



Trainer's Resource

• A Few General Notes About Planning Board Training:

A little planning ahead of time will help a great deal to make whatever training format you choose be effective. When designing a planning board training event, you must consider:

(1) How big will the event be? The ideal group for effective training with maximum involvement is 20 or less. Good training sessions can be designed for larger groups, particularly if several boards get together at the same time. Then the disadvantages of a large group are offset by the "cross-pollination" of ideas of the different communities.

(2) How long will the event be? An all-day session may be too much for many planning board members, particularly if it is held on a weekend when they normally would be spending time with their family or traveling out of town. Try building a regular training hour into regular planning board meeting agendas once a month. Or schedule a 2-3 hour evening session with a meal. Joint training sessions with a planning board from a nearby community are ideal for generating thoughtful discussions.

(3) Where will the event be? A meeting space is all-important. Comfortable chairs (but not too comfortable!), good lighting, good acoustics, a place to write things down where everyone can see them, etc. mean a lot, and it's worth going out of the way to find a special place, so that your training session will be seen as a special event. Planning the event around a meal is sure to help attendance.

(4) How much to cover? Don't try to bite off too much. Make sure you leave sufficient time for questions and discussion in small groups (if your event is formatted to include them). This is where the real learning takes place. Give more time to working on situations and less to lecturing.

• The Trainer:

A lot of planning boards like to bring in "outside" experts or moderators to handle their training sessions. There is nothing wrong with this, and experts often can bring a perspective of regional or state-wide scope to a discussion. Remember that the professional staff in each community provides technical expertise on a day-to-day basis. Hopefully the availability of these materials will encourage professionals to undertake training programs in their own communities, thus reinforcing the role the planner should play with the board.

• Presenting your material:

Bring your audience into the subject by discussing real-life issues they may be dealing with or are likely to encounter. Perhaps you might ask each participant to fill out an index card with a couple of situations that have interested or concerned them, or a couple of questions they hope to get answered.

Planning boards will be made up of a mix of experienced "veterans" as well as "rookies". You may wish to begin your session by finding out how many years of experience on the planning board are represented. Try to tailor your presentation to the level of experience represented...but don't automatically assume that the knowledge you are presenting is "old hat" to the experienced board members.

Whenever possible supplement these materials with additional material of local interest. Newspaper clippings are a great means of generating a discussion. Local rules of procedure or portions of zoning ordinances are useful as examples to bring home a point.

• Effective Training Techniques:

Try using some of these techniques to bring your points across more clearly:

- (1) **Use the communication techniques noted in Module 1.** Speak clearly. Summarize. Avoid big words, jargon and run-on sentences. Be brief.
- (2) **Use lots of pictures.** In addition to the overheads included in this module, try finding some relevant slides, or perhaps create some diagrams to bring across the point graphically.
- (3) **Try to involve the audience directly,** rather than lecturing to them. Make sure everyone participates without embarrassing anyone.
- (4) **Tell 'em what you're going to tell 'em,.. then tell 'em, ... then tell 'em what you told 'em.**
- (5) **Try to get your audience to find the answer themselves.** Don't simply tell them what the appropriate response to a situation or the right answer to a question is.
- (6) **Get down at the same level as your audience.** Don't stand up on a stage or lecture from a podium.
- (7) **Practice on others before the event.**

• Managing a discussion:

A successful training session should generate a lively discussion about the subject matter. You may choose to format this discussion in small groups, or facilitate a general discussion for the entire group. In either case, it is easy to drift from the subject. The skilled trainer will continually re-focus the discussion to the

important points to bring across. Do this with a well-timed rhetorical question, or simply remind the group of the need to answer a specific question or address a test situation that is presented to them. A time limit on the discussion is appropriate in some situations, but the most important goal is to ensure that the discussion helps reinforce the basic training points and is not just an opportunity for swapping anecdotes.

Write the goal of the discussion or a few simple points on an overhead or on a paper pad that is easily visible by the group. If you choose to have the discussion in small groups, ask the groups themselves to synthesize what they have discussed and report it to the others. While they do this look for common threads or points that support the information to be presented to them in that module. Link them visually for your audience by writing them on an overhead or paper pad as they are discussed.

- **Using the sample exercises:**

Each module of the Citizen Planner Training Program contains a few sample exercises for your use. They are designed to reinforce the main points presented in the materials. They may be answered individually by each attendee, or they may be handled by small groups or in a general discussion. If possible, allow the attendees to read the situation before the training session begins.

The notes below describe the "correct" answer, or at least the issues that should be made apparent to the audience. Generally the discussion itself brings this information to light. You, as the trainer, need only reinforce it. A unique interpretation of the situation may direct the discussion in a different direction. Go with it. There may be valuable lessons to be learned. If you want to bring the discussion back to the main points of the situation try asking a pointed rhetorical question of the group, or play "devil's advocate".

Module 1. Working Together

• Module 1 Important Points:

By the end of your Module 1 training, you should have gotten these points across:

- **Planning boards are advocates of the general public interest.** Their decisions should reflect the highest public good for the entire community and not for one individual, business or corporation. That is their primary role.
- **Planning boards generally have an advisory role to elected bodies, but are authorized to make final decisions on some issues.**
- **There is no clear definition of a conflict of interest.** Each community must set its own standards, write them down, and discuss them regularly.
- **The perception of the public means as much as the truth.** When in doubt, declare your potential conflict and discuss it with the rest of the board.
- **All public meetings are subject to the Open Meetings Law.** Any gathering of 3 or more members of the board to "deliberate" over a public issue is subject to the Open Meetings Law.
- **Prepare ahead of time, have a clear agenda, set up formal procedures, start and finish on time and save enough time for deliberation and feedback,** and your meetings will be successful.
- **Public hearings are vital to encouraging public input.** Quasi-judicial hearings have special rules that must be followed in order to have a legal proceeding.
- **Decision-making can be done in a variety of ways. Boards should strive toward consensus.** Understand how your board reaches a decision.
- **Conflicts are inevitable in public discourse.** Try to understand the interests a speaker may have, not the positions taken by each side.
- **Communication fails because listening stops.** Be aware of how you communicate. Be simple and straightforward in your verbal and written communication. Be aware of your non-verbal cues.

