April 20, 2011
5:30 P.M.

Cowles Council Chambers
491 East Pioneer Avenue
Homer, Alaska

WORK SESSION
Advisory Planning Commission
AGENDA

1. Call To Order, 5:30 P.M.

2. Discussion of Items on the Regular Meeting Agenda

3. Staff Report PL 11-42, Sign Code Amendments ***(Please refer to page 13 of the regular meeting packet)***

4. Staff Report PL 11-41, Draft Ordinance 11-xx, East End Mixed Use ***(Please refer to page 23 of the regular meeting packet)***

4. Public Comments
   The public may speak to the Planning Commission regarding matters on the work session agenda that are not scheduled for public hearing or plat consideration. (3 minute time limit).

5. Commission Comments

6. Adjournment

HOMER ADVISORY PLANNING COMMISSION
491 E. PIONEER AVENUE
HOMER, ALASKA

APRIL 20, 2011
WEDNESDAY AT 7:00 P.M.
COWLES COUNCIL CHAMBERS

REGULAR MEETING
AGENDA

1. Call to Order

2. Approval of Agenda

3. Public Comment

The public may speak to the Planning Commission regarding matters on the agenda that are not scheduled for public hearing or plat consideration. (3 minute time limit).

4. Reconsideration

5. Adoption of Consent Agenda

All items on the consent agenda are considered routine and non-controversial by the Planning Commission and are approved in one motion. There will be no separate discussion of these items unless requested by a Planning Commissioner or someone from the public, in which case the item will be moved to the regular agenda and considered in normal sequence.

1. Approval of Minutes of April 6, 2011 ***Page 1***
2. Time Extension Requests
3. Approval of City of Homer Projects under HCC 1.76.030 g.
4. KPB Coastal Management Program Reports

6. Presentations

7. Reports

a. Staff Report PL 11-47, City Planner's Report ***Page 11***

8. Public Hearings

Testimony limited to 3 minutes per speaker. The Commission conducts Public Hearings by hearing a staff report, presentation by the applicant, hearing public testimony and then acting on the Public Hearing items. The Commission may question the public. Once the public hearing is closed the Commission cannot hear additional comments on the topic. The applicant is not held to the 3 minute time limit.

9. Plat Consideration

10. Pending Business

A. Staff Report PL 11-46, Sign Code Amendments ***Page 13***
B. Staff Report PL 11-41, Draft Ordinance 11-xx, East End Mixed Use ***Page 23***
C. Staff Report PL 11-45, Draft Ordinance Amending Chapter 21.34, Conservation District ***Page 35***

11. New Business

A. Staff Report PL 11-44, Replacement and/or Expansion of Nonconforming Residential Structures ***Page 39***

12. Informational Materials

A. City Manager's Report ***Page 43***
B. Article, 'Planning Made Easy' ***Page 47***

13. Comments of The Audience

Members of the audience may address the Commission on any subject. (3 minute time limit)

14. Comments of Staff

15. Comments of The Commission

16. Adjournment

Meetings will adjourn promptly at 10 p.m. An extension is allowed by a vote of the Commission. Notice of the next regular or special meeting or work session will appear on the agenda following "adjournment."

HOMER ADVISORY PLANNING COMMISSION
REGULAR MEETING MINUTES
APRIL 6, 2011

UNAPPROVED

Session 11-05, a Regular Meeting of the Homer Advisory Planning Commission was called to order by Chair Minsch at 7:01 p.m. on April 6, 2011 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONERS BOS, DOLMA, DRUHOT, HIGHLAND, MINSCH, VENUTI

STAFF: CITY PLANNER ABBOUD
DEPUTY CITY CLERK JACOBSEN
PLANNING TECHNICIAN HARNESS-FOSTER

APPROVAL OF AGENDA

The agenda was approved by consensus of the Commission.

PUBLIC COMMENT

The public may speak to the Planning Commission regarding matters on the agenda that are not scheduled for public hearing or plat consideration. (3 minute time limit).

Scott Connelly, non city resident and local realtor, commented about mixed use and specifically the accommodations being made for residential use. He thinks they make a lot of sense and would be a good thing. He urged the Commission to incorporate them into the changes the Commission makes.

Merlin Cordes, city resident, commented regarding mixed use. An accommodation for residential use is needed. The hardship that has been created is severe in one situation that has drawn this to a head. He noted that probably each of the Commissioner's have a house payment that includes interest and taxes. A year ago this house was sold at the asking price. The reason it didn't sell is because the mortgage company found out about the change in zoning. It was in rural residential when it started and it went to GC1. The owner went to get conditional use for it so they could enlarge. Then next thing the city did was change it so no CUP's were allowed in the GC1. It took them out of being able to enlarge or add to the house. With the mortgage company not willing to support the mortgage for new sellers, these people who listed and would have sold their home were not able to sell, so they have had to go on with a years interest, a years taxes, and a years electric. It has created a hardship for the family. There are various houses and the hardship that has been created needs to be rectified in some way. They are appealing to the Commission to find something that is reasonable and equitable for this house and others in the same situation. He knows it isn't an easy task, but they have to do something for the residential uses. They need to find some amicable way to find some fairness for this family that has been put into extreme hardship. He thanked the Commission for their time.

RECONSIDERATION

There were no items for reconsideration.

ADOPTION OF CONSENT AGENDA

All items on the consent agenda are considered routine and non-controversial by the Planning Commission and are approved in one motion. There will be no separate discussion of these items unless requested by a Planning Commissioner or someone from the public, in which case the item will be moved to the regular agenda and considered in normal sequence.

1. Approval of the March 16, 2011 minutes

2. Time Extension Requests: Lee Cole 2008 Preliminary Plat Time Extension Request
3. Approval of City of Homer Projects under HCC 1.76.030 g
4. KPB Coastal Management Program Reports

The Consent Agenda was approved by consensus of the Commission.

PRESENTATIONS

There were no presentations scheduled.

REPORTS

A. Staff Report PL11-44, City Planner's Report

City Planner Abboud reviewed the staff report.

PUBLIC HEARINGS

Testimony limited to 3 minutes per speaker. The Commission conducts Public Hearings by hearing a staff report, presentation by the applicant, hearing public testimony and then acting on the Public Hearing items. The Commission may question the public. Once the public hearing is closed the Commission cannot hear additional comments on the topic. The applicant is not held to the 3 minute time limit.

A. Staff Report PL 11-39, CUP 11-05, A Request for a Conditional Use Permit (CUP) for the disturbance of existing ground cover in excess of 6,000 square feet, for a 16 foot wide driveway along the newly platted portion of Carter Drive in the Bridge Creek Reservoir to replace an access easement vacated due to the construction of a new water treatment plant.

City Planner Abboud reviewed the staff report.

Public Works Director Meyer explained that not long ago the city acquired a lot adjacent to the water treatment plant through the eminent domain process. A plat was approved to combine this lot with the water treatment plant property. In the process a section line easement that was used to access property in the area is being vacated. The city purchased another property to the north of the existing property and dedicated this right-of-way to replace the public access that used to occur through the section line easement. The access will not be developed as a city road, just to the same level of access that the section line easement provided.

Chair Minsch opened the public hearing. There were no comments and the public hearing was closed.

BOS/HIGHLAND MOVED TO ADOPT STAFF REPORT PL 11-39 CUP 11-05 CARTER DRIVE RIGHT-OF-WAY WITH FINDINGS 1-12 AND CONDITION 1.

There was brief comment that the due diligence had been done, everything looks to be in line, and no objection was expressed.

VOTE: YES: BOS, MINSCH, HIGHLAND, DRUHOT, VENUTI, DOLMA

Motion carried.

PLAT CONSIDERATION

A. Staff Report PL 11-40, Augustine Subdivision No. 5 Preliminary Plat

City Planner Abboud reviewed the staff report.

Roger Imhoff, project surveyor, commented that he is not that converse with the impervious issues, if that is an issue. In response to questions, he clarified that the plat notes are standard notes and easements of record, including driveway easements. He also explained that he does not know the reasoning behind the replat.

Question was raised regarding future development on the lot and City Planner Abboud explained that they can't exceed the 4.2 and this action doesn't qualify the applicants to develop anymore. There was also brief discussion about the graveyard on the property. City Planner Abboud noted it was already there and he isn't aware of any code that says it can't be expanded or that it creates an impervious coverage issue.

There was discussion clarifying where the structures are on the lots and how the new lots would be configured.

There were no public comments.

BOS/HIGHLAND MOVED TO ADOPT STAFF REPORT PL 11-40 AUGUSTINE SUBDIVISION NO. 5 PRELIMINARY PLAT.

Comments were made about the uncertainty of how to respond about impervious issues, and a cemetery. City Planner Abboud noted that these were not issues relevant to the platting process. No one was sure when the cemetery was established.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

PENDING BUSINESS

A. Staff Report Pl 11-42 Sign Code Amendments

Planning Technician Harness-Foster reviewed the staff report.

HIGHLAND/BOS MOVED TO BRING THIS TO THE FLOOR FOR DISCUSSION AND RECOMMENDATION.

No objection was expressed and discussion

Initial discussion points included-

- A small building would be considered 50 to 199 square feet.
- Some felt these changes would apply to the spit only, others felt they should be city wide.

- Most of the small buildings are on the spit and it should start off with spit only.
- If we are going to deal with banners, temporary signs, and sandwich boards, they need to be dealt with city wide.
- The notion of incentives sounds good but adding 20% to a sign on a small building is a substantial increase and the criteria should be consistent for everyone.
- The reference to square footage starting on line 47 refers to wall frontage. The square footage of wall that faces the front or the right-of-way.

MINSCH/DRUHOT MOVED THAT THE SIGN ORDINANCE IS APPLICABLE TO EVERYONE IN HOMER INCLUDING THE HOMER SPIT.

There was brief discussion that it keeps it simple if everyone is held to the same code.

VOTE: YES: DRUHOT, MINSCH, VENUTI, DOLMA, BOS
NO: HIGHLAND

Motion carried.

There was discussion about building sizes and amount of signage.

DRUHOT/BOS MOVED TO AMEND LINE 53 TO CHANGE 50 TO 199 SQUARE FEET TO 0 TO 199 SQUARE FEET AND ACCEPT THAT WALL FRONTAGE OF 0 TO 199 SQUARE FEET WILL HAVE A MAXIMUM SIGN AREA OF 30 SQUARE FEET AND WALL FRONTAGE OF 200 TO 349 SQUARE FEET WILL HAVE A MAXIMUM SIGN AREA OF 50 SQUARE FEET.

The comment was made that these allowances are too big. It was noted that this is a start and they can discuss it further after staff updates the changes made tonight.

VOTE: YES: DRUHOT, MINSCH, BOS
NO: DOLMA, HIGHLAND, VENUTI

Motion failed.

There was discussion of supporting a smaller signage.

BOS/DOLMA MOVED TO AMEND LINE 52 TO CHANGE 50 SQUARE FEET TO 40 AND LINE 53 CHANGE 30 SQUARE FEET TO 20.

There was no discussion.

VOTE: YES: MINSCH, DOLMA, VENUTI, BOS, DRUHOT
NO: HIGHLAND

Motion carried.

DOLMA/BOS MOVED TO ACCEPT STAFF RECOMMENDATIONS FOR LINES 38-45 FOR TEMPORARY EVENT SIGNS CHANGING THE MAXIMUM TERM FROM 60 TO 7 AND THE MAXIMUM NUMBER OF DAYS FROM 20 TO 5.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

There was brief discussion of election signs.

The Commission engaged in discussion of a sunset clause where everyone should be in compliance and amnesty for buildings on the spit in regard to their other zoning issues when applying for a sign permit. It was argued that the buildings should be brought to code and point was raised that many of the zoning issues out there are not simple fixes. City Planner Abboud added that he has had discussion with the City Attorney who said a sign permit may not be held up because of other violations. Staff will bring something back on how best to deal with amnesty and a sunset clause.

There was also discussion of the issue of responsibility for getting sign permits. Currently the property owner has to do it. It could be something where the owner and tenant both have to apply. Staff will look at verbiage for code.

The next issue addressed was the length of the sunset time to come into compliance. It was recommended that it be date specific. Most Commissioners wavered between 2 and 3 years.

DRUHOT/HIGHLAND MOVED THAT THE TIMEFRAME TO BECOME COMPLIANT WITH SIGN CODE BE THREE YEARS AFTER COUNCIL ADOPTION.

