of time and under certain conditions.

Abutting Owner
Aperson holding legal interest in real property in contact with property cited in an application, petition, or request pending before a commission, council, or board.

Access
(a) Freedom of approach, action, or communication. Access of the public applies to all legislative and quasi-legislative processes and to all transcripts and reports of such bodies. (b) The route or path to reach a lot or tract of land.

Accessory Use
An activity or structure incidental or secondary to the principle use on the same site.

Adopt
Defined as "to make one's own". The term can have substantive, formal, and functional meanings. It can mean to substantively direct future decision-making, as in the adoption of a policy. It can be used formally, as in the adoption of by-laws that govern a commission's or the adoption of a general plan by a town council.

Air Rights
The right to use the air space over the property of someone else, typically over railways and highways. With modern materials and acoustical treatment, the use of air rights in such a situation can create extensive building space where none seems to exist. The necessary engineering usually requires that the building be a major structure in both size and cost.

Amend
To improve or change for the better by removing defects, faults, or inappropriate or inoperable provisions.

Amortization
A term used in zoning to mean the process by which nonconforming uses and structures must be discontinued or made to conform to requirements of the ordinance at the end of a specified period of time. The term itself is a bastardization of the real estate term by which borrowers are required to pay back a debt in regular payments over a fixed period of time, e.g., installment payments on the principal on a mortgage. State law doesn't allow this in Arizona.

Annex
To absorb by legal incorporate: to expand the limits of a municipality.

Application
The formal preparation and submission of a specific request that asks a decision of a planning commission or board of adjustment. There should be established forms for the submission of requests.

Appoint
To designate or assign authority for a particular function, position, or office. Appointment is wholly separate from election.

Architectural Control
Regulations and procedures requiring structures to be suitable, harmonious, and in keeping with the general appearance, historical character, or style of their surrounding area. Critics have suggested that architectural controls legislate "taste" and require "new antiques" in historical zones, thereby cheapening the real landmarks. Defenders point out that a community that has an historical character or prevailing architectural design should protect and preserve it from the cheap and vulgar, most particularly from building packages of national chains of fast food franchises, filling stations, or others whose trademark is the flashy building and sign.

Bonuses; Incentive Zoning
The awarding of bonus credits to a development in the form of allowing more intensive use of the land, if such public benefits as additional open space are provided, special provisions for low- and moderate-income housing are made, or public plaza and courts are provided at ground level.

Buffer Zone
A strip of land created to separate and protect one type of land use from another. For example, a screen of planting or fencing can be used to insulate the surroundings from the noise, smoke, or visual aspects of an industrial zone.

Building Area
The total square footage of a lot covered by a building measured on a horizontal plane at mean grade level, exclusive of uncovered porches, terraces, and steps.

Building Code
Regulations governing building design, construction, and maintenance based on the government's police power to protect the health, safety, and welfare of the public. Policies vary in different jurisdictions and within cities and counties so far as enforcement is concerned. Codes may not be enforced in whole areas because it is impractical to do so. The need for enforcement, however, may suddenly be raised as justification for a project.

Building Envelope
The net cubic space that remains for placing a structure on a site after building line, setback, side yard, height, and bulk regulations are observed.

Building Line
A building limit fixed at a specific distance from the front or side boundaries of a lot beyond which a structure cannot lawfully extend.

Bulk Regulations
Zoning or other regulations that control the height, mass, density, and location of buildings, and set a maximum limit on the intensity of development so as to provide proper light, air, and open space.

By-laws
A set of rules of procedure that regulate a commission or board's internal affairs and facilitates the discharging of its responsibilities.

Capital Improvement Program
A governmental timetable of permanent improvements budgeted to fit the fiscal capability of five or six years into the future. A planning commission is often given the authority to develop and review the CIP, thereby linking

planning to the annual budgeting process.

Carrying Capacity
The level of land use or human activity that can be permanently accommodated without an irreversible change in the quality of air, water, land, or plant and animal habitats. In human settlements, this term also refers to the limits beyond which the quality of life, community character, or human health, welfare, and safety will be impaired.

Cluster Development
Development that allows the reduction of lots sizes below the zoning ordinance's minimum requirements, if the land thereby gained is preserved as permanent open space for the community. Often the developer will try to offer as open space the unbuildable lands, i.e. drainageways, steep gullies and ravines left over.

Code Enforcement
The attempt by a government unit to cause property owners to bring their properties up to standards required by building codes, housing codes, and other ordinances. Code enforcement can be a prime instrument in arresting urban deterioration.

Combination Zoning
Zones which are superimposed over the zones which either add further requirements or replace certain requirements of the underlying zone. They are a form of overlay zoning except they normally are wholly within other zones or may apply to only parts of zones, i.e. airport approach, conservation, equestrian, hillside, mobile home, general planned development, and scenic reservation. Buffer zones, where a higher intensity zone abuts one of lower intensity, may be applied as combination zones.

Commission
A committee of persons legally organized to administer certain laws or discharge certain functions that constitute a public office. A planning commission is such an appointed committee of persons.

Community Facilities
Public or privately owned facilities used by the public, i.e. streets, schools, libraries, parks; also facilities owned by nonprofit private agencies, i.e. churches, safe houses, and neighborhood associations.

Compatibility
The characteristics of different uses or activities that permit districts to be located near each other in harmony without conflict. The designation of permitted or special-permit uses in a zoning district is intended to achieve compatibility within a district. Elements to be assessed in determining compatibility include: intensity of occupancy as measured by dwelling units per acre; floor area ratio; pedestrian or vehicular traffic generated; volume of goods handled; and environmental impacts i.e. noise, vibration, glare, air pollution, or radiation.

Compliance
An enforceable and effective inducement to secure action in accord with some legally binding regulation.

Condemnation
The taking of private property by a government unit for public use (eminent domain), when the owner will not relinquish it through sale or other means. The owner is recompensed by payment of "market value." The term "to condemn" is used to indicate determination by a government agency that a particular building is unfit for use because it is structurally or otherwise unsafe or unhealthy.

Conditional Rezoning
The attachment of special conditions to a rezoning which are not spelled out in the text of the ordinance. Along with other devices to assure compliance, it may bind the developer to the conditions through filing a covenent.

Conditional Use
A use that may locate in certain zoning districts provided it will not be detrimental to the public good nor impair the integrity and character of the zoned district, or will not be unsuitable to the community at large. Examples of conditional uses permitted in a commercial, industrial, or agricultural zone are temporary carnivals, religious revivals, and rock concerts.

Condominium
The legal arrangement in which a dwelling unit in a residential development is individually owned but in which the common areas are owned, controlled, and maintained through an organization consisting of all the individual owners.

Consensus
Agreement. The majority vote is a special form of legal consensus.