• Notes about the Exercises:

Situation 1: In this situation try to get your audience to think about how to balance a profession with public service, particularly when that profession is heavily involved in the public's business. This issue of passing judgment on competitors is an interesting one. Try not to answer the question for your

audience, but play devil's advocate. Press them to provide examples from their own personal experience. Remember, there is no hard and fast definition of a conflict of interest. Challenge your Planning Commissioners to draw their own line.

Situation 2: This is a meeting management dilemma. Important issues to discuss here include the appropriate level of public involvement in a Planning Board decision, how to focus on the information needed to make a decision, and the appropriate amount of deliberation that the Board itself should undertake. A side issue is the question of what role the Planning Board takes in financial matters of the community. Try to get your group to reach a consensus on what should be done. Make them aware of the roles they are playing in the group as they discuss the issue. Be a mirror for them.

Situation 3: This is a personality management question. The effectiveness of the Board is in question, and it will be important for the group to determine how to handle one of their members who happens to be in a position of some power and influence. This is a delicate balancing act. Try to get your audience to respect the personal feelings of the Chairman, while causing a effective change in his or her behavior. Have them focus on the underlying reasons that might be there to cause the gruffness. Is it frustration with the pace of the meeting, or lack of preparation on the part of the members? Ask them to try to use feedback mechanisms to make sure the Chairman hears each of the members as they speak.

Situation 4: This quasi-judicial hearing is properly advertised, but the Chairman fails to swear in the witnesses and immediately speaks of ex parte evidence received outside the hearing in the form of a letter. The opponent provides no factual evidence, but only offers opinions. The proponents properly present factual evidence to support their case. The Chairman closes the hearing and then requests the staff to provide more ex parte information after the hearing is closed. This information should be presented during the hearing, which may have been held open by the Chair until the information was available.

Module 2. An Overview of Planning in North Carolina

• Module 2 Important Points:

By the end of your Module 2 training, you should have gotten these points across:

- **Planning is an effort to promote efficiency, equity and quality of life in the community.** It allows a community to get out in front of potential problems and prepare for growth. It is not an effort to remove rights or stifle growth.
- **Local planning is voluntary in NC.** There are only mandates to plan in the 10 coastal counties where the Coastal Area Management Act (CAMA) is applicable.
- **Local government influences land use and development by providing public facilities and programs, regulating growth, providing direction and leadership and providing financial incentives.**
- **Planning is done by a "planning agency", and several duties are laid out in the enabling statutes.** It is up to each community to decide which of these roles the planning board is to play.
- **The U. S. Constitution requires an impartial decision-making body for planning decisions.** Conflicts of interest and illegal closed meetings can cloud the impartiality of a board.
- **Different planning agencies undertake different types of decision making.** Planning boards, Boards of Adjustment, professional staff and elected officials all play key planning roles that are generally defined by State and local law.
- **Several tools are used in local government planning.** Comprehensive planning and various forms of land use regulation (zoning, subdivision management) are typical in North Carolina.
- **Cities may extend their planning jurisdiction beyond the corporate limits.** Extra-territorial jurisdiction (ETJ) limits depend on the population of the community.
- **Federal and state regulations may affect local land use planning.** Federal and state objectives to address broad issues such as fair housing practices and environmental protection often result in laws that affect the local land use pattern.

• **Notes about the Exercises:**

Situation 1: This is a basic planning conundrum faced by all communities when people live close, the issue of private property rights of an vs. the interests of others in the community who may be affected by the actions of the individual. Encourage the board to discuss the balance of private property rights of the individual with the legitimate rights of other property owners in the community to be protected from actions that may negatively affect their lives and property. Shift the scenario a little and have Farmer Brown running a nuclear waste dump and Farmer Smith operating a day care center. Encourage the Board also to explore some of the constitutional protections against arbitrary and capricious decision-making by governmental representatives. Discuss due process laws and restrictions against takings without compensation that temper the ability of the community to restrict what Farmer Brown can do with his property. Emphasize the role of an overall plan, with broad public participation, that, once in place, can guide decision-makers in determining whether more ostriches on that specific hill will be legitimate or not.

Situation 2: Encourage the board to discuss the purpose of ETJ...the acknowledgment that an area outside a city is urbanizing, and the legitimate need for the citizens of the City to prepare for the inevitable demand for services that will accompany absorption into the city limits. Talk about how the area that may seem rural today will ultimately be served by City fire equipment, emergency service vehicles, public utility lines and other services that demand safe, easily maintained streets and public rights-of-way. Though the act of subdividing one lot into two is unlikely to be a heavy burden on a future service providing organization, the cumulative effect of numbers of property owners subdividing in this way will necessitate that some sort of urban standards be applied in areas that will eventually be taken into a city limits. Talk about the variance process and the ability of City Councils to take mitigating circumstances into account. Talk about the statutory requirements for ETJ representation on Planning Boards and Boards of Adjustment.

Situation 3: Ms. Wilson will have to go through a legislative decision (the re-zoning process) involving perhaps an advisory role by the Planning Board and a decision by the Governing Board. She will then request a variance in a quasi-judicial setting from the Board of Adjustment. Her final site plans and building plans are likely to be approved by a professional staff operating under an administrative decision-making format. Discuss the special process requirements of the legislative and quasi-judicial decisions. Emphasize the more stringent evidence and fact-finding nature of quasi-judicial decisions as opposed to all others.