There was no discussion.

VOTE: YES: VENUTI, DRUHOT, MINSCH, HIGHLAND
NO: DOLMA, BOS

Motion carried.

In relation to the recommendation that if the sign face changes all signs on the building have to be in compliance, question was raised if that includes signs for multiple buildings. Chair Minsch was inclined to think it doesn't. Planning Technician Harness-Foster said she would ask for clarification.

MINSCH/BOS MOVED THAT WHEN THE FACE OF A SIGN IS CHANGED ALL THE SIGNS ON THE PARTICULAR BUILDING MUST BE REPLACED WITH A CONFORMING SIGN.

There was brief discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

The Commission discussed the suggested incentives. There were comments that it could help encourage nicer signs and it isn't too much of an increase. Others noted that a nice sign can be put together within the allotted amount and everyone should be held to the same limitations. It was also noted that some people's art may not be another person's art.

MINSCH/BOS MOVED THAT COMMERCIAL TEMPORARY SIGNS SHALL NOT BE ALLOWED.

Sandwich boards and temporary signs for the cruise ship is a big part of what is driving the signs, along with the economy, but the signs are multiplying quickly. We have been trying to deal with them and get them out of the right-of-way without a lot of success. Planning Technician Harness-Foster noted that she is trying to find a bridge by limiting the hours they can be out. There was discussion of possible options to allow sandwich board signs. Other comments included starting with not allowing them at all and see where it goes. The solution to the sandwich board issue is for the business to have a free standing sign.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

Planning Technician Harness-Foster noted that according to code temporary signs could include banners.

Banner discussion included comments that they should not be allowed. There were also comments that the banner could be fixed to a permanent rigid frame, attached to a building, included in the allowable square footage for a sign, and not attached to a deck. Staff noted that there are locations of buildings on Pioneer Avenue like the Hillas Building and the Captains Coffee building with a combination of wood signs and banners on railings.

MINSCH/BOS MOVED THAT ANY LIGHT WEIGHT FABRIC OR SIMILAR MATERIAL FOR A BANNER TYPE SIGN MUST BE MOUNTED TO A BUILDING BY A PERMANENT RIGID FRAME ON ALL SIDES AND INCLUDED IN A BUILDINGS SIGNAGE ALLOWANCE.

There was question whether the deck railing is considered part of a building and if they can be affixed to decks. The question wasn't resolved but it was noted they can revisit this when the amendments come back.

VOTE: YES: BOS, VENUTI, HIGHLAND, DOLMA, MINSCH
NO: DRUHOT

Motion carried.

DOLMA/VENUTI MOVED THAT BANNERS AND V TYPE SANDWICH BOARD SIGNS BE IN COMPLIANCE IN ONE YEAR AND NOT THREE YEARS.

It was noted that the temporary signs, like sandwich boards and banners are not going to be permitted once Council approves this.

VOTE: NO: BOS, MINSCH, HIGHLAND, DRUHOT, VENUTI, DOLMA

Motion failed.

B. Staff Report PL 11-35, Draft Ordinance 11-xx East End Mixed Use

City Planner Abboud reviewed the staff report.

MINSCH/HIGHLAND MOVED TO DISCUSS AND MAKE RECOMMENDATIONS REGARDING EAST END MIXED USE DRAFT ORDINANCE.

Chair Minch expressed her thought that they should focus on the area out east that was annexed. The rest of the areas that are GC1 and GC2 can be addressed in a different discussion.

Commissioner Bos suggested leaving the zoning as it is today and no mixed use zoning.

The discussions that took place during the comprehensive plan discussions were to look at this area and decide what parts need to be changed and in what fashion. There is a wide range of GC1 and GC2 uses in the triangle area that was annexed. The boundary lines are flexible, but it has to follow in line with the comprehensive plan, or the plan has to be revised. The draft ordinance shows what uses will be allowed in the mixed use district and the Commission needs to establish if they want those uses throughout the entire East End GC1 and GC2 areas, or just the annexed triangle.

BOS/DOLMA MOVED TO POSTPONE THIS TO THE NEXT WORKSESSION.

There was discussion that there seems to be some confusion between what was discussed in the worksession about nonconforming and the agenda item for a mixed use district.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

NEW BUSINESS

No new business items were scheduled.

INFORMATIONAL MATERIALS

A. City Manager's Report

COMMENTS OF THE AUDIENCE
Members of the audience may address the Commission on any subject. (3 minute time limit)

Merlin Cordes, city resident, commented that he was involved with the sign code back in 1993 and 96 and had to rewrite a lot of it. He questioned what perspective they are looking at this from. As a business owner it would be much different than from the outside looking in. Why is everyone so concerned about limiting business and the operation of the business when it is the tax dollar that pays for a lot of stuff around here. What's an eyesore to one can be a beauty to someone else. It is like we bend over backwards to limit and make more rules and regulations on things. He wonders at times if we are really getting anywhere. Further he hopes the upper triangle is mixed use and the lower area has something different with it. These houses were built when it was rural residential and it should go back to rural residential. If anyone here would have lost $7,000 to $8,000 last year just because zoning wouldn't permit your sale you wouldn't be sitting as quiet as his client has been sitting. He just doesn't have the money for a lawyer to make a law suit. This can be handled and taken care of. Mr. Cordes said he presented some ideas to City Council last June. Change the East

End Road industrialization out there in the triangle to mixed use. Then get this other area in residential. There are a lot more people who are non business, than business and when that drives the wheel on some of these things on signs, it disappoints him. He was a small business owner once and he got it shoved down his throat and he isn't happy about it. Looking at something up close it looks big, but get 100 yards away and see what can you read. On surveys, the real small print you can't see but if you make it bigger you can. Businesses operate from being able to see where the business is. If you are driving down the highway and can't find a business then make a few wrong turns it's no fun. Everyone has traveled and you look for signage to help you out. If it so small or hidden because there are so many regulations then it doesn't help you and it is really disappointing. There are other ways of looking at and addressing these things through other eyes. He hopes they observe that just because there is some pet peeve or some friends who say "Oh that's not pretty" well tough. Why don't we have some tolerance for things and get on with life. We spend too much time dinking with things that at times are a waste of money for us and get on with what's important.

Bill Smith recounted for the Commission how the zoning changed from rural residential. Some years ago the Planning Commission looked around town and found there was no place to have a business and a warehouse. The area was looked at, he believes letters went out three different times announcing public meetings to every property owner in the area. Public hearings went on for two months. He doesn't recall a single objection during the process. One man, Fred Yenney said he was going move his business. It was rezoned and then a petition came in from a property owner for his lots to become rural residential and they were changed. This process wasn't done in secret or behind anyone's back or by petition of land owners. Regarding signs Mr. Smith commented that there are people who have different perspectives than the Commission. There are a lot of vibrant, vital businesses out there who are getting along the way they are and we have a lot of people who come here who may feel this is messy and others like it. Putting screws down too tight on the spit signs is not a good idea. When it comes to banners, what they are making on printing presses on fabric material, the faces that go in plastic signs is permanent and made on flexible fabric material. When trying to define a banner and saying it is rigidly attached you are getting into an area where you don't understand materials used and the possibilities for them. Mr. Smith added that conservation zoning applies only to public lands. The signs allowed for building area are not consistent or fair as smaller buildings allow for 10% of the building but 750 square foot you can have 20% of the building area be a sign. They are not talking about illumination; one of the characteristics of Homer is that we do not have a lot of internally illuminated signs. If they would prohibit internally illuminated signs it would go some distance to preserve the character our community has that not many do.

One suggestion he has regarding signs is to recognize that what has happened on the spit is unique and not objectionable to a lot of people if we look at a different way to regulate and set a percentage of the building that can be covered by signs. He thinks a permit should be issued with permission of property owner but also to the specific business so if the business changes the permit lapses. The permitting could be similar to driving; you have a license to use as long as you follow the rules. Outline the rules on the spit, make sure everyone knows about it by having them sign a piece of paper that they have the rules. Then if they break the rules then they don't need to have a permit and staff doesn't have to figure out how many square feet they have unless they get it on the building and go over the line, then we can tell them they are in violation. Not having to have a permit but having to follow the rules could work. It may be a little too lose but it is worth pursuing to try and see how government help

business and get out of the way of letting things happen while keeping down the cost of operating government.

Mr. Smith does not object to temporary signs and the sandwich boards are not terribly obnoxious. They shouldn't be in the right-of-way or the walk way. If someone has to drag them in every time they close the business you would find that the signs weren't all that big and would help limit what happens. Businesses need to identify themselves and advertise. Keeping signs out the skyline is why we have a height limit and why signs aren't over the tops of the roofs. We need to look at it from the perspective of business needs as well as certain definitions of aesthetics. Chaos is not inherently anti-community.

COMMENTS OF STAFF

There were no staff comments.

COMMENTS OF THE COMMISSION

Commissioner Highland commented that she continues to find this challenging and interesting. She still wants to find a balance and harmony between development and the environment.

Commissioners Druhot, Bos, Dolma, and Venuti had no comments.

Chair Minsch said they are doing good work. This is tough stuff and there is some confusion but don't get discouraged because we will get it figured out.

ADJOURN

There being no further business to come before the Commission, the meeting adjourned at 9:46 p.m. The next regular meeting is scheduled for April 20, 2011 at 7:00 p.m. in the City Hall Cowles Council Chambers.

_____
MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK

Approved: _____

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STAFF REPORT PL 11-47

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
MEETING: April 20, 2011
SUBJECT: Planning Director's Report

April 11th City Council Meeting

Ordinance 11-11, An Ordinance of the City Council of Homer, Alaska, Amending the FY 2011 Operating Budget by Appropriating $9,000 from the Homer Accelerated Roads and Trails Fund (HART) for the Construction of the West Homer Elementary Trail Project. City Manager/Public Works Director. Introduction March 29, 2011, Public Hearing and Second Reading April 11, 2011.
Memorandum 11-049 from Public Works Director as backup.
There was no public testimony.
ADOPTED without discussion.

Ordinance 11-13, An Ordinance of the City Council of Homer, Alaska, Amending the FY 2011 Operating Budget by Appropriating $7,000 from the Port and Harbor Reserve Account in the Amount of $7,000 for the Purpose of Implementing the Long Term Parking Permit Plan. City Manager. Recommended dates: Introduction April 11, 2011, Public Hearing and Second Reading April 25, 2011.
AMENDED and ADOPTED with discussion.

Advising City Adjudicatory Bodies
Attorney Tom Klinkner explained how two in-house attorneys could work on the City's cases, each with different aspects of representation. Attorney Holly Wells and himself will handle the City's legal work, falling within the City's contract, reducing the need to hire outside attorneys.

Resolution 11-037, A Resolution of the City Council Approving the City of Homer 2011 Land Allocation Plan. Mayor/City Council.
Memorandum 11-054 from City Clerk as backup.
Memorandums 11-040 and 11-052 from Lease Committee, 11-041 from Planning Commission, 11-042 from Parks and Recreation Advisory Commission, 11-043 from Library Advisory Board, and 11-053 from Planning Technician as backup.
AMENDED and ADOPTED with discussion.

Activities: I returned from the national planning conference Thursday. It was attended by around 5,000 planners throughout the country and beyond. I had a chance to catch up with my fellow planners on the peninsula and see what I believe is a model mixed use/walkable community. While Boston has just double the land mass of Homer it has over 100 times the population. Homer will never have the population to support such a model, but it was a positive experience to see it in action and perhaps some nuggets can be taken. The hot topics include cluster and

conservation zoning, again more concepts that work best in places with higher developmental pressure than we may find in Homer. It was a great chance to recharge my batteries and help plant some seeds for further discussion.

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STAFF REPORT PL 11-46

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Dotti Harness-Foster, Planning Technician
MEETING: April 20, 2011
SUBJECT: Sign code amendments

This staff report includes an updated draft ordinance based on amendments made at the April 6, 2011 HAPC meeting. In summary, the amendments are:

1. City wide "sign allowances" based on the wall frontage of the principal building(s). Motion carried.
2. Buildings with wall frontage of 0 to 199 sf would have a 'sign allowance' of 20 sf. Motion carried.
3. Buildings with wall frontage of 200 to 349 sf would have a 'sign allowance' of 40 sf. Motion carried.
4. Banners on buildings and mounted on a permanent rigid frame on all edges. Motion carried.
5. No temporary sandwich boards allowed. Motion carried.
6. Event signs may be displayed for a maximum of seven (7) days and a maximum number of event signs is five (5). Motion carried.
7. Signs would need to comply when the face is changed, or within three (3) years. Motion carried.