Conservation Easement
A tool for acquiring open space with less than full-fee purchases; the public agency buys only certain specific rights from the owner. These may be positive rights, giving the public rights to hunt, fish, hike, or ride over the land, or they may be restricted rights limiting the uses to which the owner may put the land in the future. Scenic easements allow the public agency to use the owner's land for scenic enhancement, i.e. roadside landscaping and vista point preservation.

Conversion
The partitioning of a single-dwelling unit into two or more separate households, or the conversion of the use of an existing building into another use.

Cooperative
A group of dwellings owned jointly by the residents. The purchase of stock entitles the buyer to sole occupancy but not the individual ownership of a specified unit. Like a condominium, the cooperative arrangement offers certain flexibilities in design and economies in development and maintenance.

Cost Benefit Analysis
An approach to evaluating the advantages and disadvantages of a project, policy, action, etc. in which an attempt is made to quantify the various results, so that the pros and cons can more objectively be compared with one another. At worst, it imposes a false "objectivity" by giving erroneous dollar value or other numerical value to such matters as attitudes, visual quality, and other concerns that resist quantification.

Dedication
A turning over of private land for public use by an owner or developer, and its acceptance for such use by the governmental agency in charge of the public function for which it will be used. Dedications for roads, parks, and school sites, or other public uses are often made conditions for the approval of a development by a planning commission.

Dedication, Payment In Lieu Of
Cash payments required as a substitute for a dedication of land by an owner or developer, usually at so many dollars per lot. This overcomes the two principal problems of land-dedication requirements by applying the exactions on development more equitably, and by allowing purchase of sites at the best locations rather than merely in places where the development is large enough to be required to dedicate a school or park.

Deliberation
A process that includes the careful weighing of facts, objectives, arguments, and law with a view to considerate and dispassionate choice or decision.

Density, Control Of
A limitation on the occupancy of land. Density can be controlled through zoning by one method or a combination of the following: use restrictions of single- or multifamily dwellings;

minimum lot size requirements; floor area ratio; land-use intensity zoning; setback and yard requirements; minimum house-size requirements; ratios between the number and types of housing units and land area; direct limitations on units per acre; requirements for lot area per dwelling unit; and other means. The major distinction between different residential districts often is in their allowable density.

Density Transfer
A technique of retaining open space by concentrating residential densities, usually in compact areas adjacent to existing urbanization and utilities, with outlying areas being left open, so that the residential density of the entire community will average out at the same number of dwelling units as if the community were developed end to end with large lots.

Development Rights
A broad range of less-than-fee-simple ownership interests, mainly referring to easements. An owner can retain complete or absolute (fee simple) rights to land and sell the development rights to another. The owner would keep title but agree to continue using the land as it had been used in the past, with the right to develop resting in the holder of the development rights.

Discretion
The exercise of judgment with regard to what is just and proper under the circumstances. Discretion is given to members of certain governmental bodies so that they may make reasonable application of the laws and regulations.

Downzoning
A change in the zoning classification of land to a classification permitting development that is less intensive or dense, such as from multi-family to single-family or from commercial to residential. A change in the opposite direction is called "upzoning".

Due Process of Law
A requirement that legal proceedings be carried out in accordance with one or two forms of rules and principles: procedural or substantive. Procedural due process means an assurance that all parties to a proceeding are treated fairly and equally, that citizens have a right to have their views heard, that necessary information is available for informed opinions to be developed, that conflicts of interest are avoided, and that, generally, the appearance and fact of corruption does not exist. Substantive due process is less precise, but it refers to the payment by government of "just compensation" to property owners when their property is condemned by government or is severely diminished in value because of government action.

Easement
The right to use property owned by another, i.e. for utility facilities and maintenance access, or for purposes of pedestrian or vehicular circulation.

Eminent Domain
The right of a government to take private property for public use or benefit upon payment of just compensation to the owner.

Enabling Statutes
State statutes conferring limited permissive powers to do planning, zoning, and subdivision regulation.

Environmental Impact
An assessment of a proposed project or activity to determine whether it will have significant environmental effects on the natural and built environments. When no significant environmental impact will result, a "negative declaration" is submitted instead of the Environmental Impact Report (EIR), which is the detailed report on how the project will affect the environment. Significant environmental effects are generally associated with those actions which:

1. Alter existing environmental components such as air and water

quality, wildlife habitats, and food chains.

2. Disrupt neighborhood or community structure (i.e. displace low income people).
3. Further threaten rare or endangered plant or animal species.
4. Alter or substantially disrupt the appearance or surroundings of a scenic, recreational, historic, or archaeological sites.
5. Induce secondary effects such as changes in land use, unplanned growth, or traffic congestion.

Exaction
A contribution or payment required as an authorized precondition for receiving a development permit. It usually refers to mandatory dedication or fee in lieu of dedication requirements found in many subdivision regulations.

Exception
The official provision of an exemption from compliance with the terms or conditions of a building or zoning regulation by a board of adjustment or hearing officer vested with the power to authorize it. It is usually granted if there are practical difficulties in meeting the existing requirements; or if the deviation or exception would not have a detrimental impact on adjacent properties or effect substantial compliance with the regulations. While an exception or special use is a departure from the standard application of the zoning ordinance, it is provided for within the ordinance. A daycare center, for example, might not ordinarily be permitted in an area zoned exclusively residential, yet since this might be a perfectly desirable and acceptable place for the care of preschool children, allowance for an exception, subject to conditioning of how the operation will be conducted, will be pre-established in the text of the zoning ordinance.

Exclusionary Zoning
Discretionary zoning techniques used to selectively control population and minimum residential floor area requirements which increase housing costs, have been challenged for their exclusionary affects. Many court decisions are invalidating exclusionary practices, and are requiring affirmative, inclusionary practices. On the other hand, discretionary techniques, such as inclusionary zoning, can be an important part of land use program.

Executive Session
A meeting of an official body with the express purpose of administering internal affairs. No testimony may be mentioned, applications discussed, deliberations joined, or decisions made.

Ex Parte Contact
Communication made outside the public forum without the benefit of hearing all sides of an issue. They are considered "from one side only" and are made without notice to and knowledge of others involved. They can include telephone calls, informal meetings, lunches, or even a casual encounter on the street. The law does not prohibit ex parte contacts, but does require the communication to be placed on the record at the hearing to enable interested parties to hear and rebut the substance of the communication. If not made part of the record, an ex parte contact provides grounds for voiding a board of adjustment decision in Superior Court.

Externalities, Side Effects, Spillovers, Repercussion Effects
The impacts on others than the direct beneficiaries or targets of a course of action; can be local or widespread; fiscal, environmental, social, or any combination.

Family
In many zoning ordinances, the legal definition is a group of two or more persons related by blood, marriage, or adoption residing together; this is the basic occupancy intended for single-family

residence districts. More recently, communes and other cooperative lifestyle arrangements of unrelated and mostly single individuals have run afoul of the regulations that use this definition of the family (and a specific limit to how many nonrelated individuals may dwell together) to exclude such groups from dwelling in single-family residences.