Module 3. Comprehensive and Strategic Planning

• Module 3 Important Points:

By the end of your Module 3 training, you should have gotten these points across:

- **A good plan forms the basis of a community's vision of the future.** Planning helps keep taxes low by making public services efficient, allows the community to accommodate growth by placing infrastructure in place ahead of time, helps maintain a high quality of life and makes a community eligible for state and federal resources to help manage growth.
- **The comprehensive plan forms the legal underpinning for land use regulation.** A good plan, created with community involvement and regularly updated, serves as to guide decisions on land use and zoning, and supports ordinances that are challenged in court.
- **Many different movements in the history of planning in this country have influenced the evolution of the general plan since the turn of the century.** Different styles of long-range planning have been in vogue at different points in history, including "City Beautiful" plans, "advocacy" plans, ecological plans, and the "new urbanism".
- **The process of creating a long-range plan may either be "bottom up" or "top-down" in its emphasis.** The trend recently is more toward the bottom-up (participatory) process.
- **Comprehensive planning is the best choice when one wants to bring together all planning functions** (e.g., housing, land use, transportation, physical environment, energy, community facilities, etc.), **the entire geographical and political jurisdiction, and include a long-range time perspective** (e.g., 15-20 years into the future).
- **Strategic planning is superior in dealing with dynamic and changing conditions over the short-term.** This choice is intended to focus on select issues within a limited area of influence.
- **Future search planning heavily depends on the creative power of group dynamics, and is best when used to develop a vision of the future on a limited budget within a short time frame.** A future search conference attempts to bring together in the same room the entire system (i.e., community stakeholders) at one time.
- **Participation by citizens representing as many interests as possible is critical to the success of a long-range plan.** Various visioning tools may be employed to draw citizens into the debate. Technology can play an important role in bringing people to the table who would otherwise be excluded.

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- **The approval of a plan should be formalized, and a means set up to continually refer to it and adjust it as time goes along.** A plan that is static is useless in a changing community, and will not be taken seriously as a guide to land use decision-making.

- **Notes about the Exercises:**

Situation 1: Acme, though it is a private company involved in a profit-making operation, needs to plan in the same way as a community does. Where Acme must plan to remain competitive to retain customers who will purchase its hubcaps, communities must have a clear vision and an investment strategy if they wish to continue to support a high quality of life with low cost public services. Planning is important to BOTH organizations. As your Planning Board members consider how a comprehensive planning process may apply to Acme's situation, encourage them to talk about the importance of knowing how all aspects of their business interrelate...the inability of the smelter to keep up with the production efficiencies of the rolling and stamping operation will result in the entire organization not being able to meet its goals. Having good information on all aspects of the production and marketing of the product is important, but time consuming. Consider how adopting a strategic planning approach may result in Acme being able to quickly adjust to changing market conditions, and put any investment toward changes that can have the greatest impact in the shortest time.

Situation 2: This exercise is important in any community. Have the answers available if they do not know them. Some will be surprising! While the trainees are answering these questions, encourage discussion on how decision-making comes about in the zoning process in your community. Have them talk about how it might be different if the long-range plan were better used. If the plan already is central to the decision-making process, talk about decisions over the past several years where the plan was a critical factor. What is the result of these decisions? How might things have been different without the plan? What are the strongest and weakest parts of the plan in the opinion of the trainees?

Module 4. Zoning

• Module 4 Important Points:

By the end of your Module 4 training, you should have gotten these points across:

- **Zoning is a tool used to implement the general plan of a community.** Without a plan, the application of a zoning ordinance can be criticized as being arbitrary and unfair.
- **Zoning is intended to protect property rights, not remove them.** Properly used, zoning can ensure that the reasonable, investment-backed decisions of property owners are protected against unpredictable decisions by others.
- **There are constitutional protections against the over-zealous application of zoning, and the resultant impacts on individual property owners.** Zoning must be applied in a fair, even-handed manner, must be related to community goals as stated in a general plan and must allow for due process to ensure that all aspects of an issue have been properly considered.
- **Zoning ordinances consist of text and an official map.** The map designates districts where certain uses or groups of uses are allowed, sometimes subject to special conditions or development standards.
- **There are many special applications of zoning, including performance zoning, overlay districts, planned unit developments and special or conditional use zones.** Each of these has a specialized application, to address unusual circumstances, or to allow flexibility when a developer proposes an extraordinary project.
- **There are 4 types of public decisions in the zoning process.** Legislative, advisory, quasi-judicial and administrative processes are all different, and the Planning Board should be aware of what type of decision they are making.
- **State law requires that zoning ordinance amendments be made after a properly advertised public hearing.** Local procedures vary, but the essence of the process is that it be open and encourages public input.
- **Quasi-judicial zoning decisions require rigorous record-keeping, proper procedures, and consideration only of evidence presented at the hearing.** Planning Board members discussing a quasi-judicial decision outside the hearing may be violating the law, unlike a legislative decision, where such "ex parte" communication is acceptable.
- **Property owners may establish vested rights to complete a project if special procedures are followed, or if a building permit is issued.** If

communities decide to change rules after such "vesting" property owners may develop under the rules in effect when the project was so "vested".

- **"Spot-zoning" is illegal, but difficult to define.** Factors for determining reasonableness include: (1) Size of area - and its particular characteristics, (2) relation to comprehensive plan, (3) degree of change in uses allowed, (4) relative harm and benefit - to owner, neighbors, and the community.

• **Notes about the Exercises:**

Situation 1: A variance is a quasi-judicial proceeding. This type of decision requires a higher standard of procedure than other types of decisions, and no evidence obtained outside the hearing can be used to make a decision. All contact with any person or agency involved with the case outside the hearing is termed "*ex parte*" communication and is illegal. Testimony in a quasi-judicial hearing is sworn and may be ruled out of order if not factual in nature.

Situation 2: A petition submitted at the hearing can have no bearing on the decision, which is to be based on specific findings that must be made after receiving factual evidence. A petition is not sworn testimony, nor does it address anything other than the opinion of the petitioners.

Situation 3: A re-zoning case is a legislative decision, usually arrived at by the governing board after a recommendation is made by the Planning Board. Unlike quasi-judicial decisions, this process allows a wide variety of input, including opinion, that can be considered. Though the Comprehensive Plan should bear heavily on such a decision, the decision-makers are not legally bound to conform to it.

Situation 4: It is likely that a court would side with the zoning inspector on this one. Any sign that is strictly political speech ("Save the Whales", "The President's a Bum") has some degree of protection under the First Amendment, but a sign clearly intended to draw attention to the business taking place on the property is a commercial sign, and must conform to local ordinances. Since this is an administrative decision by staff and no variance appeal has been made to the Board of Adjustment or Planning Board (whichever body in that community is entrusted with hearing variance requests) the Planning Board has no role whatsoever in this issue. NOTE: Political signs warrant special care, but are not totally exempt. A content-neutral regulation of size, placement, etc., can be applied to all signs, political as well as commercial.