- A motion for banners and sandwich boards to comply within one year **failed**.

Also discussed and addressed in the staff report are:

8. Electoral signs
9. Internally lit signs
10. Lot owners responsible for sign permits

The sign conversation started with the concern how best to accommodate multiple Spit buildings on one parcel. In trying to ensure that changes to the sign code truly meet that goal, staff is concerned that the draft ordinance has broadened and could disrupt the initials goals.

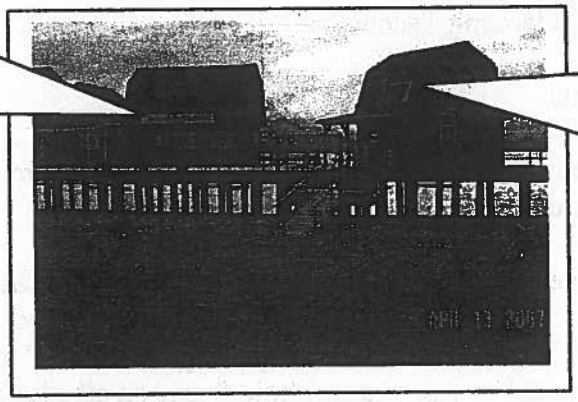
1. Sign allowance based on the wall frontage of the principal building(s). Line 15-23.

Regulatory methods: On April 6, 2011 the HAPC asked about how other communities regulate "Sign allowances." "Sign allowances" can be a function of lot area, street frontage, building area or some combination thereof.[1] Homer's 'sign allowance' is within these standards by basing the "sign allowance" on the building's wall frontage. The wall frontage approach is straight forward and the 100 sf range within each category avoids 'hair-splitting' calculations under roof peaks.

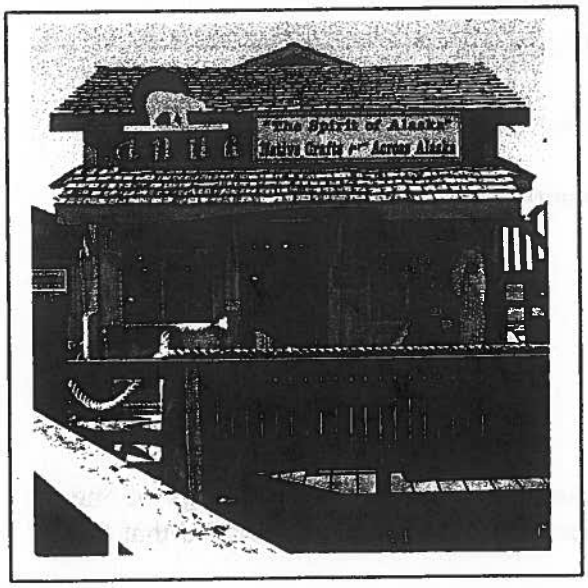
2. Buildings with wall frontage of 0 to 199 sf would have a 'sign allowance' of **20** sf. Line 23.

This amendment is not recommended by staff: Business owners may consider a 20 sf sign allowance restrictive, especially those businesses with large setbacks from the rights-of-way (ROW). Along the Homer Spit Road the width of the ROW ranges from 90 to 180 feet. This results in varying setbacks for business store fronts that range from 45 to 190 feet from the road center line. To accommodate businesses that have large setbacks from the road, staff recommends that the sign allowance of buildings with wall frontages of 0 to 199 sf be **30** ~~(20)~~ sf.

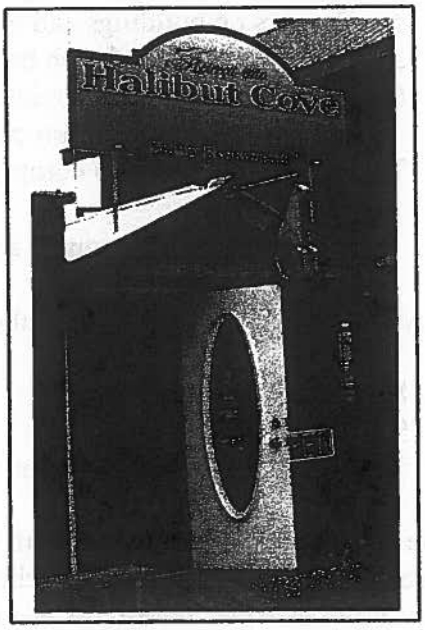
250 sf of wall frontage
2' x 16' = 32 sf main sign
16" lettering (Tackle Busters)
3" lettering (Booking)
190' from road center line



Frosty Bear Ice Cream
4' x 10' main sign
12" high lettering
160' building setback from road center line
Black lettering on white background.



160 sf of wall frontage
22 sf of signage (text only)
85' building setback from road center line
Photo taken 8/18/2010

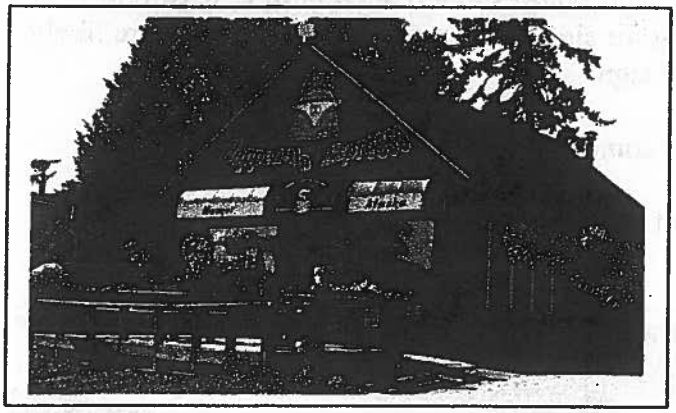


Less than 200 sf of wall frontage
32 sf of signage
45' building setback from road center line

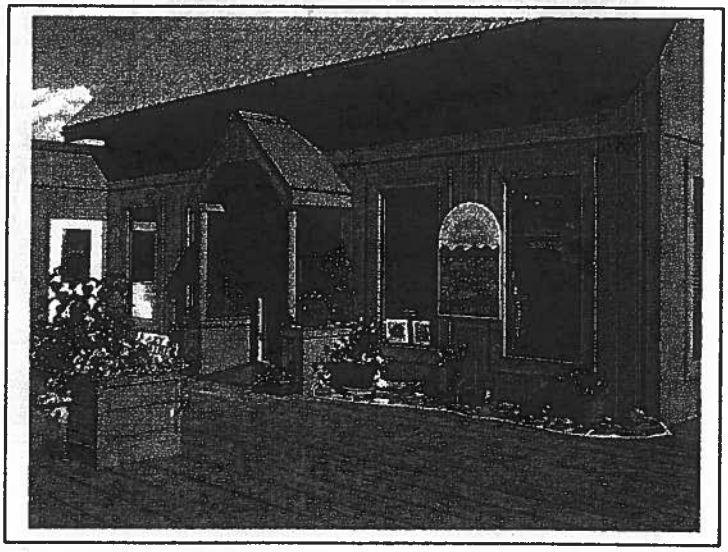
3. Buildings with a wall frontage of 200 to 349 sf would have a 'sign allowance' of **40** sf. Line 22.

This amendment is not recommended by staff: This amendment would require existing compliant businesses to reduce their signage within three (3) years. The intent of this ordinance as staff understands it is to fix Spit sign issues, not reduce signage city wide.

Reducing the "sign allowance" for buildings with a wall frontage of 200 to 349 sf from 50 to 40 sf broadens this sign ordinance to existing businesses that are in compliance. Below are photos of businesses that comply with the 50 sf sign allowance.



240 sf of wall frontage
50 sf of signage
Photo taken 9/13/2010



300 sf wall frontage
50 sf of signage
(additional signage on deck the railings).
Photo taken 8/24/11

At the April 6, 2010 HAPC the Commission asked for information on sign readability, a huge topic that I'll attempt to boil down thanks to help from the International Sign Association.

- Viewer reaction time depends on what the driver has to do. For example: "Homer 12 miles" the driver reads it, processes the information, no action needed.
- In a simple driving environment it takes 4 seconds to see a sign, and an additional 4 seconds to process the sign, plus another 4 seconds to respond.
- Signs displayed at a perpendicular angle to the road are more readable.
- Font size, font type and contrast matters.
- Other road distractions as in the fishing hole, kite surfers, eagles etc.

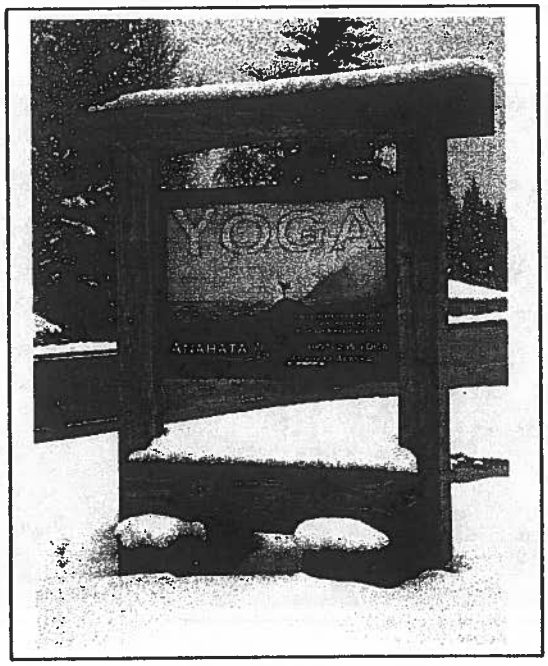
4. Banners mounted to a **building** by a permanent **rigid** frame **on all** edges. Line 5-6.

Staff does not recommend restricting banners from deck railings or for that matter within a freestanding sign. This broadens the sign ordinance to existing businesses such as the Hillas building, Captain's Coffee, Cosmic Kitchen, Don Jose's, and the Veteran's building on Pioneer Avenue. All these buildings have decks with a mix of banners and rigid signs that are tacked or screwed into the railing. Often times a banner is an interim to a more permanent sign.

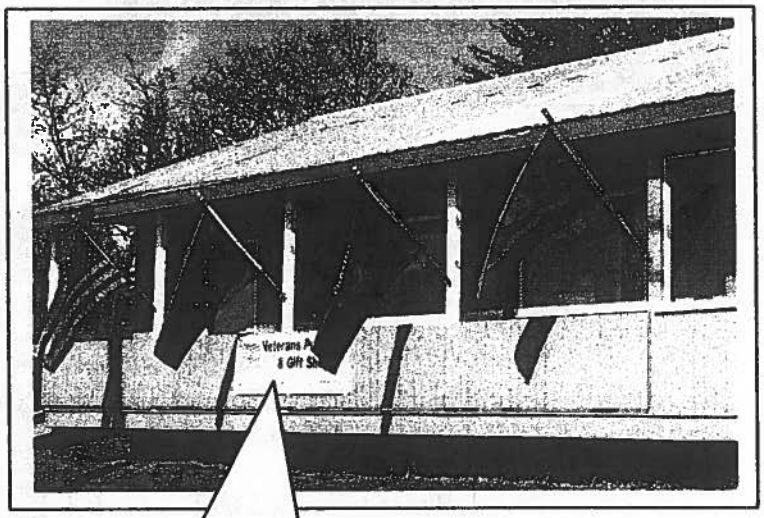
On the Spit, staff estimates that approximately 30% to 60% of the buildings would need to reduce signage to meet the proposed standards. This equates to a reduction of at least 600 sf of signage from buildings and decks. When aiming for sign compliance business owners are likely to remove banners before a more expensive rigid sign.

A motion to amend the draft ordinance would be something like:

"I move that banners be mounted on a permanent **rigid** frame **on all** edges."



A banner mounted on a permanent rigid frame on all edges.



A deck banner mounted on a permanent rigid and attached on all edges.