Final Subdivision Map (or Plat)
A map of an approved subdivision filed in the county recorder's office. Usually it shows surveyed lot lines, street rights-of-way, easements, monuments, distances, angles, and bearings pertaining to the exact dimensions of all parcels, street lines, and so forth.

Findings
A determination or conclusion based on the evidence presented and prepared by a hearing body in support of its decision. A board of adjustment is usually required by law to hold a public hearing to hear evidence when it receives a petition for a variance, special permit, or appeal of an administrative official's decision. When it presents its decision, a board is often required to demonstrate in writing that the facts presented in evidence support is decision in conformance with the law. If, for example, the law requires evidence of a hardship before a variance can be granted, a board of adjustment must support its approval by finding that a hardship actually exists. A requirement to produce findings of fact is often found in due process rules of state legislation.

Floating Zone (or Design District)
A zoning district that is described in the text of the zoning ordinance but not mapped as a specific district in a specific location. When a project of sufficient size anywhere within unrestricted areas can meet certain other requirements, however, the floating zone can be anchored and the area designated on the zoning map.

Floor Area Ratio (FAR)
A formula for determining permitted building volume as a multiple of the area of the lot. For example, a ratio of six on a 5,000 square foot lot would allow a three story building with 10,000 square feet on each floor, or a six story building with 5,000 square feet on each floor, or a variety of similar combinations as long as the total area did not exceed 30,000 square feet. Some zoning ordinances offer an incentive in the form of a higher FAR in order to reduce site coverage and thus encourage provision of plazas and other open spaces on the ground level.

General Plan
(a) A legal document which is a plan of a community's general policies regarding the long-term development of its jurisdiction. The plan should include not only general physical development but also public services, social services, and governmental operations. The plan may be a map accompanied by description and supplemented by policy statements. It provides direction to the capital improvements and maintenance programs, forms the legal foundation for the systematic application of zoning regulations, and permits the consistent and coherent application of subdivision regulations. (b) A comprehensive plan for a municipality as defined in the Arizona Revised Statutes.

Growth Management (Growth Control; Land Use Development Management)
The use by a community of a wide range of techniques in combination to permit it to determine its own amount, type, and rate of growth and to channel it into designated areas. General or comprehensive plans often form the backbone of the system; devices used to execute growth management policy may include zoning, emphasizing flexibility, capital improvements, programming, adequate public facilities ordinances, urban limit lines, population caps or ceilings, and many others. Conceptually, growth management differs from conventional approaches in that it does not accept likely

population growth and its rate as inevitable; these are open to question and are subject to determination by public policy and action.

Guidelines
An undetailed statement of policy direction around which specific details may be established later. In community planning this often takes the form of a local jurisdiction's adopting general principles, to which private development must conform, without mapping or describing the specific details of what may or may not be built or where (e.g. floating zone).

Hardship
Where the rigid application of zoning ordinance restrictions would unduly limit use. Hardships are determined by an objective accounting of circumstances and serve the jurisdiction for a variance granted by a board of adjustment.

Highest and Best Use
The use of land in such a way that its development will bring maximum profit to the owner. It is a theoretical real estate concept that does not take into account the externalities from such a use of land, and thus public regulations often limit land use to some activity that will provide the owners with less than maximum profits in order to minimize spillover costs to other properties and the public at large. Thus the term is not commonly used in planning but is often heard at zoning hearings.

Houses, Halfway
Therapeutic residences that provide a sheltered and transitional environment for person emerging from mental or penal institutions or drug treatment centers. They are open and non-institutional in order to help ease their residents' return to being fully functioning members of the community. When they are proposed for residential areas, a great deal of public controversy is likely to ensue, and many jurisdictions treat them as conditional uses in order to allay public fears.

Improved Land
Raw land that has been improved with basic facilities such as roads, sewers, water lines, and other public infrastructure facilities in preparation for development.

Incentive
A provision within a development regulation that grants relief from specific compliance upon condition that certain features of a proposal are altered so as to secure some benefit, convenience, or use by the public.

Infrastructure
Streets, water and sewer lines, and other public facilities necessary to the functioning of an urban area.

Interim or Study Zone
This is a zoning technique used to temporarily freeze development in an area until a permanent classification for it can be decided upon. Generally, it is used to preserve the status quo while the community plan is prepared to serve as a basis for permanent zoning.

Investment
Any expenditure to acquire real property in order to secure profitable return. Disinvestment is the disposition of real property so as to reduce economic loss and tax liabilities and to transfer capital resources to activities of higher profit yield.

Land Use Plan
A basic element of a general or comprehensive plan designating the future use or reuse of land within a given jurisdiction's planning area, and the policies and reasoning used in arriving at the decisions in the plan. The land use plan serves as a guide to official decision in regard to the distribution and density of private development, as well as public decisions on the location of future public facilities and open spaces. It also serves as a guide the structuring of zoning and subdivision controls, urban renewal, and capital improvement programs.

Leapfrog Development
Development that occurs well beyond the existing limits of urban development leaving intervening vacant land behind. This bypassing of the next-in-line lands at the urban fringe results in the haphazard shotgun pattern of urbanization known as "sprawl".

Limited Partnership
A type of partnership comprising one or more general partners (who manage the business affairs and are personally responsible for debts) and one or more limited partners (who contribute capital and share in profits but take no part in management and incur no liability beyond the contribution of capital).

Lot of Record
A lot which is part of a recorded subdivision, or a parcel of land which has been recorded, usually at a county recorder's officer containing property tax records.

Majority Vote
A formal and functional act of decision-making by a deliberative body requiring a plurality of votes. The bylaws of a planning commission and board of adjustment should clearly specify when a majority must be of the full membership and when it may be a quorum.

Mandatory
Constituting a command and imposing an obligation for performance.

Mandatory Referral
The process of referring specified proposals to the planning commission (and sometimes to other departments or agencies) for review. Such proposals might include rezoning requests or major capital improvements by another governmental agency. Under such requirements, often found in enabling legislation or a municipal charter, the planning commission must report whether the proposal conforms to its general or comprehensive plan or other policies. Increasingly, conventional mandatory referral procedures are becoming more rigorous through legislative executive requirements for impact analysis.

Metes and Bounds
A system of describing and identifying land by measures (metes) and direction (bounds) from an identifiable point of reference such as a monument or marker, the corner of intersecting streets, or other permanent feature. This system is the most precise of the three most common forms of urban land description; the others are street number by house, and by blocks and lots in tract subdivision. Metes and bounds is used most often in rural areas.