Module 5. Subdivision Management

• Module 5 Important Points:

By the end of your Module 5 training, you should have gotten these points across:

- **Land subdivision regulation is intended to achieve several purposes:** Promote good development and design practice, ensure that the subdivision improvements are adequate, establish good land records, and protect the interest of the lot purchaser.
- **The scope of coverage of a local subdivision ordinance is established by state statute** (or a local act) in the form of the definition for the term “subdivision”.
- **If an ordinance applies to the land, the county register of deeds is prohibited from recording a *subdivision plat* that has not been approved.**
- **Standards in subdivision ordinances are related to other regulatory tools of government.** The standards in a subdivision ordinance may address dimensional lot standards relating to zoning, flood prone area regulations related to a flood hazard ordinance, sedimentation and erosion control standards relating to state regulations regarding erosion control, impervious surface and riparian buffer requirements related to a watershed protection ordinance.
- **The Planning Board's role in subdivision regulation, as the Planning Agency,** is to review site-specific subdivision plats and offer advice to the governing board on ordinance changes and development policy, and perhaps consider variances to the subdivision standards.
- **The subdivision review process typically has these steps:**
 - pre-application procedures
 - preliminary plat review
 - final plat review
 - guaranteeing developer performance
- **Planning Boards must consider what standards might be appropriate for the community,** including whether to require curb and gutter on new streets, what the standards for stormwater collection and release into streams are to be, how to reasonably extend the street and utility infrastructure by stub-outs to adjacent property as a development takes place, whether to allow private streets or require public streets, etc.
- **Development exactions are necessary and appropriate contributions by a developer toward the public infrastructure that is made necessary by growth.** These exactions are only appropriate when they are reasonably related to the impact the new development will have on the community.

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- **Impact fees are applied incrementally, usually in conjunction with the issuance of a building permit, for public infrastructure that serves a broader area than a single development.** These fees off-set the costs of providing such things as thoroughfares, large parks or large utility trunk lines.
 - **Special types of subdivisions may be used in certain circumstances to achieve a particular goal.** Some examples are cluster subdivisions, which preserve open space while allowing the developer the full density allowed in the zoning district, planned unit developments for large areas developed under a master plan, and neo-traditional subdivisions which attempt to re-create the scale, atmosphere and efficiency of early 20th-century neighborhoods.
 - **Growth management tools are used in communities where rapid growth presents serious challenges.** Some examples are adequate public facilities ordinances, urban growth boundaries, annexation agreements, compulsory cluster developments, development moratoria and transfer of development rights.

• **Notes about the Exercises:**

Situation 1: "Dedication" typically refers to dedication to the public for use and maintenance by the city. This has obvious benefits to the residents, for they no longer must pay extra for the upkeep of the streets (beyond what they already pay in taxes), but it also requires that they allow everybody who wants to use them to do so. No gates or other means of restricting access are allowed.

Situation 2: Yes. This is a typical requirement of most local governments when a property abuts a thoroughfare street. The dedication of right-of-way for the thoroughfare is related to the additional vehicle trips generated by the development, which incrementally contribute to the need for a thoroughfare to be there. In some communities where impact fees are paid on each house, this right-of-way dedication might be partially reimbursable to the developer, from the funds contributed by the payers of impact fees.

Situation 3: A basic reason why subdivision regulations exist is to ensure that properly designed and installed infrastructure, particularly utility lines, are installed to serve new lots that are created for sale. It is not OK, however, to require that the developer give up a portion of land for a fire station, even though the growth of the community in general is what creates the need for a new fire station. The courts have found that requiring dedications of land in fee simple without compensation, where there is no direct relationship between this particular development and the facility to be placed on the land, is unconstitutional. In this case, the development would clearly not, by itself, require a new fire station. Dedications of playgrounds for use by the residents is a legal requirement, if general standards are set by the community as to what is an appropriate level of open space related to a development. Once again...the dedication must be specifically proportional to this particular development. The community may not require dedication of land for a regional park. An

incremental fee, or impact fee, is an appropriate way for the community to apportion out to each development their share of the community's cost to provide larger infrastructure like parks and thoroughfares.

Situation 4: Street connections are often contentious, because developers like to sell exclusivity, and because the additional cost of bringing a street to a property line is often not recoverable by the developer in the form of additional lots. There are good public purposes, however in extending a public street system, including ensuring efficient circulation for the community to provide police, fire, trash pickup and school bus services, and reducing the need to send all traffic in and out of an area by a single street. This often results in traffic on the through-street becoming difficult for residential dwellings to co-exist with, resulting in pressure to re-zone to other land uses. Clearly, when streets are stubbed to the property line when a property is developed it is appropriate to continue them through the development, and when the community has a collector or thoroughfare plan, the intent to extend streets is clearly identified before property is developed.

Situation 5: Here are some things to consider about Cola Run:

- Single-family lots with direct driveway access on a thoroughfare
- Power easement across lot building envelopes
- Stub-out location for Guilford Lane, and the ability of the next developer to pick up the street in an efficient way
- Right-of-way dedication on the thoroughfare
- How long should Duke Circle be?

Module 6. Landmark NC Legal Cases

• Module 6 Important Points:

By the end of your Module 6 training, you should have gotten these points across:

- **Zoning is constitutional in North Carolina.** Particular land uses can be excluded, and a diminution in value on any specific property, real or perceived, is not grounds for invalidation of a zoning ordinance. An ordinance can be declared invalid if it leaves the property owner with no "reasonable use" of the property at all.
- **Regulation based on aesthetic considerations may constitute a valid basis for the exercise of the police power depending on the facts and circumstances of each case.** Usually, the regulation must balance the public purpose behind the aesthetic standard with its impact on a particular property owner.
- **Developer exactions are legal when they are clearly related to the impact of the development to which they are applied.** Future as well as present needs may be taken into account.
- **Regulations requiring consistency with an element of a comprehensive plan are legal.**
- **Additional or supplementary powers related to development regulations are legitimate, if a "rough proportionality" exists between the regulatory effect and the impact of the development.** Open space, for example, may be required by the community to be provided to the residents of a development.
- **Bodies acting in a quasi-judicial format are held to a high procedural standard.** Formal actions by a board in such a case must be carefully documented, and the board must follow its own written procedures. Usually quasi-judicial bodies are entrusted with making factual findings on clearly defined criteria. They are not authorized to do what they think is right despite the written code, as only governing bodies are entrusted with the authority to make legislative decisions.
- **Development moratoria are legal under certain circumstances.** It is important that adequate public notice be given, and a hearing held in accordance with zoning statutes.
- **Amortization of non-conforming properties (requiring removal of the use after a specified period after enactment of the ordinance) is a legal means of removing non-conforming uses.** A reasonable period must be provided for the owner to recoup their investment.