5. Temporary sandwich boards. Line 29-32.

The total ban on sandwich boards is not recommended by staff. First, business owners are convinced that sales increase when their sandwich board is displayed. Second, tourists appreciate some direction. Third, businesses may create more 'creative' substitutes to sandwich boards. Fourth, the legal consequence of allowing sandwich boards for civic events, but not for commercial messages is 'content-based;' 'content' being the commercial message. Research reveals that court challenges to a complete ban of a particular type of sign has had mixed results, in conjunction with the city's failure to provide adequate substitutes for such an important medium.[2]

Based on the above, staff is keeping with the recommendation to limit commercial temporary signs to business hours, with a maximum of 12 hours per day. If the HAPC agrees, a motion to amend the draft ordinance would be something like:

> "The display of a **commercial** temporary sign shall ~~not~~ be displayed **only during the hours the business is open, with a maximum of 12 hours per day** ~~for more than 14 days in any 90-day period~~, except a sign offering for sale or lease the lot on which the sign is located, which is allowed as long as the property is for sale or lease."

Additional thoughts: Eliminating sandwich boards from the MC district would not allow businesses on a boardwalk to have sandwich boards on their boardwalks. Do we really want to be that restrictive?

A temporary portable sign.
Approximately 16 sf.
GC1 district.

6. "Event" signs maybe displayed for a maximum of seven (7) days, and the maximum number of event signs is five (5). "Event" signs are also temporary and portable signs which are addressed in HCC 21.60.090, 21.60.130 and 21.60.140. "Event" signs are not defined in our code. Staff will work with the city attorney on these issues.

7. Signs would need to comply when the face is changed, or within three (3) years. This is a policy statement, a Whereas, and not included in the attached draft ordinance. Staff will work with the City Attorney on an appropriate policy statement.

Information on subjects of discussion:

8. "Electoral" signs:

HCC 21.60.095 allows electoral signs to be displayed 60 days prior to an election, and they must be removed within one week after the election. Maximum size is 32 sf. To be content neutral political signs can be the same size as any other allowed sign. For example, a real estate For Sale sign is also a temporary sign and HCC 21.60.130(c) states that the "maximum size of a temporary sign is restricts to 16 sf." If the commission wishes to address electoral signs, some discussion is needed on the desired outcome, and then staff will work with the city attorney to include it in the draft ordinance.

9. Internally lit signs:

HCC 21.60.060 Table 3 allows "Illumination Internal" signs in the commercial districts with one exception. Neither "Illumination Internal" nor "banners" are allowed in the Gateway Business District. Eliminating internal lit signs is suggested by Smart Growth advocates: "Because internally lit signs can be intrusive, consider prohibiting them or strictly limiting their size and brightness. Any lighting for signs should be shielded and focused to ensure that glare doesn't impact surrounding roads and properties."

If the HAPC wishes to ban "Illumination Internal" a motion is needed to amend the draft ordinance:

"I move to amend Table 3, Illumination Internal signs to reflect "N" = Not allowed in the Central Business District, Town Center, General Commercial 1 & 2, Marine Commercial, Marine Industrial district and for all institutional uses(INS)."

10. Lot owners responsible for sign permit.

HCC 21.60.070(a) and HCC 21.60.092(f) puts the responsibility on the property owner to secure a sign permit.

Multitenant properties such as a boardwalk or a mall may have several sign changes in a year; requiring a land owner or corporate officer signature for every sign permit is onerous for a tenant that already has a lease agreement. Staff will work with the city attorney to resolve this issue.

STAFF COMMENTS/RECOMMENDATIONS:

Staff recommends adopting SR 11-45 and the following amendments:

1. Banners mounted to a ~~**building**~~ by a permanent **rigid** frame **on all** edges. Line 5-6.

2. Buildings with a wall frontage of 200 to 349 sf would have a 'sign allowance' of **50** ~~(40)~~sf. Line 22

3. Buildings with wall frontage of 0 to 199 sf would have a 'sign allowance' of **30** ~~(20)~~ sf. Line 23

4. The display of a **commercial** temporary sign shall ~~not~~ be displayed **only during the hours the business is open, with a maximum of 12 hours per day** ~~for more than 14 days in any 90-day period~~, except a sign offering for sale or lease the lot on which the sign is located, which is allowed as long as the property is for sale or lease. Line 29-32.

Comments or motions are needed on:

5. Electoral signs

6. Illuminated Internal signs: A sample motion, "I move to amend Table 3, Illumination Internal signs to reflect "N" = Not allowed in the Central Business District, Town Center, General Commercial 1 & 2, Marine Commercial, Marine Industrial district and for all institutional uses(INS)."

ATTACHMENTS

1. April 20th Draft ordinance

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[1] *Sign Regulation for Small and Midsize Communities*, American Planning Association, 1989, pg 6.
[2] *A Framework for On-Premise Sign Regulations,* by Alan C. Weinstein, LLC, March 2009

Based on the April 6, 2011 HAPC motions. Attached to SR 11-46, April 20, 2011

Section 1. Homer City Code Title 21 Zoning and Planning 21.60.040 Definitions:

"Banner." Any sign of lightweight fabric or similar material that is mounted to ~~a pole or a~~ building by a permanent **rigid** frame **on all** ~~at one or more~~ edges.

Section 2. Homer City Code Title 21 Zoning and Planning, 21.60.060 Table 2 Part B Sign Code Maximum Total Sign Area is hereby amended as follows:

Table 2 Part B

In all other districts not described in Table 2 Part A, the maximum combined total area of all signs, in square feet, except incidental, building marker, and flags, shall not exceed the following:

Square feet of wall frontage (c):	Maximum allowed sign area per ~~lot~~ **principal building(s)**
750 s.f. and over	150 s.f.
650 to 749	130 s.f.
550 to 649	110 s.f.
450 to 549	90 s.f.
350 to 449	70 s.f.
200 to 349	**40(~~50~~) s.f.**
0 to 199	**20 s.f.**

Comment [DH1]: Not recommended by staff because it broadens this sign ordinance to existing businesses that are in compliance.

Comment [DH2]: Not recommended by staff due to large ROW's.

Section 3. Homer City Code Title 21 Zoning and Planning 21.60.130 Temporary signs-Private property is amended to read as follows:

21.60.130 Temporary signs-Private property. Temporary signs on private property shall be allowed subject to the following requirements:

a. Term. A **commercial** temporary sign shall not be displayed, ~~**only during the hours the business is open. open with a maximum of 12 hours per day. for more than 14 days in any 90-day period.**~~ except a sign offering for sale or lease the lot on which the sign is located, which is allowed as long as the property is for sale or lease.

Comment [DH3]: Not recommended by staff. Too restrictive and could disrupt the initials goals.

DRAFT

Section 4. Homer City Code Title 21 Zoning and Planning 21.60.140 Temporary signs-Public right-of-way is amended to read as follows:

21.60.140 Temporary signs-Public right-of-way. Permits for temporary private signs in the public right-of-way shall be issued in accordance with the following conditions:

a. Term and Number of Permits. The maximum term of such a permit shall be 7 ~~60~~ days. No more than one permit for temporary signs shall be issued to any applicant in any calendar year. For any sign containing the name of a political candidate, the candidate shall be deemed to be the applicant.

b. The signs must meet the requirements of Table 3 of this chapter.

c. Number of signs. No more than 5 ~~20~~ signs may be erected under one permit.

ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA this _____ day of

DRAFT

City of Homer
Planning & Zoning
491 East Pioneer Avenue
Homer, Alaska 99603-7645

Telephone *(907) 235-8121*
Fax *(907) 235-3118*
E-mail *Planning@ci.homer.ak.us*
Web Site *www.ci.homer.ak.us*

STAFF REPORT PL 11-41

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
MEETING: April 6, 2011, April 20, 2011
SUBJECT: Draft Ordinance 11-xx East End Mixed use

Requested action: Please summarize the outcome of the work session discussion during the regular meeting, and make any motions during the regular meeting, so there will be a written record of your work.

Generally: This is the district described in the Comprehensive Plan; it is always a good idea to be familiar with that discussion. The current GC1 and GC2 designations do not incorporate the wide range of activities currently found in operation in the designated area. We are trying to relax regulations to accommodate and encourage a wide range of commercial activities, while allowing some allowance of residential.

Comprehensive Plan:
E-MU ("EAST END MIXED USE")

- **Intent** The intent of the E-MU district is to allow a wide variety of commercial, industrial, and heavy industrial uses in a district with access to the boatyard, marine services and the airport, and to ensure such uses, which are important to Homer's economy, continue to have a viable location.
- **Primary Use** Mixed-use development with fewer constraints on uses than existing GC-1 and GC-2. Designed to accommodate the wide range of uses found in the area today, as well as other future uses, examples include industrial, marine-oriented, construction services (including batch plants), storage and artist workshops. Residential and retail are allowable, but residential/retail and commercial conflicts will be resolved in favor of commercial/industrial uses.
- **Other Uses, Allowances and Specifications**
  - Allows for mixed use, live/work, provides larger lots than would be available in CBD
  - On-site parking required.
  - Guide use to create/maintain an attractive highway environment
- **Development standards include:**
  - Minimal – basic guidelines for parking, setbacks
  - Encourage basic landscaping
  - Properties adjacent to the Conservation zone should use best management practices when developing near the southern edge of the property. Strategies may include, but are not limited to, 100 foot buffer zones along the southern property lines adjacent to the conservation areas, tree retention (bird habitat, moose cover), habitat and vegetation

retention, and storm water and pollution management techniques. Developers are encouraged to use a combination of techniques to minimize impacts within 100 feet of the south property line, and to provide for storm water filtration. Development is encouraged to concentrate on the northern portions of these lots.

Review: According to the discussion at the last meeting, I have made a list of items and my understanding of their support. Please review these and correct as necessary.

1. Support was shown for residential as an accessory use to commercial.

   - Residential may be allowed in a separate structure apart from business

2. More than one principle permitted structure may permitted through Planning Office until HCC requirements indicate a CUP is necessary.

3. Retail store size recommendation will be made in a motion.

4. Business will not be required to screen for residences.

   - But may be required to provide some basic screening/landscaping for arterials and other rights of way.

5. Current Residential (Refer to and discuss information on residential nonconforming found in packet)

   - Allow to rebuild
   - Encourage stick replacement of mobile homes
   - Allow expansion of existing residential within physical requirements of code
   - Accessory only, not outright – commercial first

Underground Storage Tanks: Research shows that the State has registration and inspection requirements. Staff does not suggest any additional local regulations.

Definition of Studio found in code, "Studio" means a room, rooms or building where an artist or photographer does work, a place where dancing lessons, music lessons, or similar artistic lessons are given, or where radio or television programs are produced or where recordings are made.

Dry Cleaning chemicals are hazardous and information collected on the State's DEC included, (Note: Disposal practices once considered standard are no longer legal. Dry cleaners today use significantly less solvent and the dry cleaning machines are now closed-loop systems, meaning no discharge from the machine to the sewer. The solvent must be properly collected in the machine and disposed of in a controlled manner.) I did not get specific information related to the implementation of directive.

STAFF COMMENTS/RECOMMENDATIONS:

1. Discuss the items in this report and make any amendments by motion.
2. Summarize any work session discussion on the record during the regular meeting. (please!!)

Attachments:
Dotti's email

From: Dotti Harness [mailto:DHarness@ci.homer.ak.us]
Sent: Friday, March 18, 2011 3:52 PM
To: Steele, William E (DEC)
Subject: Underground fuel tanks

Bill,

Homer's Planning Commission asked for general regulators for underground fuel storage tanks. I have reviewed the DEC website for underground fuel tanks and it's overwhelming and hard to put in a 'nutshell.'
They also asked about regulations for dry cleaners.

Is there a 'nutshell' document (1-2 pages) for fuel tanks? and dry cleaners?

Dotti Harness-Foster

From: Steele, William E (DEC) [mailto:bill.steele@alaska.gov]
Sent: Monday, March 21, 2011 7:07 AM
To: Dotti Harness
Subject: RE: Underground fuel tanks

Good morning,

We do not currently have a "nutshell" document for UST requirements. I will attempt to do that for you.

Basically any underground storage tank that holds any type of petroleum or petroleum based product is required by federal and state statute and regulations to be registered with the state. The only exception to this requirement are underground storage tanks holding fuel oil for a heating system that is solely used on the premises where stored.

Dry cleaners that use petroleum based solvents such as stoddard solvent are required to register the tank.

Regulated underground storage tanks and associated piping are required to meet minimum requirements for inspection, leak detection, leak prevention, and corrosion protection. Installation and inspection must be done by state certified UST workers. All tanks are also required to meet minimum financial responsibility requirements.

There is a $50 per year per tank registration fee and each tank is required to be third party inspected every three years.

If you wish more specific information regarding any requirement, please let me know.