Mobile Home (Trailer)
A factory-built home, equipped with all the basic amenities of a conventional home which can be moved to its site by attaching it to an automobile or truck. "Double-wides" and "triple-wides" are units connected together to form a single structure of size and roof design similar to that of a conventional home built on a foundation on site.

Moratorium
In planning, a freeze on all new development pending the completion and adoption of a general or comprehensive plan or the completion of a planning study or instituted by utility agents when sewage treatment facilities are inadequate or water shortage are threatened. They have also been voted into being by residents of communities whose schools and other public facilities have been overwhelmed by rapid growth. Air basins already overburdened by air pollution may be next in line for building freezes.

Municipal Corporation
A corporation consisting of inhabitants of a designated area created by the state legislature or by provisions of state law for the purposes of local government. A municipal corporation has a dual character: it exercises those powers assigned to it by state law and exercises other powers for the benefit of its inhabitants. Generally, cities

and towns are municipal corporations.

Neighborhood
The smallest sub area in city planning, defined as a residential area whose residents have public facilities and social institutions in common. Informal face-to-face contacts and some communal consciousness, either through homeowners' associations or crisis alliances to ward off threatening developments and zone changes also characterize a neighborhood.

Nonconforming Uses
A structure or use that is not permitted by its present district's zoning regulations. If established after the enactment of the ordinance, the use is illegal and may be abated, but if it existed before the regulations, it is a legal nonconforming use and may continue, although a new or different nonconforming use may not replace it. Most ordinances provide that its extension or enlargement is not permissible. Many ordinances permit the restoration of the nonconforming premises when damaged by fire, earthquake, or some other catastrophe. However, once the use is abandoned there is no longer a right to it restoration and the future use of the premises must conform to the regulations. Some states, not Arizona, provide for the cessation of such uses at the end of a prescribed amortization period equivalent to the life of the structure as an investment.

Nuisance
Anything that interferes with the use of enjoyment of property, endangers personal health or safety, or is offensive to the senses. Nuisance law forms part of the basis for zoning. The separation of uses through zoning helps to foster the enjoyment of residential areas free from pollution, noise, congestion, and other characteristics of industrial areas.

Official Map
A detailed map adopted by the city council or board of supervisors, that protects proposed facility or public improvement sites and rights-of-way shown on it from preemption by private development for a limited period, during which the required land can be acquired by conventional acquisition procedures. By reserving land for streets, parks, school sites, and public facilities, the community in turn is placed under an obligation to acquire these lands with reasonable promptness and should coordinate their capital improvement program and budgeting process accordingly.

Open Land District
A zoning classification that limits the allowable uses to agriculture, recreation, parks, reservoirs, and water supply lands. Open land (OL) districts are most commonly used for publicly owned lands of public agencies, but are also used in areas subject to flooding and other natural hazards. A variation of OL zoning is used in airport approach and clear zones where land beyond the landing runways must be kept free of obstructions and projections from the ground.

Open Space
Land which has not been developed and which is desirable for preservation in its natural state for ecological, historical, or recreational purposes, or in its cultivated state to preserve agriculture, forest, or urban greenbelt areas is termed open space.

Ordinance
An enactment of a legislative body of a municipal corporation constituting local law.

Overrule
An action of a local legislative body to reverse a commission recommendation, sometimes requiring an extraordinary or two-thirds majority of full membership.

Parcel
A lot, or contiguous group of lots in single ownership or under single control, and usually considered a unit for purposes of development.

Peak Hour
For any given highway, the sixty-minute period of the day during which it carries it highest volume of traffic. Usually this occurs during the morning or evening rush, when commuters are attempting to go to or from work.

Performance Standards
Zoning regulations providing specific criteria limiting the operations of certain industries, land uses, and building to acceptable levels of noise, air pollution emissions, odors, vibration, dust, dirt, glare, heat, fire hazards, wastes, traffic generation, and visual impact. This type of zoning may not bar an industry or use by specified type, but admits any use that can meet the particular standards of operation set for admission. Instead of classifying industries in districts under the headings "light", "heavy", or "unrestricted," it establishes measurable technical standards and classifies the industries in terms of their probable environmental impact. Terms such as "limited", "substantial", or "objectionable" determine the overall acceptability rating of a particular use.

Pattern
A formal, written request for specific action from a group of individuals to a governmental body specifying the action sought, giving reasons, and clearly identifying individual petitioners.

Planned Area (PAD) or Planned Unit Development (PUD)
A self-contained development, often with a mixture of land uses, housing types and densities, in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots, as in most subdivisions. Often trade-offs occur between the clustering of houses and the provision of common open space.

Police Power
The inherent right of the state to restrict an individual's conduct or use of property in order to protect the health, safety, and welfare of the community. This power must follow due process of the law, but unlike the exercise of the state's power of eminent domain, no compensation need be paid or losses incurred as a result of police power regulation.

Policy
An imperative or prescriptive principle that directs future action. A policy usually has three components: specific definition of the action to be performed, statement of the conditions under which it is to be performed, and identification of the individuals or offers responsible for performing it. Policies may be positive (prescriptive) or negative (proscriptive); they may be strict commands (employing such verbs as shall or must), or discretionary (employing such verbs as will or may).

Precedent
A guide to decision-making based on earlier decisions on matters similar in circumstances or in legal principles.

Preliminary Subdivision Map
The first formal submission by a subdivider is usually in the form of a map with accompanying documents providing the information about the proposed subdivision required by the local subdivision ordinance. The map contains the following: name of subdivision; its location, acreage, owner, and engineer or surveyor; the location of property lines, roads, existing utilities and their bearings and dimensions; names of adjoining properties; zoning classification of the property; proposed water, sewer, drainage, and public utility systems to be employed; names of new streets; lot numbers, setback lines, and lot dimensions; and the location of any easements, culverts, storm drains, creeks, ponds, or other significant natural features, including contours and adjacent structures. If the land is to be subdivided, the preliminary map is often required to include a precise plan of streets, public facilities, and lots for the entire holding as well as the section being submitted for approval so the public agency can be assured that pieces will fit together properly when the development is

completed.

Principal Use
The main use of land or structure as distinguished from secondary or accessory uses. A house is a principal use in a residential area; a garage or pool is an accessory use. Zoning ordinances will often establish a general rule that only one principal structure or use will be permitted on each lot.

Procedure
A rule specifying the content and sequence of an activity. The procedures for a planning commission or board of adjustment must be formally established and made publicly accessible; they are most conveniently incorporated into the by-laws of a commission or board.

Public Hearings
A formally announced meeting of a planning commission, the express purpose of which is to receive written and oral testimony on specific matters open to the public for attendance and testimony. Commission members may ask questions, but no deliberation takes place. A full record of information should be kept, reviewed by the staff, and incorporated into its report for subsequent commission deliberation.

Public Record
Records that a governmental body is required by law to maintain in the discharging of its responsibilities. Records of a planning commission or board of adjustment must be available for public inspection.