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- **Conditional use zoning is legitimate** as long as the action of the local zoning authority is: (1) reasonable; (2) neither arbitrary nor unduly discriminatory; and (3) in the public interest (which are three requirements applicable to any form of zoning as well).
 - **The 'rational-nexus' test provides that a subdivider can be required 'to bear that portion of the cost which bears a rational nexus to the needs created by, and benefits conferred upon, the subdivision.**

- **Notes about the Exercises:**

Police Power

ANSWER-- The regulation constitutes a taking as it mandates a physical invasion of the land of a private property owner. In the Responsible Citizens case, there was no physical invasion of the property: rather, conditional affirmative duties were placed upon the landowners (i.e., the requirements had to be met by those engaging in “new construction” or in “substantial improvements” to existing properties).

Consistency with Comprehensive Plans

ANSWER-- A land-use plan can be thought of as a set of development policies expressed in a geographic format. Some of the policies that may be implicated in considering a rezoning may concern the type of land use that is generally appropriate in the area (i.e., single-family residential, commercial, etc.). Other policies may concern the pattern of development (i.e., is commercial development to be concentrated at key intersections or is strip commercial acceptable; do acceptable land use intensities depend on the availability of certain public or common facilities). Other policies concern the intensity of land development and its impacts (i.e., what areas are inappropriate for uses that generate high volumes of traffic, what are acceptable ranges of intensity in terms of housing density, floor area and lot coverage, built-upon are, etc.).

Closely related to these are policies concerning the carrying capacity of the land (i.e., what constraints on development are posed by steep slope, poor soils for septic tanks, flood hazard areas). Still other policies may concern preferences for certain kinds of uses (i.e., affordable housing, projects that produce jobs and stimulate economic development, well-established neighborhoods). Other key policies concern when, how, or if various public facilities will be made available in the area (e.g., utility service, key roads) and how the capital costs of such facilities are expected to be shared. Other policies speak to the preservation of aesthetic, historical, cultural, or environmental features of particular areas. Clearly, a myriad of policies, strategies, and decision-making values suggested by a land-use plan may have implications for a particular rezoning decision.

Multi-stage Plan Approval

ANSWER: Final plat and final plans are generally more precise and developed at a larger scale than preliminary plats and plans. As a result, a developer needs to have and does have some maneuvering room in refining approved preliminary plans and preparing final plans. The test is generally whether final plans (or plats) substantially conform to what has been approved at the preliminary stage. Changes can be accommodated if they are not substantial or if they are not fundamental to the original approval. Of course, if a proposed change is a substantial one, then the preliminary approval must be amended. Whether this necessary is a determination based largely on judgment.

- (A) This first change is probably inconsistent with the preliminary approval. An increase in the number of lots of this magnitude may affect the application of standards such as the length of cul-de-sacs, the amount of park land dedication, the classification of streets, the protection of environmentally sensitive areas, and even the applicable subdivision plat approval application fee.
- (B) This change is a minor one and is probably consistent with the previously approved plat. It is unlikely to affect the configuration of lots already approved nor is it likely to affect the overall design of the entire subdivision in any significant way.
- (C) This kind of a change can be more significant than it appears. It probably is not consistent with the original approval and should be viewed as a proposed alteration or amendment to the original approved plan. Whether a developer chooses cul-de-sacs or stub-outs can affect the entire traffic circulation pattern of a subdivision. It can also affect the way individual streets should be classified (i.e., as a collector, minor subdivision street, or cul-de-sac) which in turn may affect the design and improvements standards that apply to those streets.

Variances

1. *ANSWER--* The facts of this case were drawn from Sherrill v. Town of Wrightsville Beach, 76 N.C. App. 646 (1985). The Court affirmed the denial of the variance by the board of adjustment. Citing Lee, the Court stated that a board of adjustment has a quasi-judicial power to vary or modify zoning regulations only so long as the spirit of the ordinance continues to be observed. The Court noted that the construction of a duplex would violate the spirit as well as the letter of the R-1 zoning classification, as the purpose of an R-1 designation is to limit density, while the purpose and effect of a duplex is to increase density. Accordingly, the Court found the requested variance to be directly contrary to the zoning ordinance. The Court was not persuaded by the landowner's attempt to distinguish Lee on the grounds that it involved a commercial use in an area zoned for residential use, whereas this case involved a nonconforming residential use in an area zoned for residential use.
2. *ANSWER--* As with other legislative bodies, to interpret the intent of an enactment (such as an ordinance) it is useful to examine the pertinent past actions, that is the

legislative history, of the body which created it. In Sherrill, the Court noted that the Town Council had refused petitioners' rezoning request that would have allowed duplexes in R-1 areas. This further demonstrates that granting the variance here would directly contravene the legislative intent behind the zoning ordinance. It is critical to remember that ultimately upon a legal challenge, a court of law will construe zoning ordinances to ascertain and effectuate the intent of the governing body.

As the Court succinctly stated in Keiger v. Board of Adjustment, 278 N.C. 17 (1970): *The original zoning power of the State reposes in the General Assembly. It has delegated this power to the 'legislative body' of municipal corporations. Within the limits of the power so delegated, the municipality exercises the police power of the State. The power to zone, conferred upon the 'legislative body' of a municipality, is subject to the limitations of the enabling act. . . . [T]he legislative body of the municipal corporation may not delegate to the municipal board of adjustment the power to zone; that is, the power originally vested in the General Assembly to legislate with reference to the use which may be made of land and the structures which may be erected or located thereon.*

Amortization

ANSWER-- The ordinance was upheld as reasonable in Summey Outdoor Advertising v. City of Henderson, 96 N.C. App. 5339 (1989), *disc. review denied*, 326 N.C. 486 (1990). The Court examined the amortization provisions in light of the four part test set forth in Joyner.