Bill Steele
TTF Section Manager
ADEC/SPAR/TTF
(907) 269-7886
Bill.Steele@alaska.gov

March 2, 2011 DRAFT

Chapter 21.27

EEMU East End Mixed Use District

21.27.010 Purpose
21.27.020 Permitted uses and Structures
21.27.030 Conditional Uses and Structures
21.27.040 Dimensional requirements
21.27.050 Site and Access Plans
21.27.060 Traffic Requirements.
21.27.070 Site Development Requirements.
21.27.080 Nuisance standards.
21.27.090 Lighting Standards.

21.27.010 Purpose. The East End Mixed Use (EEMU) District is primarily intended to provide sites for businesses that require direct motor vehicle access and may require larger land area. The district is meant to accommodate a mixture of residential and non-residential uses with conflicts being resolved in favor of non-residential uses.

21.27.020 Permitted uses and structures. The following uses are permitted outright in the East End Mixed Use District, except when such use requires a conditional use permit by reason of size, traffic volumes, or other reasons set forth in this chapter.

a. Auto, trailer, truck, recreational vehicle and heavy equipment sales, rentals, service and repair,
b. Auto fueling stations and drive-in car washes;
c. Building supply and equipment sales and rentals;
d. Lumberyards;
e. Garden supplies and greenhouses;
f. Boat and marine equipment sales, rentals, manufacturing, storage yard, service and repair;
g. Welding and mechanical repair;
h. Restaurants, including drive-in restaurants, clubs and drinking establishments;
i. Religious, cultural, and fraternal assembly;
j. Studios
k. Personal services
l. Agricultural activities, including general farming, truck farming, livestock farming, nurseries, tree farms and greenhouses provided that:
   Other than normal household pets, no poultry or livestock may be housed and no fenced runs may be located within one hundred feet of any residence other than the dwelling on the same lot,
m. Storage of heavy equipment, vehicles or boats over 36 feet in length ~~as an *accessory use incidental to a permitted or conditionally permitted principal use;*~~
n. Plumbing, heating and appliance service shops,

o. Home occupations, provided they conform to the requirements of HCC § 21.51.010
p. Mortuaries and Crematoriums;
q. Open air businesses;
r. Parking lots and parking garages, in accordance with HCC Chapter 7.12.
~~s.~~ Manufacturing, fabrication and assembly and assembly ~~of pottery, ceramics, musical instruments, toys, novelties, furniture, small molded products and electronic equipment, instruments, equipment and devices,~~
t. Retail businesses;
u. Trade, skilled or industrial schools;
v. Wholesale businesses, including storage and distribution services incidental to the products to be sold;
w. Parks and open space;
x. Warehousing, commercial storage and mini-storage;
y. Recreational vehicles, subject to the standards set out in HCC § 21.54.320.
z. Dry cleaning, laundry, and self-service laundries;
aa. Mobile food services;
bb. Day care homes; all outdoor play areas must be fenced and provided that a conditional use permit was obtained for the dwelling, if required by HCC § 21.27.030
cc. Rooming house and bed and breakfast, provided that a conditional use permit was obtained for the dwelling, if required by HCC § 21.27.030
dd. Dormitory
ee. As an accessory use, one small wind energy system per lot
ff. Production, processing, assembly and packaging of fish, shellfish and seafood products;
gg. Construction, assembly and storage of boats and boat equipment;
hh. Research and development laboratories;
ii. Storage and distribution services and facilities, including truck terminals, warehouses and storage buildings and yards, contractors' establishments, lumberyards and sales, or similar uses;
jj. Underground bulk petroleum storage;
kk. Cold storage facilities;
ll. Mobile commercial structures;
mm. Dwelling units located in buildings primarily devoted to business uses;
nn. *Update HERE for final district* uses….*this is a placeholder for now!* Customary accessory uses…(Include residential uses like too!)Accessory uses to the uses permitted in the EEMU district that are clearly subordinate to the main use of the lot or building, such as wharves, docks, restaurant or cafeteria facilities for employees; or caretaker or dormitory residence if situated on a portion of the principal lot: provided that separate permits shall not be issued for the construction of any type of accessory building prior to that of the main building.(other code examples: k. Customary accessory uses to any of the permitted uses listed in the X district, provided that no separate permit shall be issued for the construction of any detached accessory building prior to that of the main building. Needs tweaking for open air land uses..ie a tool or storage shed on a lot used for equipment storage)
oo. Taxi operation;
pp. Itinerant merchants, provided all activities shall be limited to uses permitted outright under this zoning district;
qq. Public and private stables;

rr. The outdoor harboring or keeping of dogs, small animals and fowl as an accessory to a residential use in a manner consistent with the requirements of all other provisions of the Homer City Code and as long as such animals are pets of the residents of the dwelling and their numbers are such as not to unreasonably annoy or disturb occupants of neighboring property;

21.27.030 Conditional uses and structures. The following uses may be permitted in the East End Mixed Use District when authorized by conditional use permit issued in accordance with HCC Chapter 21.71:

a. Construction camps;
b. Extractive enterprises, including crushing of gravel, sand and other earth products and batch plants for asphalt or concrete; *(should better spell out noxious uses such as batch plants from more benign uses like sand pile storage for contractors who provide sanding services) (stockpile OK)(screen/landscape for new structures on EERoad)*
c. Bulk petroleum product storage above ground;
d. Planned unit developments,
e. Junk yard;
f. Kennels;
g. Public utility facilities and structures;
h. Impound yards; (allow outright w screening? Stuff is supposed to move in an impound yard as opposed to long term storage in a junk yard?)
i. Shelter for the homeless, provided any lot used for such shelter does not abut an urban, rural or office residential zoning district;
j. More than one building containing a permitted principal use on a lot. *Allow outright?*
k. Day care facilities; provided, however, that outdoor play areas must be fenced.
l. Group care homes and assisted living homes.
m. Indoor recreational facilities;
n. Outdoor recreational facilities.
o. Multiple-family dwelling, only if the structure conforms to HCC § 21.14.040(a)(2)
p. Single family and duplex dwellings, **including mobile homes**
q. Townhouses;
r. Other uses approved pursuant to HCC § 21.04.020.

Comment [JE1]: After discussion about residential uses in GC1 in general, staff think allowing individual mobile homes in the EEMU is appropriate. This does NOT allow mobile home parks which is 2 or more mobile homes on a lot.

21.27.040 Dimensional requirements. The following dimensional requirements shall apply to all structures and uses in the East End Mixed Use District:

a. Lot Size.

1. The minimum lot area shall be 40,000 square feet in areas not served by public sewer and water.

2. Each lot shall contain a minimum of 20,000 square feet if one of the following conditions exists:

i. The lot is served by public water supply approved by the State Department of Environmental conservation; or

ii. The lot is served by public or community sewer approved by the State Department of Environmental Conservation.

3. Each lot shall contain a minimum of 10,000 square feet if the lot is served by both public water and sewer that satisfies both conditions of subsection (a)(2).

b. Building Setbacks.

1. Buildings shall be set back 20 feet from all dedicated rights-of-way, except as allowed by subsection (b)(3);

2. Buildings shall be set back from all other lot boundary lines according to the number of stories as follows:

b. Building Setbacks.

1. All buildings shall be set back 20 feet from all dedicated rights-of-way. Alleys are not subject to a 20 foot setback requirement. The setback requirements from any lot line abutting an alley will be determined by the dimensional requirements of subparagraphs (2) and (3) below;

2. Buildings shall be set back five feet from all other lot boundary lot lines unless adequate firewalls are provided and adequate access to the rear of the building is otherwise provided (e.g., alleyways) as defined by the State Fire Code and enforced by the State Fire Marshal;

3. Any attached or detached accessory building shall maintain the same yards and setbacks as the main building.

4. Adjacent to those rights-of-way that lead to Kachemak Bay and have been determined to be unsuitable for road construction by Resolution of the City Council, all buildings shall be set back from the boundary of the right-of-way according to the number of stories as provided in subsection (b)(2).

c. Building Height. The maximum building height shall be 35 feet.

d. No lot shall contain more than 8,000 square feet of building area (all buildings combined), nor shall any lot contain building area in excess of 30 percent of the lot area without an approved conditional use permit.

e. Building Area and Dimensions - Retail and Wholesale.

1. The total square feet of floor area of retail and wholesale business uses within a single building shall not shall not exceed 75,000 square feet.

2. No conditional use permit, Planned Unit Development, or variance may be granted that would allow a building to exceed the limits of these subparagraphs (e)(1), and (2)

and no nonconforming use or structure may be expanded in any manner that would increase its nonconformance with the limits of subparagraphs (e)(1), and (2).

f. Screening. When one or more side or rear lot lines abut land within an RO, RR, or UR district or when a side or rear yard area is to be used for parking, loading, unloading or servicing, then those side and rear yard areas shall be effectively screened by a wall, fence, or other sight-obscuring screening. Such screening shall be of a height adequate to screen activity on the lot from outside view by a person of average height standing at street level.

21.27.050 Site and Access Plans. a. A zoning permit for any use or structure within the East End Mixed Use District shall not be issued by the City without a level one site plan approved by the City under HCC Chapter 21.73.

b. No zoning permit may be granted for any use or structure without a level two right-of-way access plan approved by the City under HCC § 21.73.100.

21.27.060 Traffic Requirements. A conditional use permit is required for every use that is estimated or expected to generate traffic in excess of the criteria contained in HCC § 21.18.060.

21.27.070 Site Development Requirements. All development on lands in this district shall conform to the level two site development standards set forth in HCC § 21.50.030

21.27.080 Nuisance standards. The nuisance standards of HCC § 21.59.010**(a)through (g)(1)** apply to all development, uses, and structures in this zoning district. Open storage of materials and equipment is permitted, subject to these exceptions and conditions:

(a) If a lot abuts a residential zoning district ~~**or abuts a lot that lawfully contains a dwelling unit,**~~ any outdoor storage of materials and equipment on the lot must be screened from the residential ~~**lot or**~~ district by a wall, fence, or other sight-obscuring material. The screen must be a minimum of eight feet in height.

21.27.090 Lighting Standards. The level one lighting standards of HCC § 21.59.030 apply to all development, uses, and structures in this zoning district.

Section 2. The official zoning map as drafted of the East End Mixed Use Zoning District dated _____ (attached exhibit A) shall consist of the originally proposed properties and adjoining properties which may by request be included. The City Clerk is authorized to sign the map and adhere to the requirements set forth in the Homer City Code, Section 21.10.030 (b).

City of Homer
Planning & Zoning
491 East Pioneer Avenue
Homer, Alaska 99603-7645

Telephone *(907) 235-8121*
Fax *(907) 235-3118*
E-mail *Planning@ci.homer.ak.us*
Web Site *www.ci.homer.ak.us*

STAFF REPORT PL 11-45

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
MEETING: April 20, 2011
SUBJECT: Draft Ordinance amending Chapter 21.34 Conservation District

GENERAL INFORMATION:

Staff has incorporated suggested changes and had the attorney review and amend the draft ordinance. Changes include incorporation of a new purpose statement and a description of public utility facilities and structures including the height limit and (after consulting the Public Works Director) a maximum building area of 3000 square feet.

STAFF COMMENTS/RECOMMENDATIONS:

Planning Commission discuss the draft ordinance, review the amendments and recommend public hearing on May 4th.

ATTACHMENTS

1. March 24, 2011 Attorney Review Draft Ordinance

CITY OF HOMER
HOMER, ALASKA

Planning

ORDINANCE 11-

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, AMENDING HOMER CITY CODE 21.34.010, PURPOSE; HOMER CITY CODE 21.24.020, PERMITTED USES; AND HOMER CITY CODE 21.34.030, CONDITIONAL USES; REGARDING THE PURPOSE AND USES PERMITTED IN THE CONSERVATION ZONING DISTRICT.

THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code 21.34.010, Purpose, is amended to read as follows:

21.34.010 Purpose. The ~~purposes of the~~ conservation district **is applied to sensitive** ~~are primarily to identify, protect and enhance those~~ public **lands, and private** lands **subject to the consent of the owner,** that **are** ~~have been identified by state or federal agencies or the City of Homer as habitat~~ critical to the maintenance of fish and wildlife resources, **protect important watershed areas, or serve other key environmental functions. These lands are to be maintained in an undisturbed and natural state, except for enhancement projects and necessary public utility facilities and structures that cannot be reasonably located in another district. Acceptable uses in this district include undeveloped open space,** ~~and secondarily including~~ parks **with passive** ~~whose~~ recreation activities and facilities ~~are passive in nature,~~ (e.g., ~~those activities that include~~ wildlife viewing, nature walks, educational and interpretive uses) and other uses that do not change the character of the land or disrupt fish and wildlife. **Passive recreation activities are secondary to habitat protection and enhancement.**

Section 2. Homer City Code 21.34.020, Permitted uses, is amended to read as follows:

21.34.020 Permitted uses. The following uses are permitted outright in the conservation district:

a. Fish and wildlife habitat protection and enhancement.~~; and~~

b. Marine-life and wildlife sanctuary or preserve.

Section 3. Homer City Code 21.34.030, Conditional uses, is amended to read as follows:

21.34.030 Conditional uses. The following uses are conditionally permitted in the conservation district when authorized by conditional use permit issued in accordance with HCC Chapter 21.71:

a. Pedestrian trails, including boardwalks and viewing platforms.~~; and~~

b. Educational and interpretive displays and signs.~~; and~~

[**Bold and underlined added.** ~~Deleted language stricken through.~~]

c. **Public utility facilities and structures that cannot be reasonably located in another district, and that have a maximum height of 35 feet and a maximum building area of 3000 square feet.**

d. Parking lots incidental to a permitted or conditionally permitted use.~~; and~~

e~~d~~. Other conservation uses that will enhance the conservation district, approved by the Planning Commission, provided, however, a finding of no adverse impact to the integrity of the fish and wildlife resources and habitat must be found.

Section 4. This Ordinance is of a permanent and general character and shall be included in the City Code.

ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this _____ day of _____ 2011.

CITY OF HOMER

_____
JAMES C. HORNADAY, MAYOR

ATTEST:

_____
JO JOHNSON, CMC, CITY CLERK

YES:
NO:
ABSTAIN:
ABSENT:

First Reading:
Public Hearing:
Second Reading:
Effective Date:

Reviewed and approved as to form:

_____
Walt E. Wrede, City Manager
Date: _____

_____
Thomas F. Klinkner, City Attorney
Date: _____

[**Bold and underlined added.** ~~Deleted language stricken through.~~]

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City of Homer
Planning & Zoning
491 East Pioneer Avenue
Homer, Alaska 99603-7645

Telephone *(907) 235-8121*
Fax *(907) 235-3118*
E-mail *Planning@ci.homer.ak.us*
Web Site *www.ci.homer.ak.us*

STAFF REPORT PL 11-44

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
MEETING: April 6, 2011, April 20, 2011
SUBJECT: Expansion and/or replacement of nonconforming residential structures

Background:
After responding to and furthering a negative recommendation to the City Council in regards to a citizen petition that proposed allowance of single family and duplex dwellings in the General Commercial One (GC1) district with a Condition Use Permit (CUP), the Commission recognized the need to address the ability of existing residential dwellings to rebuild and possibly expand.

Our present code does not allow for reconstruction of a nonconformity if the structure is damaged in excess of 50% of the structures 'pre-damaged' value. This is standard language in most all zoning codes. The concept supported is the notion that nonconformities are expected to terminate sometime in the future and are not conducive to meeting the goals and intent of the district in which they are found.

Homer has a limited amount of land zoned for commercial uses and does not expect to be able to rezone much residential to commercial designations. During the public hearing for the comprehensive plan the mere suggestion that sometime in the future Homer may wish to designate some land on west hill as a limited commercial district met with passionate resistance. We believe that similar resistance would be encountered in most any of the current residential districts. Much of the currently designated commercial districts on the east end of town are also very challenging to develop in regards to gaining wetland permits and constructing necessary infrastructure for commercial activities, further constraining potential commercial ventures within the city. For the reasons expressed above, the Planning Commission has determined that it would not be prudent to allow for further expansion of residential activities in the current commercial districts.

Options:

It is my understanding that the Planning Commission wishes to explore options to rebuild nonconforming residences in the commercial districts. After getting specific direction from the Planning Commission on the approach to take, I will have the attorney help with drafting an ordinance that fulfills your request.

Rebuilding residences
Attached you will find some examples of ordinances that provide an option for residences to be rebuilt.

Question 1.

Should property owners be allowed the option to replace/rebuild nonconforming single family residences damaged beyond 50% of their 'pre-damaged' value?

Single family residences

Duplexes

Mobile homes

From preliminary discussions I understand that there is support to replace and/or expand the structures listed above with the caveat that mobile homes have the option to be replaced with stick structures.

Question 2.

Should nonconforming residential structures be allowed to expand?

Or/and be allowed as a second permitted structure?

Question 3.

Which zoning districts should such allowances be given to?

Commercial 1? 2? All districts?

Conclusion: After general direction is gained an ordinance may be crafted and added to the PC agenda.

Attachments
Example from *21st Century Land Development Code* and Anchorage Title 21 (including 21.12.020, Single- and Two-Family Structures and Mobile Homes)

EXAMPLE CODE

21st Century Land Development Code

TERMINATION OF NONCONFORMITIES

Destruction or Damage of Structure
The right to operate and maintain any nonconformity, except for a single-family dwelling unit, shall terminate and shall cease to exist whenever the structure or structures in which the nonconforming use is operated and maintained is damaged or destroyed from any cause whatsoever, and the cost of repairing such damage or destruction exceeds 50 percent of the replacement cost of such building or structure on the date of such damage or destruction. A nonconforming single-family dwelling unit that is destroyed or damaged more than50 percent of the replacement cost may be rebuilt, provided that a development approval is issued within one year of the date of such damage or destruction. The[PLANNING OFFICIAL] shall require the submission of sufficient evidence to verify the date of damage or destruction.

EXPANSION OF NONCONFORMITY

Applicability
No nonconformity may expand unless a conditional use permit (CUP) has been granted as set forth in Chapter 4, Procedures, of the LDC.

Criteria for Conditional Use Permit In addition to the criteria required to be met for a CUP, the following criteria shall apply to the issuance of a CUP for the expansion of a nonconformity:(A) The termination of such nonconformity will result in unnecessary hardship;(B) The continuation of the nonconformity will not be contrary to the public interest;(C) The continuation of the nonconformity will not substantially or permanently injure the appropriate use of adjacent conforming property in the same district;(D) The use will be in harmony with the spirit and purpose of these regulations and the comprehensive plan goals, objectives, and policies;(E) The plight of the applicant for which the continuation of the nonconformity is sought is due to unique circumstances existing on the property and/or within the surrounding district;(F) The continuation of the nonconformity will not substantially weaken the general purposes of this chapter or the regulations established in this chapter for the applicable zoning district; (G) The continuation of the nonconformity will not adversely affect the public health, safety, and welfare; and (H) The continuation of the nonconformity through a reasonable amortization period is appropriate.

Anchorage Title 21 (including 21.12.020, Single- and Two-Family Structures and Mobile Homes)

NONCONFORMATIES

SINGLE- AND TWO-FAMILY STRUCTURES AND MOBILE HOMES

A. Applicability In this chapter, only sections 21.12.010, 21.12.020, and 21.12.050 shall apply to lawfully erected nonconforming single- and two-family structures and mobile homes. The other sections of this chapter shall not apply to lawfully erected single- and two-family structures and mobile homes.

B. Expansions and Enlargements

Any lawfully erected nonconforming single- or two-family structure may be expanded or enlarged, as long as the nonconformity is not increased.

C. Damage or Destruction

Any lawfully erected nonconforming single- or two-family structure that is damaged or destroyed may be rebuilt in the same location and to the same dimensions so that the nonconformity of the damaged or destroyed structure is not increased, but the structure may be rebuilt in a manner that moves towards conformity.

D. Mobile Homes

1. Lawfully erected nonconforming mobile homes may be repaired or replaced, as long as the nonconformity is not increased.

2. Lawfully erected nonconforming mobile homes on individual lots may be moved within the lot in compliance with setback regulations.

3. Mobile homes in nonconforming manufactured home communities may be repaired or replaced, in compliance with setback regulations.

MANAGERS REPORT
April 11, 2011

TO: MAYOR HORNADAY / HOMER CITY COUNCIL

FROM: WALT WREDE

UPDATES / FOLLOW-UP

1. Cook Inlet Jack Up Rig: Last year the Legislature passed a bill which provides for various incentives to encourage more gas drilling in Cook Inlet. Attached is a letter from the Alaska Industrial Development and Export Authority (AIDEA) describing a plan for AIDEA to become part owner in a Jack Up Rig that would operate in Cook Inlet. I am bringing this up for several reasons. First, you will see that AIDEA is asking for comments from the City regarding this plan. I have not formally responded beyond a quick e-mail stating that we would get back to them. My first thought was that the City is putting a great deal of resources into getting a gas line to Homer. Supply is one of the questions and this is an attempt to address the issue. On the other hand, we can't assume that everyone supports more drilling in Cook Inlet. So, this is a policy call and I hope Council will give me some direction. The second reason for bringing this to your attention is that a representative for the owner of the jack up rig has contacted the Port and Harbor Director about mooring the vessel at the deep water dock for three or four months next winter. The owners need a safe place to tie up and do work on the rig in preparation for its operations in the Inlet. This is potentially a good source of private sector jobs and revenue for the Port and Harbor Enterprise Fund. One thing that might get the public's attention however, is that the legs of the rig stand up straight and will be twice as high as the high mast lights. At Bryan's suggestion, the owners are consulting with the FAA. Please let us know if the Council has any questions or concerns.
2. Energy Prices and the Operating Budget: As everyone knows, the cost of energy is rising rapidly. This is having a very large impact on the budget and it is particularly worrisome as we look forward to the FY 2012 Budget. The energy efficiency measures we are taking will shield the City from even higher costs in the future because we are reducing consumption. That is good. However, the reduction in energy costs that we hoped to see in the operating budget will likely vanish due to higher costs per unit. In addition, the departments will now be expected to repay either the Revolving Energy Fund or the Depreciation Funds, increasing the operating budget expenditures / (transfers) even further. We anticipate that property tax revenues will decline again this year and sales taxes may as well. Anything that increases operating costs is not a good sign and it may be that we will have a discussion about whether we have the ability to repay some of these "loans" next year.
3. City Attorney Report: As you know, we have been looking at ways that we can increase efficiency and reduce costs in cases where the City Attorney has

determined that he has a conflict of interest. This usually occurs when there are appeals to either the Planning Commission or the Board of Adjustment. Mr. Klinkner has commented on one possible approach we have discussed in a memorandum that is included in your packet under City Attorney Report. I wanted to provide the Council with an opportunity to discuss this approach before we went too much further. This approach definitely has some advantages and disadvantages. Tom will be at the meeting and is prepared to discuss this during the City Attorney slot on the agenda. I have decided to go ahead and use this approach in the Becker remand matter because the parties are well served by a timely process. We need to keep that process moving and the new attorney would need time to review the case and get up to speed. However, it is not too late to reverse that if Council wishes.

4. Term Contracts / Engineering Services: Several years ago the Council approved issuing an RFP for a term contract for engineering services. The City uses outside engineers for a wide variety of services from designing water and sewer extensions to modifications on the Deep Water Dock. The advantage of having an engineering firm on a term contract is that we do not have to issue a separate RFP every time we need an engineer for a job; saving time and money. The current term contract has expired and we would like to issue an RFP again. This time around, Carey would like to issue three separate RFPs for specialized services; one for water and sewer, one for maritime/docks and harbors, and one for civil work. We plan to bring Council a resolution authorizing these RFPs at the next meeting.
5. Old Water Treatment Plant Demolition: The old water treatment plant is currently being demolished. Nothing will be left except the cement pad. As you know, we have discussed placing some type of structure there to house a satellite fire station. We will be developing a plan and budget to accomplish that soon for your consideration. The cost of the demolition contract ($58,000) is significantly less than the insurance settlement (147,287.41). Unless Council has other ideas, we propose to place the remainder of the insurance settlement into the Water and Sewer Reserve Account.
6. Construction Contracts / Jobs: The Public Works Department is doing what it can to get some jobs and economic activity on the streets this summer. At the next couple of meetings, the Council will be asked to approve construction contracts for the West Homer Elementary trail, the access road project at the water treatment plant, the security gate at the Deep Water Dock, improvements at Jack Gist Park, and the Soundview / Woodard Creek bridge. If things go well, the Phase II Kachemak Water and Sewer Project could be before you in late May/ early June. Other projects are in the development phase. (See next item).
7. Karen Hornaday Park Improvements: Attached is a letter from the Parks and Recreation regarding improvements at Karen Hornaday Park. We asked the Commission to give us some input on how the legislative grant the City received last year ($250,000) and the funding the City provided ($55,000) should be spent. The legislative grant,and the grant agreement, are focused upon implementation of Phase I of the Karen Hornaday Park Master Plan. As you might recall, Phase I was focused on the most immediate needs such as drainage and parking lot

improvements, upgrades to the playground and day use areas, removal of the old storage shed, etc. The Commission favors doing the engineering work for the drainage and existing parking lot improvements; which we will do. However, it also appears to be more focused now upon the bridge over Woodard Creek and preparation for Phase II which includes moving the road and re-contouring the entire parking area adjacent to Woodard Creek. The argument for this is that unless we do the preliminary engineering work, we will never know if moving the road is possible or affordable. The downside of this approach is that we might spend a lot of money on engineering and not much on actual improvements. Future funding for this project is speculative at best. This approach may also require an amendment to the grant agreement since we are starting to delve into Phase II projects. Council input on this is encouraged. The bottom line is that this year, we are likely to see only some engineering and design work and improvements on the ball field playing surface. We will also see what we can accomplish in the playground and day use areas.