Recommendation
A decision that may be either a statement for the approval of some action or a statement of disapproval of some action. Formal recommendations generally are accompanied by supporting reasons.

Request
An asking for a finding, review, advice, or action with the initiating body or group retaining discretion as to acceptance or rejection. Requests may be formal or informal; where formal, they should be submitted in the form of an application.

Resolution
A formal expression of the will of an official body, adopted by vote. A municipal resolution does not have the character of law and is not an ordinance, but a legislative expression of will.

Reversion Clause
A requirement that may accompany special use permit approval, or a rezoning that returns the property to its prior zoning classification if a specified action, such as taking out a building permit or beginning construction, does not begin in a specified period of time. This is a way of protecting a community against using permits or rezonings for speculative purposes.

Right-of-way
The right of passage over the property of another. The public may acquire it through implied dedication and most commonly refers to the land on which a road or railroad is located. Utility pathways and drainage ways are usually referred to as easements.

Road System
The classification of streets and highways by their diverse functions and design. The following is a commonly used hierarchy of streets and highways for planning purposes:

Local street

A roadway allowing access to abutting land, serving local traffic only.

Collector

A street whose function is to channel traffic from local streets to major arterials.

Major arterial

A road that serves through-traffic movement across urban areas, often subject to controlled access from properties fronting on the right of way.

Expressway

A divided multilane highway whose purpose is to move large volumes of through-traffic from one part of a metropolitan area to another; intersections are separated by under- or overpasses at major intersections.

Freeway

A multilane highway with full grade separation, total control of access, median strips, and fencing, or landscaping strips along the sides. Basically, it serves intercity and interstate traffic.

Parkway

An expressway or freeway designed for non-commercial traffic only; usually located within a strip of landscaped park or natural vegetation.

Septic Tank
A tank plus a leaching field or trenches in which sewage is purified by bacterial action. Septic tanks differ from cesspools, which are simply buried, perforated tanks that allow the liquid effluent to seep into surrounding soils but retain most of the solids and must be periodically pumped out.

Setback Regulations
The requirements of building laws that a building be set back a certain distance from the street or lot line either on the street level or at a prescribed height. The aim is to allow more room for pedestrians, or reduce the obstruction of sunlight reaching the streets and lower stories of adjoining buildings.

Sewage System
A facility designed for the collection, removal, treatment, and disposal of waterborne sewage generated within a given service area. Usually it consists of a collection network of pipelines, and a treatment facility to purify and discharge the treated wastes.

Site Plan
A plan showing uses and structures proposed for a parcel of land as required by the regulations involved. It includes lot lines, streets, building sites, buildings, their dimensions; reserved open space, major landscape features and locations of proposed utility lines.

Site Plan Review
The process of local officials, planning commission or the staff reviewing the site plans and maps of a developer to assure they meet the stated purposes and standards of the zone, provide for the necessary public facilities such as road and schools, and protect and preserve topographical features and adjacent properties through appropriate siting of structures and landscaping. The process often allows considerable discretion to be exercised by local officials since it may deal with hard-to-define aesthetic and design considerations.

Special Use; Special Use Permit
The term "special use" with is numerous sub classifications, is so widely and variously used as to make definition difficult. Using the exclusion approach, a special use may be defined as a use other than a use by right. Required special approvals may be by one or more of the following: the governing body, the planning commission, the board of adjustment, hearing examiner, the architectural review board, other special-purpose review boards, and department heads or officials, ranging through building, health, traffic, and safety. Procedures may require presentations before elected and appointed officials, involving public notice and hearings.

Spot Zoning
The awarding of a use classification to an isolated parcel of land which is detrimental or incompatible with the uses of the surrounding area, particularly when such an act favors a particular owner. Such zoning has been held to be illegal by the courts on the grounds that it is unreasonable and capricious. A general or comprehensive plan, or special circumstance such as historic value, environmental importance, or scenic value would justify special zoning for a small area.

Standards
While often used loosely to refer to all requirements in a zoning ordinance, the term usually is used to mean site design regulations such as lot area, height limits, frontage, landscaping, yards, and floor area ratio as distinguished from use restrictions.

Strip Zone
A mix of development, usually commercial, extending along both sides of a major street. Usually a strip zone is a mixture of auto-oriented enterprises (e.g. gas stations, motels, and food stand), truck-dependent wholesaling, and light industrial enterprises, along with the once-rural homes and farms overtaken by the haphazard leapfrogging of unplanned sprawl. In zoning, a strip zone may refer to a district constituting a ribbon of highway with commercial uses fronting both sides of a major arterial route.

Subdivision
Transforming raw land into building sites by division into lots, blocks, streets, and public areas. A subdivision is generally defined as dividing land into six or more lots, parcels or fractional interests.

Subdivision Regulations
Regulations governing the division and development of land so as to ensure definitive legal title, and guarantee health, safety, and welfare to both users and the public.

Subdivision Plat
The formal instrument by which the division of land together with the conditions of development are legally recorded.

Sunshine or Open Meeting Laws
Statutes specifically requiring the deliberative meetings of public bodies be open to the public. Such laws often contain extended provisions for public notice of deliberative meetings.

Taking
The appropriation by government of private land for which compensation must be paid. Under the U.S. Constitution, property cannot be condemned through eminant domain for public use or public purpose without just compensation. This is reasonably clear when government buys land directly, but the "taking clause" is far less clear when the imposition of police power controls diminishes the value of property considerably.

Testimony
The presentation of information by an interested or affected party regarding an application pending before an official or an official body. Testimony here is usually nonjudicial with no administration of oath or cross-examination. Nevertheless, such testimony becomes part of the public record of deliberation; persons providing it are held responsible for their comments.

Trip
The journey from a traveler's point of origin to the destination and the smallest unit of movement considered by transportation studies.

Trip Generation
A factor, usually determined empirically, which is used to estimate the amount of traffic that will arrive and depart from a particular establishment or development. The amount of traffic is usually expressed as the ADT (average daily trips). Trip generation factors are expressed as trips per employees, trips per dwelling unit, trips per some specific amount of floor area, etc.

Urban Design
The attempt to give coherent form, in terms of both beauty and function, to entire areas. The term implies a more fundamental approach than "beautification" and is concerned with the location, mass, and design of various urban components, combining the concerns of urban planning, architecture, and landscape architecture.

Urban Fringe
An area at the edge of an urban area, usually made up of mixed agricultural and urban land uses. Where urban sprawl is the predominant pattern, this mixture of urban and rural may persist for decades until the process of urbanization is completed.

Urban Limit Line; Urban Growth Boundary; Urban Service Area
An area identified through official public policy, within which urban development will be allowed during a specified time period. Beyond this line, using a variety of growth management tools such as acreage zoning and limits on capital improvements, development is prohibited or strongly discouraged. The establishment of such service boundaries has become an important tool for implementing public decisions on where growth should occur and what kinds of services a community can afford to supply.