1. THE NATURE OF THE BUSINESS OF THE PROPERTY OWNER-- The nature of plaintiff's business was outdoor advertising. The Court found plaintiff's argument about the "single purpose" of his business to be unpersuasive. The Court stated that the fact that plaintiff is engaged solely in a "single purpose" business does not exempt it from any and all regulation.
2. THE IMPROVEMENTS ERECTED ON THE LAND-- Examining the improvements, the Court found that although his alleged improvements to the land were legal when built or bought, it did not mean that the City could never subject plaintiff to any regulations.
3. THE CHARACTER OF THE NEIGHBORHOOD-- The Court found this factor to make no difference here. The ordinance applied throughout the county to off-premise signs unless otherwise excepted. The fact that an on-premise unregulated sign may still exist in a particular area while an off-premise sign in the same area is regulated by the ordinance does not necessarily impact on the character of the neighborhood. The City's overall purpose in enacting the ordinance would generally improve the character of a neighborhood even if only a few signs were subject to compliance.
4. THE DETRIMENT CAUSED THE PROPERTY OWNER-- The Court rejected plaintiff's argument that the cost of compliance is a substantial detriment. Citing Responsible Citizens v. City of Asheville, 308 N.C. 255, 265 (1983) and A-S-P Associates v. City of Raleigh, 298 N.C. 207, 218 (1979), the Court held that the cost of compliance with such an

ordinance and the possible decreased property values did not constitute sufficient reasons to render an ordinance invalid.

The Court concluded that the ordinance did not constitute a taking of plaintiff's property without compensation, as the ordinance's five-year amortization period was deemed to be sufficient compensation in and of itself.

Developer Exactions

ANSWERS-- The answers to each scenario are as follows:

- (A) The primary feature of the rational nexus test is that the exaction must be proportional to the needs created by a development. A national standard used by parks and recreation officials calls for 3.5 acres of park land to be available for every 100 single-family detached dwelling units on lots with an average size of 35,000 square feet. A greater amount of park land is required for development on smaller lots. In this example an ordinance provision requiring a dedication of less than one and a half acres would not exceed this standard. Also, since the playground and park is located within the subdivision the park will primarily benefit the residents of the subdivision.
- (B) Although building an additional lane for an arterial street can be expensive, such an exaction may well meet the rational nexus test in this circumstance. The deceleration lane obviously must be closely connected to the traffic generated by the shopping center. First, it would have to be shown that shopping center traffic would diminish the level of service on the existing street if an additional lane of traffic were not provided. In addition, to meet the exaction test the deceleration lane quite likely would have to be designed for the exclusive purpose of serving one or more shopping center driveways. If it did, the benefits of the additional lane would be enjoyed primarily by the owners and users of the shopping center.
- (C) It is unlikely that the intersection and signal improvements meet the test. When an exaction is located "off-site," the facility will most likely benefit traffic generated by other developments as well as the one in question. Therefore there is a potential mismatch between the developer's contribution for the improvements and the benefits that the improvements are expected to provide for the development for which they were required.

Module 7. Coastal Area Planning

• Module 7 Important Points:

By the end of your Module 7 training, you should have gotten these points across:

- **The CAMA program influences growth in the coastal region by:**
 - requiring coastal local governments to develop and adopt a **comprehensive land use plan (LUP)** to guide growth and development within the community; and
 - promoting the identification of “**Areas of Environmental Concern**” (AECs) within the coastal region and establishing a **permitting program** to address development within Areas of Environmental Concern.
- **The Coastal Resources Commission is an appointed body of citizens.** The CRC's role is to set policy, oversee the CAMA program and hear variance requests.
- **The Division of Coastal Management is a bureaucratic division of state government.** DCM is responsible for handling the day-to-day permitting processes, and oversees the creation and updating of comprehensive plans required in the 20 coastal counties.
- **CAMA requires each community in the 20 coastal counties to develop a land use plan.** This plan must meet specific standards and be updated every 5 years.
- **The land use plan must have 11 basic elements:**
 - Executive Summary
 - Introduction
 - Goals and Objectives
 - Data Collection and Analysis - Present Conditions
 - Constraints
 - Estimated Demands
 - Policy Statements
 - Land Classification
 - Intergovernmental Coordination and Implementation
 - Public Participation
- **The involvement of the average citizen in the preparation of the plan is critical to its success.** Broad community support for a land use plan will help make it easier on the Planning Board as they are faced with site-specific decisions at a later date.
- **The land use plan must consider the overall goals of the Coastal Management program. The Coastal Resources Commission has identified the following Areas of Environmental Concern:**

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- Estuarine System
 - Ocean Hazard Areas
 - Public Water Supply
 - Natural and Cultural Resources
- **For each of these Areas of Environmental Concern, the Division of Coastal Management has set best management practices, which must be considered in the preparation of the land use plan.**

- **Notes about the Exercises:**

Situation 1: Jones may wish to talk with him about the intent of the plan, which is to protect his business, not destroy it. He may wish to emphasize that it is a series of small decisions made by individuals without the benefit of a plan that has caused pollution in places like the Neuse River, where fisheries downstream are suffering because of the environmental costs of inadequate planning for water quality upstream. He can point out the locations where such a use would be accommodated in his community with less damage to the systems that create an environment where fish can spawn and provide him with an income. Additionally, he can point out that a lot of people were concerned when the plan was created, and that his peers in the fisheries industry helped craft the final outcome of the plan.

Situation 2: Mr. Litigate is in a difficult situation, since a critical aspect of the management of the Ocean Hazard Area of Environmental Concern is the restriction on any kind of permanent structure that might affect the delicate natural systems at work in the surf zone. He has already made his request to the Division of Coastal Management, and his request has not been approved. Whatever the land use plan says, if the permit is not issued by DCM, then the only avenue of appeal is to the Coastal Resources Commission. The local planning board has no role in such a permit review. If the CRC denies the variance request, Mr. Litigate's only option is to appeal to the Courts.