8. Sewer Rehab Project: This project was funded in large part by stimulus money. This project is not very sexy or visible to the public but we are excited about it because it is accomplishing major maintenance and repair tasks on the City sewer lines that would be very expensive to do later. This project will save the City and its sewer customers a great deal of money down the road. Carey attempted to give the Council an update on the project including a video taken by a small remote camera traveling through the sewer lines. That part of the presentation did not go so well you might recall! At any rate, the project was described in an article in Pacific Northwest Trenchless Review. (Yes, there is such a publication you have to be a real geek with no life whatsoever to read such a thing!). A copy of the article is attached I hope the public will find it to be informative.
9. Change Order Notice: This agenda contains a resolution which awards a contract to HDR to perform the Sewer Treatment Plant Bio-Solids Disposal Feasibility Study and replacement of the polymer injection equipment. Carey explains in the resolution and in his back-up memo the reasons for using HDR and tacking this work onto an existing contract. HCC 3.16.100 provides that change orders which change the scope of work of a contract are not binding without prior Council approval.
10. HERC / Old Intermediate School. The Request for Proposals to lease the building has been published and the closing date is Friday May 6. One thing Council may want to consider is what to do if the EDC does not have a quorum when it comes time to review the proposals and make a recommendation to Council. I am told that might be a possibility. Council might consider sending the proposals to the Lease Committee instead or setting up a committee made up of Council members.
11. Bridge Creek Fire Mitigation Project: This project is well underway and so far we are pleased with the result. The only complaint we have received so far is that firewood is not being made available to the public.

ATTACHMENTS

1. Employee Anniversaries / April
2. Letter from AIDEA re: Jack Up Drill Rig
3. Letter from Parks and Recreation Commission re: Karen Hornaday Park
4. Sewer rehab Article
5. Answers to questions posed at last Council Meeting

" Planning Made Easy "

CHAPTER

3

ZONING

WILLIAM TONER

Zoning is like the game of poker.
It's boring until the money is in the pot.
—BILL WHITED

INTRODUCTION

Welcome to zoning, a simple device used to protect people and their property. While zoning is plain in concept and easy to understand, it is often complex and difficult in application. Of the decisions that planners make, there are few that will equal zoning in terms of the day-to-day impact on the health, safety, and welfare of ordinary people.

Consider the folks who live in a two-story, 2,000 sq. ft. home, on a 10,000 sq. ft. lot in a suburb of Baltimore, Maryland. The town has zoning, and here are some of the particular features of zoning that protect the people of that house.

The house may be no higher than 32 feet. That's because the ladders on the fire truck can extend only that far. The front and back of the house are 40 feet from the front and back property line. That's to guarantee open space and prevent overcrowding. The sides of the house are 15 feet from the side property lines. That's to maintain sunlight between buildings, prevent overcrowding, and provide maintenance space. A garage is required to keep cars off the street so drivers have a clear view of pedestrians, including many children who play on the sidewalk or on the street. While these are simple, straightforward explanations of why zoning is helpful to ordinary people, in practice zoning can become far more complex, sometimes troublesome, sometimes beneficial.

Two examples might help to show how this most common tool of land-use control affects people of cities, counties, townships, and villages in complex ways large and small.

There is a two-story house in Flossmoor, Illinois, that is nicely painted and well maintained on all sides but one. On this one side, the paint blisters and peels, shutters and screens are in disrepair, gutters sag, and the brick needs tuckpointing. It is a curious sight, for the homeowners clearly care for their house. So why is that one side so badly in need of repair? Because some 30 years ago, local officials adopted a zoning ordinance that allowed the former owner to put an addition on the house, moving a two-story wall to within five feet of the neighboring property line. As a result, for the past 30 years, the incensed owner of the adjoining property has refused to let any workers use his property to erect any scaffold or place any ladder or other equipment necessary to repair that one wall of the house.

As one might imagine, the conflict between the neighbors (the house has changed ownership several times) has been continuous on personal and legal fronts. This long and personal fight, which has often spilled over to the rest of the neighborhood, could easily have been avoided had local officials kept a reasonable distance between adjoining homes.

Neighborhood fights like this one are a common result of poor zoning decisions. The results were considerably more complex and more troublesome than officials envisioned. Thus zoning is at once simple and complex, with the potential for long-lasting good or for long-lasting harm.

It wouldn't be fair to Flossmoor officials to isolate a single case of poor choice without also pointing out that they have made hundreds of good decisions. If there are two neighbors fighting because of a poor zoning decision, there are 2,000 others living in relative peace and civility, provided in part by good zoning decisions.

In the late 1960s and early 1970s, Walworth County, Wisconsin, officials took note of a troublesome pattern arising in the countryside. Specifically, their zoning ordinance allowed several subdivisions to be built within their agricultural area. As a result, farmers were reporting a series of problems—subdivision dogs chasing purebred cattle, kids biking through crops, trash and litter deposited on farm fields and the like. Similarly, people in the subdivisions began complaining that the noise of farm operation disturbed them, that slow-moving farm vehicles made for rural traffic hazards, and that pesticides and insecticides applied by farmers endangered their health.

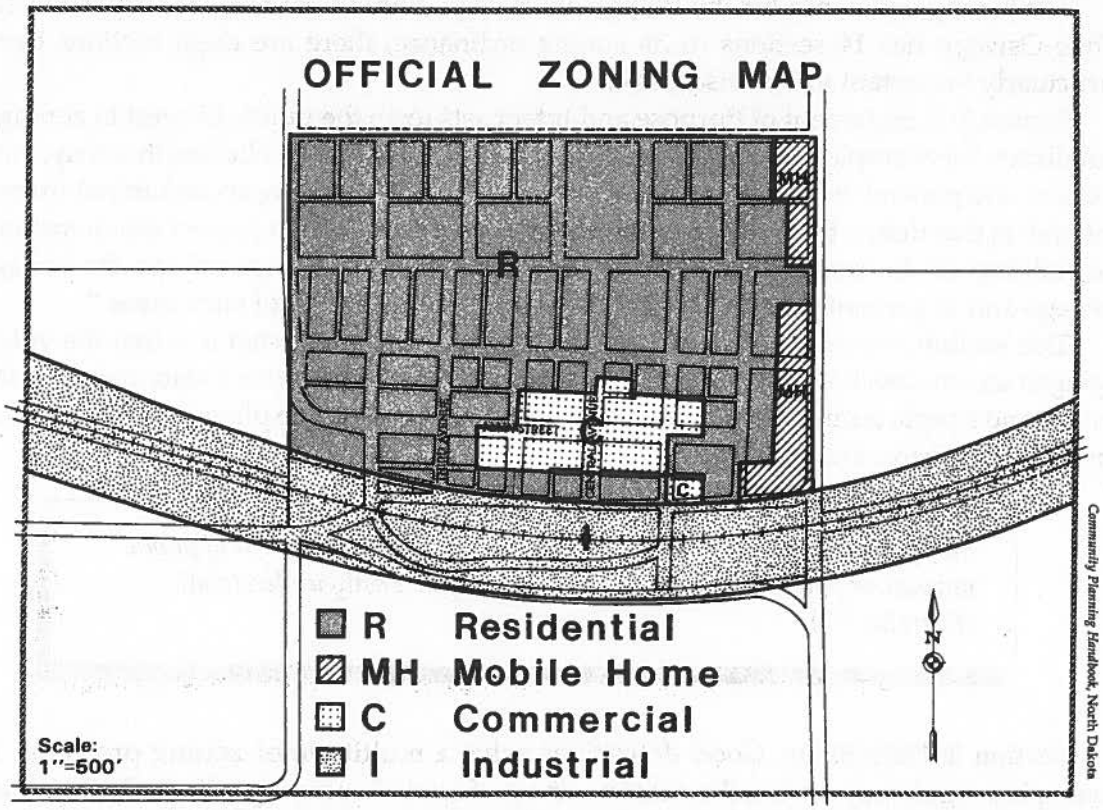
Walworth County officials changed the zoning, recognizing that agriculture was a heavy industry that needed to be kept separate from indiscriminate subdivision, reaffirming the long-held zoning notion that homes and heavy industry do not mix. By this and subsequent action, county officials used zoning to prevent such problems from emerging in the future and thereby increased the health, safety, and welfare of farmers and subdivision dwellers alike. Officials provided vast expanses of land for agricultural production and preserved the same area in open space while at the same time protecting homeowners from the noise, traffic, and health hazards associated with the industry of agriculture.

In making zoning decisions, the first thing for members of planning commissions and zoning boards of appeal to recognize is that a good zoning decision is full of the possibility of long-lasting, great achievement. Poor zoning decisions, on the other hand, often establish protracted conflict and result in a diminished quality of health, safety, and welfare. To gain the former and to evade the latter, it is essential to understand the basic products and processes of zoning.

MODULE 9: ZONING PRODUCTS AND ZONING PROCESSES

Zoning Map

There are two pieces in the zoning puzzle—a zoning map and a zoning text. The zoning map simply illustrates how the entire area of a community is classified and divided up into distinct zoning districts, such that, in general, every parcel of land in the community may be identified as being at least in one zoning district. The common zoning districts are residential, commercial, industrial, and agricultural.



For example, the preceding zoning map illustrates the concept. Note that the map shows four separate districts. Each parcel of land has one zoning district. Maps of larger, more complex areas might show several different residential districts and a few different commercial districts, with one dominant type of housing in each residential district and one dominant type of commercial use in each of the commercial districts. Thus each district tends to group similar types of land uses together, while, at the same time, keeping them separate from other, incompatible landuses.

Examine your zoning map. Write down the number of districts that you see. Now see if you can spot a zoning district that appears to be out of place—one that may put conflicting land uses side by side. This may be a source of trouble. (Exercise 9-1)

Zoning Text

The zoning text serves two purposes. First, it explains the zoning rules that apply to each of the districts. These rules, which will be detailed in a moment, typically establish a list of land uses that are permitted in each of the districts plus a series of specific standards for the permitted land uses that govern lot size, height of building, required yards and setbacks from front property lines, and so forth. (If a use is not permitted in a district, it is generally prohibited unless allowed under special circumstances—but more on this later.) Second, the text sets forth the procedures for administering the zoning ordinance and establishes the roles and responsibilities of the principal actors—zoning applicants, zoning administrators, planning commissions, zoning boards, and elected officials. The zoning text specifies the basic steps to be followed.

The zoning ordinance for the Village of Oswego, Illinois, contains the typical features. While Oswego has 14 sections to its zoning ordinance, there are eight sections that are particularly important to our discussion.

Section 1: A Statement of Purpose and Intent sets forth the public interest in zoning and establishes, for example, that zoning is adopted "To promote the public health, safety, morals, comfort, and general welfare of the citizens of the village." There are an additional 16 specific statements that define the public interest more clearly such as, "To protect the character and the stability of the residential, business, and manufacturing areas within the Village of Oswego and to promote the orderly and beneficial development of such areas."

This section, common to most zoning ordinances, explains what it is that the village is trying to accomplish with zoning rules. A good zoning text will define a statement of purpose in clear and simple terms such that the public interest is apparent to planners, elected officials, applicants, citizens, and judges.