Vacancy Ratio
The ratio between the number of vacant units in a designated area and the total number of existing units within the area. Vacancy ratios can often be misleading because they do not sufficiently take into account such variables as (1) the actual condition of the building, (2) the condition of public services or neighborhood quality relating to transit, safety, etc., (3) the rent or purchase price levels of the available units, (4) the ability of prospective families and individuals to pay, and (5) special restrictions aimed as racial groups, children, and others.

Variance
The granting of specific and definitive relief from the rigid application of the restrictions of development regulations on grounds that the peculiar circumstances of the property in question would suffer deprivation of use. A license to do some act contrary to zoning.

Zoning Regulations
The division of land within the jurisdiction of a local unit of government and the designation of permitted uses of land within those divisions. Zoning regulations permit the lawful restraint of the right to use of real property. They define residential, commercial, industrial, and other uses; number of occupants; and height, coverage, and location of buildings. A set of administrative procedures is included in zoning regulations.

ARIZONA MUNICIPAL PLANNING AUTHORITY

A.R.S. § 9-461 DEFINITIONS

In this article, unless the context otherwise requires:

1. "**General plan**" means a municipal statement of land development policies, which may include maps, charts, graphs and text which set forth objectives, principles and standards for local growth and redevelopment enacted under the provisions of this article or any prior statute.
2. "**Municipal**" or "municipality" means an incorporated city or town.
3. "**Planning agency**" means the official body designated by local ordinance to carry out the purposes of this article and may be a planning department, a planning commission, a hearing officer, the legislative body itself, or any combination thereof.
4. "**Right-of-way**" means any public right-of-way and includes any area required for public use pursuant to any general or specific plan.
5. "**Specific plan**" means a detailed element of the general plan enacted under the provisions of this article or a prior statute.
6. "**Street**" means streets, highways, freeways, expressways, avenues, boulevards, parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public access easements and rights-of-way.
7. "**Subdivision regulations**" means a municipal ordinance regulating the design and improvement of subdivisions enacted under the provisions of article 6.2 of this chapter, or any prior statute, regulating the design and improvement of subdivisions.
8. "**Zoning ordinance**" means a municipal ordinance regulating the use of land, structures or both, under the provisions of this article.

A.R.S. § 9-461.01 PLANNING AGENCY; POWERS AND DUTIES

A. The legislative body of a municipality may by ordinance establish a planning agency.

B. The planning agency shall:

   1. Develop and maintain a general plan.
   2. Develop such specific plans as may be necessary to implement the general plan.
   3. Periodically review the capital improvement program of the municipality.
   4. Perform such other planning functions as the legislative body may provide.

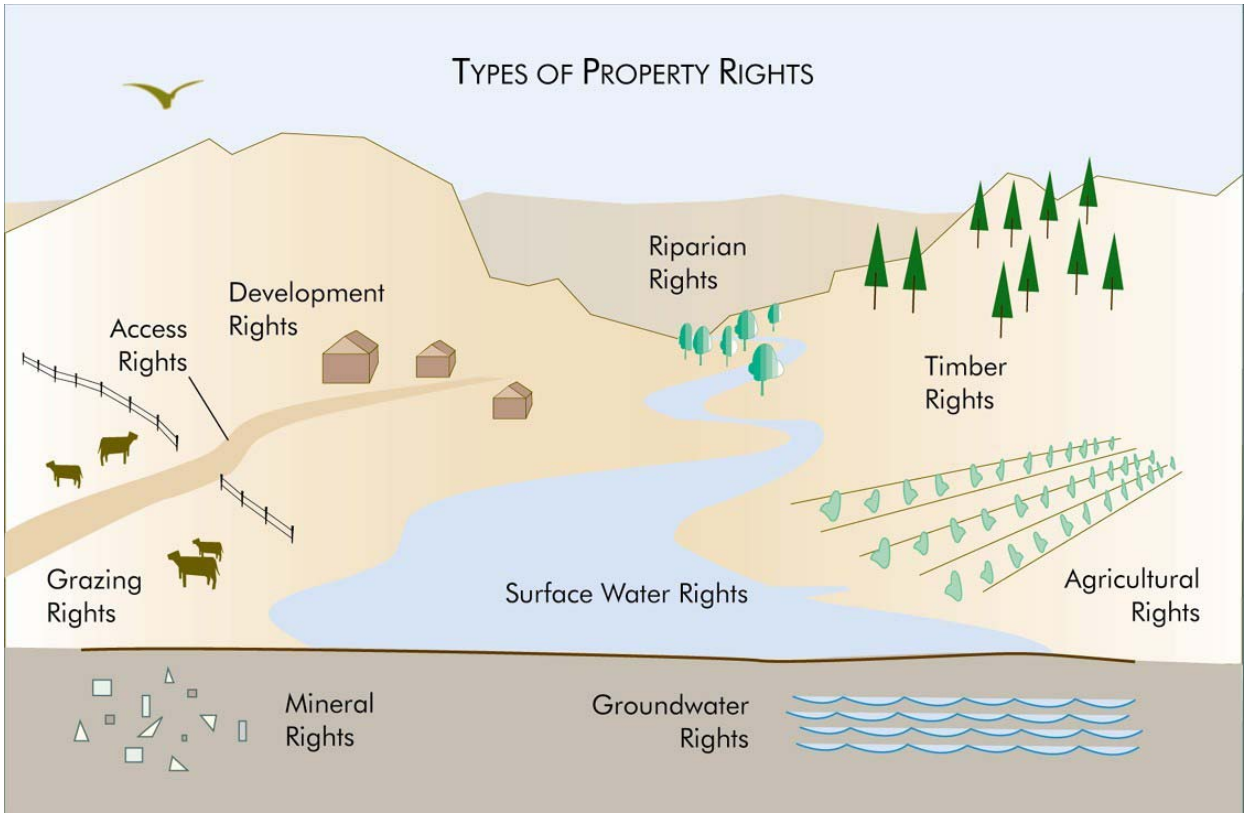
C. Each planning agency has the powers necessary to enable it to fulfill its planning functions as provided in this article. It may:

   1. Contract for, receive and utilize any grants or other financial assistance made available by a municipality, a county, the state or the federal government.
   2. Contract with the state or federal government and any of its agencies, or the legislative body of any municipality or county.

A.R.S. § 9-461.02
PLANNING COMMISSION; CREATION; LIMITATIONS

If a municipal planning commission is created, the organization, number of members, the terms of office and the method of appointment and removal shall be as provided by local ordinance, except that each municipal planning commission shall have at least five members.