Module 8. Aesthetic Regulations

• Module 8 Important Points:

By the end of your Module 8 training, you should have made these points:

- **There is general consensus in most communities that some governmental influence of aesthetics is justified. The question is how much and how it will be applied.** It's hard to find folks who don't agree that junk yards should be held to some standard of aesthetic reasonability, but the same people might find it offensive to be subject to government regulations about what color they paint their house.
- **The purpose of aesthetic controls is to:**
 - respect others' investments in their property,
 - establish sustainable economic development climate for a community,
 - preserve natural or cultural heritage of the community,
 - preserve environmental health (indirectly) and
 - foster community involvement in the character a community presents to the outside world.
- **Governmental regulation based on aesthetics alone has been upheld by the nation's highest courts, as long as a clear community intent is established and the standards are applied fairly.**
- **Community character is influenced by many groups, but particularly important are appointed advisory commissions such as planning commissions, appearance commissions, tree boards and parks boards, and design review boards such as historic district commissions.**
- **Zoning is the primary tool used by most communities to influence aesthetics, but many creative variations have been applied, including:**
 - "New Urbanism" oriented codes that encourage a compact pattern.
 - Performance Zoning
 - Cluster development
 - Planned Unit Developments
 - Landscape ordinances
 - Tree Preservation standards
 - Overlay Zoning Districts
 - On-Premise and Off-Premise Sign Controls
 - Incentive Zoning
 - Design Review
 - Historic Preservation
 - Open Space Preservation
 - Grant Programs for building façade upgrades
- **Design review should generally be quasi-judicial, based on clear standards with due process rules for the applicant.**

• **Notes about the Exercises:**

Situation 1: Well, it's clear that the zoning inspector was entirely correct to notify the owner that a structure was erected in the historic district without the required pre-clearance by the appointed commission. You may wish to discuss in this context how important it is to let new homeowners know about what it means to buy in a historic district. Pamphlets describing the process and homeowners responsibilities ought to be published by the Commission and distributed through the realtor network to prospective buyers. What to do in this situation is not quite as clear. See if you can get your commissioners to discuss how they might lean on the published standards of the historic district in making their decision. You may also wish to emphasize how democracy is important even in a quasi-judicial hearing, and that they should listen carefully to what other neighbors think. Sometimes these issues are divisive and difficult, and there is no right or wrong answer to this one, which, incidentally is based on a true story. In the real-life case the Commission granted a certificate of appropriateness. They made sure to link their decision directly to their published standards regarding decorative features that reflect the individual tastes and business livelihood of the owner, and to other sections noting the intent of the district to "strike a reasonable balance between the preservation of existing architectural and environmental elements...and necessary new development that will infuse vitality into them." As long as your commission bases their decision on standards and allows the applicant their "day in court", whatever decision a Commission makes is the right one.

Situation 2: Opinions on the type of ordinance to enact will vary from group to group. The important part of this question is to understand the pros and cons. A "proscriptive" code that lays everything out definitively and requires a formal variance for any wavering from that standard is easy to administer and understand, but is likely to conflict often with real-world site constraints, and multiple variance requests may ensue. The alternative proposed allows some flexibility and puts a great deal of control in the hands of the professional staff to administer this flexibility. This will generally be supported by the development community, as they prefer to deal with staff than work in a political environment, but it also assumes a highly-professional staff that has the expertise to make reasoned judgments on alternatives, and also takes some control out of the hands of the appointed and elected officials who may have created the standards, and gives no role to others who may be affected by the development as neighbors.

Situation 3: "Incentive-based" zoning standards assume you haven't given away the store already. If a community does not have reasonably restrictive standards to start with, it is often difficult to come up with any meaningful incentive for a developer to comply voluntarily. The Commission may wish to remind Mayor Wilson that the issue of use and standards for development are separate issues, and the use may continue to be allowed under a set of standards for minimum levels of performance from an aesthetic standpoint. It may also be important to emphasize the property rights of other business owners in the US 2 corridor whose economic development potential may be damaged by these intrusive businesses, and the property rights of the neighboring residents, whose quality of life is affected by the aesthetic decisions of the convenience store developers. Property rights issues are seldom black-and-white, and usually involve a balancing of rights among members of the community.

Module 9. Water Resources and Floodplain Management

• Module 9 Important Points:

By the end of your Module 9 training, you should have made these points:

- **Water shortages have only recently become a serious issue for North Carolina.** Very little state regulation exists to prevent water shortages from affecting local communities. There are only three ways to avoid water shortages: Develop alternative water sources, require conservation existing supplies or decrease demand through limiting or managing growth through land use planning.
- **All fresh and saltwater surface waters in NC have been assigned a “Water Quality Classification (WS-I, II, III, etc.).** Specific water quality standards have been adopted by the State based on the use of these waters.
- **Pollutant sources are either point sources or non-point sources.** Point sources are much easier to identify and manage. Non-point source pollution is the nation’s leading threat to water quality and is the major cause of impairment in most of the state’s waters.
- **The State of NC requires protection of water supply watersheds.** This protection involves limitation on impervious surfaces, protection of buffers around watercourses, allows the use of clustering and density averaging and limits point-source dischargers.
- **Stormwater Management is the major water quality issue today in most urban areas.** Changes in land use directly affect both the quantity and quality of stormwater runoff. Volume changes cause extreme erosion and can dramatically alter the natural hydrology of an area and can contribute to flooding. Increasing amounts of various pollutants in urban stormwater runoff end up in surface waters as impervious surfaces make up a greater percentage of urban land.
- **The State of NC has established strict standards for Sedimentation and Erosion Control on construction sites.** Larger communities administer these regulations themselves. For other communities the State Division of Land Resources enforces these rules.
- **Wetland protection is generally addressed through state and federal, not local regulations.** Wetlands are important because they prevent flooding, provide essential breeding areas for commercially important species, protect wildlife and open spaces, and stabilize stream banks to prevent erosion.
- **In the Neuse River and Tar / Pamlico River basins, special standards have been established for Nutrient Sensitive Waters.** These rules involve best management practices for agriculture, nutrient management requirements for commercial fertilizer applications and urban stormwater requirements.

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- **Water quality management can be directly affected by land use and zoning controls.** Comprehensive planning strategies to direct development away from environmentally sensitive areas and to ensure that growth is properly managed to mitigate the effects of urban stormwater and other pollutants are a key role of local Planning Boards.
 - **Groundwater protection is a key role of land use planning in smaller communities and rural areas.** Density standards around well-heads, use of clustering and density transfers, rules for the proper siting and use of hazardous materials near water supply well-heads, etc. are ways local governments can work to protect water supplies.
 - **Floodprone areas are divided for regulatory purposes into the flood plain (AKA flood fringe) and the floodway.** Flood fringe areas are low lands adjoining the stream channel, which are occasionally inundated by floodwaters. The floodway is the channel that normally carries a base flood, and is intended to carry the deep and fast-moving water at normal flood conditions. Urbanization can affect the natural hydrology and can lead to more frequent and more severe flooding.

• **Notes about the Exercises:**

Situation 1: This is a classic debate between those who assume pollution control is a state responsibility, and those who believe that localities need to get out in front of the issue. There is specific authorization in state law for localities to enact urban stormwater controls that exceed the minimum state standards, so Councilor Smith is incorrect in stating that the locality has no authority to enact such rules. He is also incorrect when he alludes to urban stormwater not affecting the town's water supply. Groundwater sources, just like surface water sources, are affected by the changes in hydrology and the pollutants associated with urban stormwater runoff. What to do about it is a much more difficult question. Limiting land uses to low density can affect a community's tax base, and lead to urban sprawl, which arguably is worse for the environment. On-site stormwater management devices are rarely well maintained and can be costly and ineffectual if not carefully managed.

Situation 2: The short answer here is no. They cannot do this. State law requires protection across jurisdictional lines precisely because nature does not respect political boundaries and the only way to protect surface water sources is to protect the entire watershed, whatever jurisdiction it lies within. However, the economic concern is a real one, and some regional solution seems appropriate here that may involve revenue sharing. Unfortunately regional cooperation among different jurisdictions is a new issue here in North Carolina, and no political structure is in place to facilitate this. It is probably important to realize that the underground aquifer that serves Mountain Haven's well is likely affected by land uses in other jurisdictions, and that protection of water supplies is an issue that may affect them in the future just as it does Cove Lake today.

Situation 3: This situation is a great opportunity to have the Planning Board discuss how land use planning based on environmental considerations may present trade-offs with land use planning based on urban design considerations,

or efficiency of service issues, or on efficient tax base considerations. From an environmental standpoint the best development may be no development. Nature does seem to know best how to balance the complex systems that provide us with clean air and fresh water. But because we cannot all live on a 40-acre woodland, we must begin the process of finding best practices to allow development and protect the environment, to allow cities to be built without destroying natural systems. This is very difficult to do. You may wish to use the example of a local plan that encourages grid-system streets, and a riparian buffer system that protects water quality in small streams by protecting the banks from disturbance. When the street system meets the creek, how do you decide whether the road should terminate or cross the stream?

Module 10. Transportation Planning

• Module 10 Important Points:

By the end of your Module 10 training, you should have gotten these points across:

- **There is an important link between land use and transportation. Decisions on one affect the other.** Planning Boards cannot look at each system independently, but must consider both when making land use or transportation decisions. Land use decisions that result in low-density, sprawling development may have spin-off effects resulting in increasing transportation costs.
- **MPO's (Metropolitan Planning Organizations) are the main agencies that allow local government involvement in transportation funding priorities. In the future they may plan a larger role in regional planning in general.**
- **NCDOT constructs and maintains all of the roads in NC outside of municipalities.** Within municipalities NCDOT is typically directly involved only with major US and Interstate routes, but still control the bulk of transportation funding for all roads in the state.
- **Regional transportation planning involves a pre-analysis phase, where data is collected on the existing transportation picture, a technical phase, often involving computer modeling of alternative solutions, and a policy-making phase, where solutions are decided upon, implemented and monitored.**
- **There are basically two ways to deal with congestion: demand-based policies designed to limit the need for additional trips, and supply-based policies that emphasize increasing the capacity of the system.** A complete transportation policy should include both.
- **Good public transportation policy on the site level balances the needs of the property owner for easy and direct access with the needs of the taxpayer in general to be protected from unnecessary costs resulting from the development.**
- **Traffic calming, modern roundabouts and other innovative street design alternatives are available for use in specific cases where unusual needs demand them.**
- **Alternative transportation systems can help reduce the pressure on the automobile system to provide for our transportation needs.** Many of these alternative modes, including rail transit, bicycle and pedestrian systems, are increasingly popular in urban areas.

• **Notes about the Exercises:**

Situation 1: There is no right answer to this question. The Planning Board should weigh the impact of a major road widening through town, and its effect on the scale and character of the community, with the economic implications of sending all the traffic, and much of the resulting business, out to a bypass around town. Many communities have tried to find a middle ground, but for some, the bypass might be the best way. The important thing, when using this exercise, is to make sure the participants understand the TRADE-OFF's inherent in transportation policy. There rarely is an obvious right answer, and the usual choice to relieve congestion (more pavement) almost always has a down-side, too, which should be considered when the decision is made.

Situation 2: The mayor is right in stating that major capital budget items for transportation are submitted to the MPO for priority-setting on a regional basis, but he is wrong in stating that this is a "zero-sum-game" where money that is spent on bikeways is deducted from road projects. True, overall there is a limited amount of money state-wide to spend on transportation, but the TEA-21 legislation from Congress specifically sets aside "enhancement" funds for projects like this that do not come from the funds set aside for highways.

Situation 2: The town board is faced with a classic planning conundrum, wherein what is perhaps the right answer for the community in the long run is a political disaster for the elected officials in the short run. Typically citizen interest in any planning issue like this is inversely proportional to the distance from anyone's front door. The more distance, the less interest. A council chamber will be packed with families in the neighborhood wishing the road to be terminated and made into a permanent dead end, but there will likely not be a similar contingent of folks from the remaining through streets there to protest the increased traffic on their streets, or from the community at large whose garbage collection costs will incrementally rise because of such a decision. So it is important for the board to consider ALL the long term costs of a policy before granting relief in this case. Dead-end streets increase costs to serve homes with typical municipal services. They cause more local trips to use the thoroughfare system, accelerating needs for expensive widenings. The trips forced onto other residential streets when through streets are cut off increases the traffic on the remaining streets, sometimes to the point of making them less desirable for residential use. They may want to offer traffic calming designs as a substitute for complete disconnection from the remainder of the street network, if speed or volume of traffic is the major concern of the neighbors.