LAND RIGHTS


TYPES OF PROPERTY RIGHTS
Riparian Rights
Development Rights
Access Rights
Timber Rights
Grazing Rights
Surface Water Rights
Agricultural Rights
Mineral Rights
Groundwater Rights

COUNTY PLANNING AUTHORITY

A.R.S. § 11-801 DEFINITIONS

In this chapter, unless the context otherwise requires:

1. "**Area of jurisdiction**" means that part of the county outside the corporate limits of any municipality.
2. "**Board**" means the board of supervisors.
3. "**Commission**" means the county planning and zoning commission.
4. "**Indian reservation**" means all lands that are held in trust by the United States for the exclusive use and occupancy of Indian tribes by treaty, law or executive order and that are currently recognized as Indian reservations by the United States department of the interior.
5. "**Inspector**" means the county zoning inspector.
6. "**Newspaper of general circulation in the county seat**" means a daily or weekly newspaper if any is published in the county seat.
7. "**Rezoning ordinance**" means that portion of a zoning ordinance adopted by the board of supervisors that identifies the requirements for amending or changing the zoning district boundaries or regulations within an area previously zoned.
8. "**Zoning district**" means any portion of a county in which the same set of zoning regulations applies.
9. "**Zoning ordinance**" means an ordinance adopted by the board of supervisors, which shall contain zoning regulations together with a map setting forth the precise boundaries of zoning districts within which the various zoning regulations are effective.
10. "**Zoning regulations**" means provisions governing the use of land or buildings, or both, the height and location of buildings, the size of yards, courts and open spaces, the establishment of setback lines and such other matters as may otherwise be authorized under this chapter and which the board deems suitable and proper.

A.R.S. § 11-802 COUNTY PLANNING AND ZONING

The board of supervisors of a county, in order to conserve and promote the public health, safety, convenience and general welfare, and in accordance with the provisions of this chapter, shall plan and provide for the future growth and improvement of its area of jurisdiction, and coordinate all public improvements in accordance therewith, form a planning and zoning commission to consult with and advise it regarding matters of planning, zoning, and subdivision platting and in the manner provided in this chapter, adopt and enforce such rules, regulations, ordinances and plans as may apply to the development of its area of jurisdiction.

A.R.S. § 11-803 COUNTY PLANNING AND ZONING COMMISSION; MEMBERSHIP; TERMS; ADVISORY OFFICERS

A. In the counties having three supervisorial districts, the county planning and zoning commission shall consist of nine members who shall be qualified electors of the county. Three members shall be appointed from each supervisorial district by the supervisor from that district, and not more than one of the three may be a resident of an incorporated municipality. Members of the commission shall serve without compensation except for reasonable travel expenses.

B. Except as provided in subsection C of this section, in the counties having five supervisorial districts, the county planning and zoning commission shall consist of ten members who shall be qualified electors of the county. Two members shall be appointed from each supervisorial district by the supervisor from that district and, if the district contains at least sixty per cent incorporated area, both members may be residents of the incorporated area. If the district is less than sixty per cent incorporated, one member may be a resident from the incorporated area but at least one member shall be a resident of the unincorporated area. Members of the commission shall serve without compensation except for reasonable travel expenses.

C. If any supervisorial district is at least ninety per cent Indian reservation and at least ninety per cent of the district is not subject to county zoning regulations, the supervisor from the district may appoint some or all of the members to the commission from any supervisorial district in the county if there is no appointee who is willing to serve within the supervisorial district. These appointments are subject to the limitations on residency required by subsections A and B of this section. Members appointed to the commission pursuant to this subsection require the approval of the board.

D. The terms of the members of the commissions shall be for four years except for those initially appointed. Of those members initially appointed pursuant to subsection A of this section, five members shall be appointed to a two year term and four members shall be appointed to a four year term. Of those members initially appointed pursuant to subsection B of this section, five members shall be appointed to a two year term and five members shall be appointed to a four year term. Thereafter, each term shall be four years. If a vacancy occurs otherwise than by expiration of term, it shall be filled by appointment for the unexpired portion of the term. Members of the commission may be removed by the board for cause.

E. Upon a conversion from three to five supervisorial districts pursuant to Section 11-212, the board of supervisors, upon expiration of the terms of members of the commission serving on the date of such conversion, shall make such appointments to fill such vacancies to conform to the provisions of subsection B of this section as soon as is practicable.

F. The county assessor, county engineer, county health officer and county attorney shall serve in an advisory capacity to the commission and to the boards of adjustment.

A.R.S. § 11-804 ORGANIZATION OF COMMISSION

A. The commission shall:

1. Elect a chairman from among its members for a term of one year, and such other officers as it may determine.

2. By resolution fix the time and place within the district of regular meetings, and hold at least one regular meeting each month, and such additional meetings as the

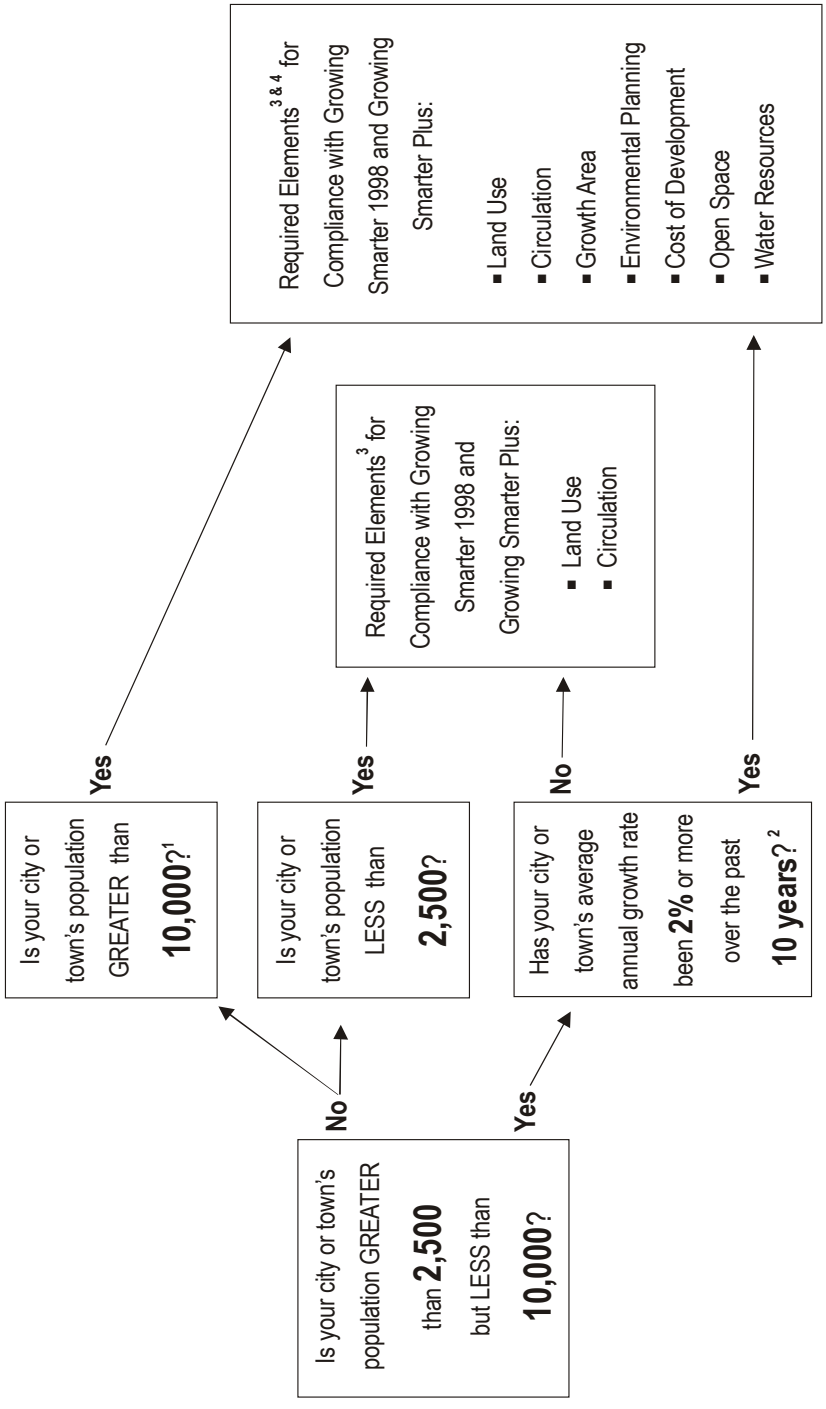
chairman or a majority of the commission deems necessary.

3. Adopt rules for the transaction of business, and keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record and be open to public inspection.

4. Transmit all of its recommendations, decisions, findings, reports and official actions, regardless of vote, to the board of supervisors.

B. A majority of the commission shall constitute a quorum for the transaction of business and a majority vote of the quorum shall be required for any official action.

GROWING SMARTER 1998/PLUS GENERAL PLAN ELEMENTS CITIES & TOWNS



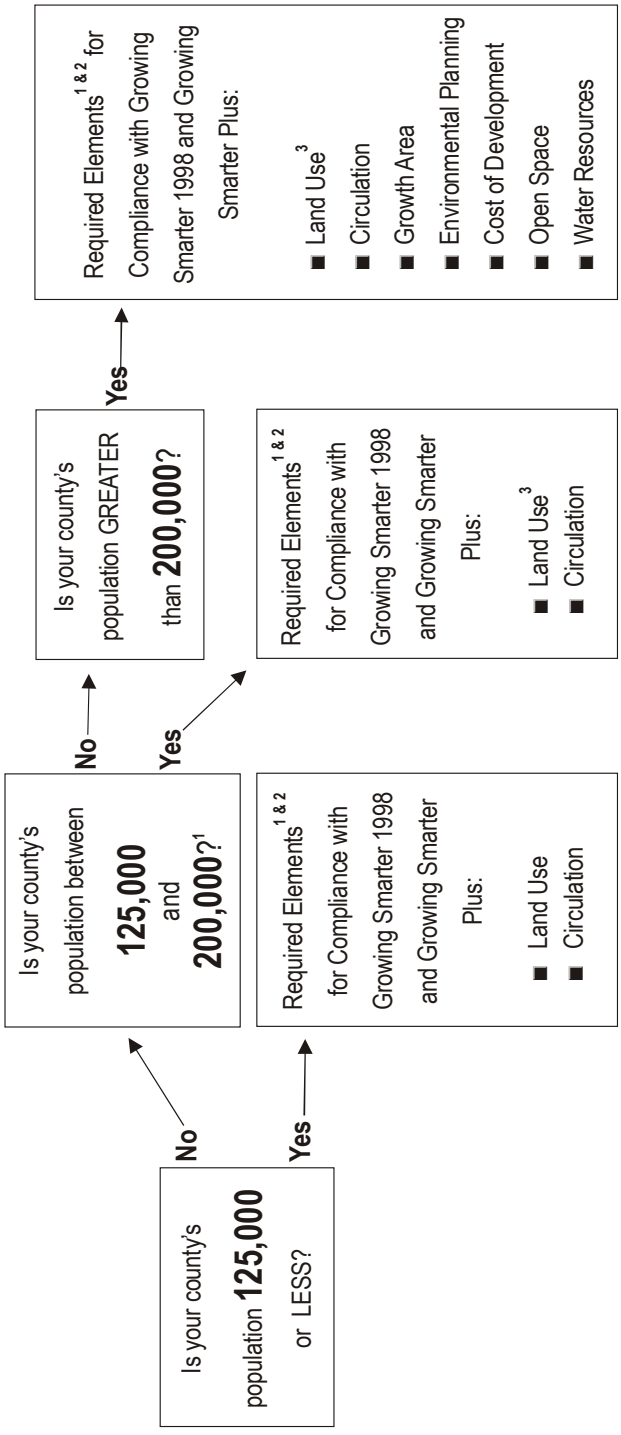
[1] For cities and towns with populations exceeding 50,000 additional elements are required. See A.R.S. § 9-461-05(E).

[2] Average annual growth rates determined using the most current U.S. Decennial Census (1990 U.S. Census and 2000 U.S. Census estimates).

[3] Prior to the preparation and adoption of an updated or amended General Plan, the governing body is required to adopt written procedures to provide effective, early and continuous public participation from all geographic, ethnic, and economic areas of the municipality.

[4] The legislative body shall submit each new adopted General Plan to the voters for ratification at an election. If a majority of the voters fail to approve the new plan, the current plan remains in effect until a new plan is approved. See A.R.S. § 9-461.06(L).

GROWING SMARTER 1998/PLUS COMPREHENSIVE PLAN ELEMENTS COUNTIES



[1] All counties may also include studies and recommendations relating to location, character & extent of highways, railroads, bus, & other transportation routes and facilities; public buildings, public services, schools; parks, open space, hiking and riding; housing quality, variety, and affordability; dams, floodplain zoning; projects affecting conservation of natural resources, forests, wildlife areas; air quality, and water quality.

[2] Prior to the preparation and adoption of an updated or amended Comprehensive Plan, the governing body is required to adopt written procedures to provide effective, early and continuous public participation from all geographic, ethnic, and economic areas of the municipality.

[3] Includes more detail than the generalized Land Use Element for smaller counties.

ARIZONA DEPARTMENT OF COMMERCE

OFFICE OF SMART GROWTH
1700 W. WASHINGTON ST. SUITE 420
PHOENIX, AZ 85007

PHONE 602-771-1191 ▪ FAX 602-771-1210 ▪ www.azcommerce.com