> *Stop for a minute. Look at your zoning text. Find the statement of public purpose or public intent. Is it clear and specific? Easily understood? (Exercise 9-2)*

Section 2: Definitions. Good definitions solve a multitude of zoning problems. Since zoning is a regulatory device, the exact meaning of terms becomes particularly important. A good zoning ordinance is anchored in good definitions.

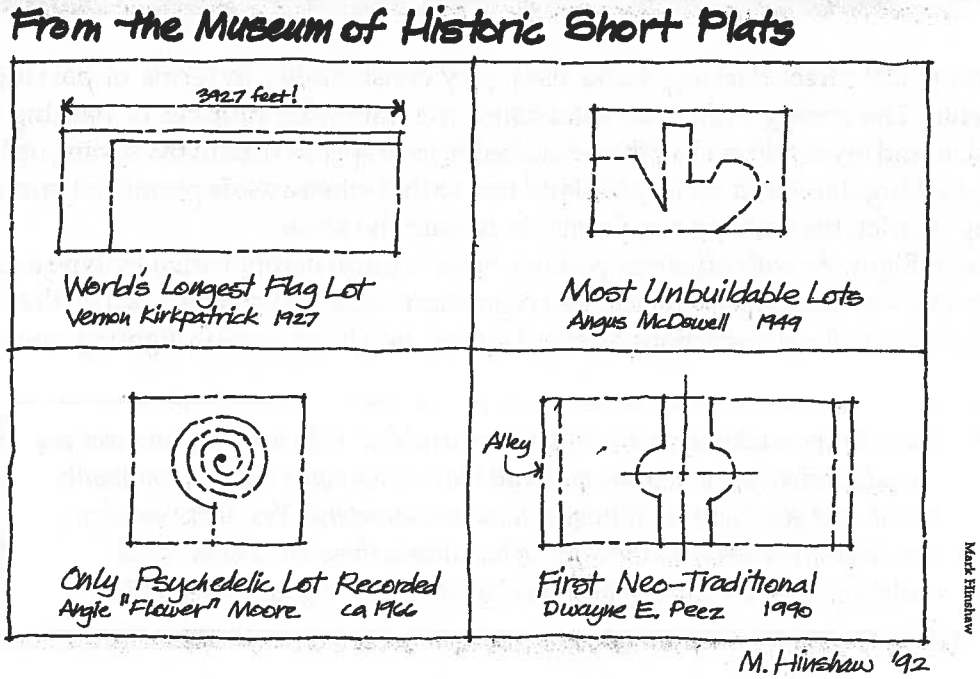
> *Now turn to definitions. Find the word "lot." Note the many variations. The word "lot" is obviously an important one and needs precise definition. Any idea why? (Exercise 9-3)*

If your evaluation of the word "lot" doesn't suggest the importance of clear meaning of words, consider two cases. The first is the term "day care, in home." Exactly what is suggested here? What is a home? What is day care? Does it include children? Adults? How many? Are disabilities important? Does it matter how many day care operations are in a neighborhood? Obviously, a good definition will answer many of these questions so that, when applied, the answer would be a clear yes or no.

But even the best zoning definitions often leave words poorly defined. And that's where planning commissioners, zoning board of appeals members, planners, local elected officials, and ultimately judges exercise some judgement. The Allentown (Pennsylvania) *Morning Call* reports on a case in Upper Saucon Township, Lehigh County, Pennsylvania, where a judge is dealing with a definition of animal husbandry. The question is whether William and Cheryll Stoneback, in raising one wolf and five wolf-hybrids, are engaged in animal husbandry or merely operating a kennel. If the answer is animal husbandry, the wolf-hybrids are a permitted use and, provided their activities meet normal zoning requirements, a zoning certificate would be issued. If not, the Stonebacks must apply for a special exception permit (also called a conditional use or a conditionally permitted use) that may or may not be granted. So, is it animal husbandry or a kennel? Should the Stonebacks be allowed to raise wolf-hybrids in an agricultural zoning district as an agricultural use?

Section 3: General Provisions. General provisions include the overriding rules that apply to all land uses and all parcels throughout the community (rather than a single district) and would answer such questions as, "What if a conflict existed between the zoning ordinance and other regulations adopted by the village?" (The usual answer is that the more restrictive ordinance or regulation would apply.)

Section 4: Nonconforming Structures and Uses. Whenever a zoning ordinance is first adopted, there is the problem about what to do with existing buildings that don't meet the new zoning rules and, similarly, the problem of what to do about uses of buildings or land that don't meet the new rules. These are termed nonconforming structures and nonconforming uses. For example, if a zoning ordinance required that residences be located at least 15 feet from the side yard property line and an existing home were located 10 feet from that line, this home would be a nonconforming structure. If, on the other hand, this same structure was, say, 15 feet from the side yard property line, but the structure was used for a business not permitted in a residential district, the use of the structure for the business would make it a nonconforming use. Over the long term, the zoning ordinance attempts to eliminate all nonconforming structures and nonconforming uses.



Mark Hinshaw

Section 5: Zoning Districts. The Oswego ordinance includes three broad classes of land-use districts: residential, business, and manufacturing. Each of these broad classes are further subdivided so that there are four residential districts, four business districts, and two manufacturing districts. The exact number of zoning districts is generally tied to the size and complexity of the community. The larger, more complex communities have many more and many different types of land uses and thus require very specialized zoning districts. In smaller towns and rural areas, there are typically fewer land uses and thus little need for highly specialized zoning districts. In Oswego, the four residential districts include a district for single-family homes on large lots, a district for single-family homes on smaller lots, a district for duplexes, and a district for town homes and apartments.

In the zoning text, each zoning district is organized around the following scheme. First, there is a statement of public purpose or intent that relates specifically to the district at hand as opposed to the communitywide goals identified in Section 1 above. The second segment includes a list of land uses that are permitted in the district and a list of land uses that may be permitted under special conditions. A land use that may be permitted under special circumstances is referred to as a "special use" or "conditional use." The third and last segment sets forth the rules that apply to each of the permitted uses or conditional uses that are provided for in that district.

These rules, discussed in greater detail in separate modules, require a minimum lot size, minimum yard sizes and minimum setbacks, maximum building heights, and minimum open space requirements. These rules also govern the minor land uses, called "accessory uses" that accompany the principal land use. A garden shed, for example, is an accessory use to a home in a residential district.

> *In your zoning ordinance, find the section on a residential district. Is there a statement of public purpose? What is it? Identify the permitted and special uses. What uses are prohibited? Describe, in general, the rules that apply to permitted uses. See if any additional rules apply to special uses in the district. (Exercise 9-4)*

Section 6: Off-Street Parking: Land uses vary considerably in terms of parking space requirements. The zoning ordinance establishes the minimum number of parking spaces, location, size, and layout for each of the permitted uses or special uses in the zoning ordinance. Typically, parking standards vary by the land use, so that when a use is permitted in more than one zoning district, the parking requirements remain the same.

Section 7: Signs: As with off-street parking, signs are also highly varied by type and size of land use. In this section of the ordinance, sign regulations are established for each of the land-use districts and often include restrictions on size, location, height, projection, lighting, and so forth.

> *Want to know why signs are difficult to regulate? Take just one land use, say an auto dealership, and write down all the various signs that are commonly found. Did you include the huge inflatable characters? Yes, those are signs, too. Now think about all the types of businesses there are. Think about multiplying all the types of business by the types of signs. (Exercise 9-5)*

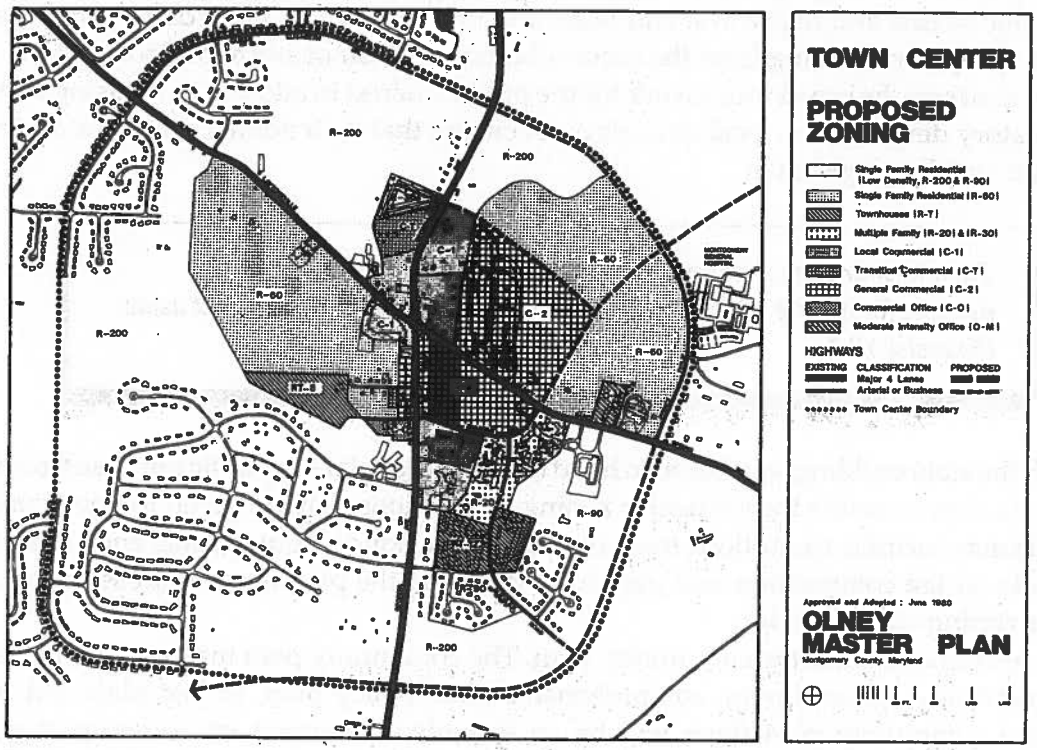
Section 8: Administration: This describes the zoning administration procedures, establishing the roles and responsibilities of planning commissioners, zoning board members, the zoning administrator, and elected officials. This is perhaps the single most important section of the zoning ordinance since it: (1) details the work or job of the key actors in the zoning process, (2) outlines the exact steps that must be taken in carrying out the work, and (3) clarifies the criteria that planning commissioners, zoning board members, zoning administrators, and elected officials must use in making zoning decisions.

We want to note that communities may have additional sections in the ordinance dealing with such subjects as landscaping, historic preservation, flood control, wetlands, view protection, overlay zones, and so on. Here, we deal with the basics.

> *Read the administrative section of your ordinance. Answer the following questions. How may one file for a zoning change? How much time does the planning commission have to review a zoning change? When is it appropriate for the applicant to file with the zoning board of appeal? (Exercise 9-6)*

So much for the basic outline of products and processes of zoning. The thing to remember is that the zoning ordinance and the zoning map are your working tools—so use them. Read, question, and write it down. Make notes in the text or on the map. Put a tab on the table of contents and on the index (if you have one and you should have one). Get to know the zoning text and the zoning map, and you are well on your way to making good, fair decisions. Isn't that what it's all about?

Maps depicting proposed zones help citizens and officials make informed decisions about the community's future.



Olney Master Plan, Summary Concepts, Montgomery County, Maryland

Module 10: How to Make Zoning Work

While the mechanics of zoning are straightforward, it is no simple matter to get zoning right. Yet there are three key documents that, if consistently followed, will help local officials to make good, fair decisions. These three documents establish the public purpose that officials must follow in making any zoning decision.

For local officials, the heart and soul of zoning decisions rests upon this elegant idea of the public purpose. So what is the public purpose? The public purpose includes those things that serve the public generally, increasing the quality of public health, protecting property rights, minimizing threats to public safety, and increasing the overall quality of community life. The public purpose does not include those things that increase the health, safety, or welfare interest of a few persons at the expense of the public at large. It is the larger, communitywide public that counts.

The public purpose (or public interest) is commonly established in three documents that you need to know (in detail) and need to have available at all times. The three documents are: (1) the *state enabling legislation* that sets forth the zoning powers of each community and also establishes the particular public purpose in doing so; (2) the *community plan*, reflecting the state enabling legislation and highlighting what the community is attempting to accomplish through its land-use plan and other plans; and (3) the *zoning text*, which should be anchored in both the state enabling legislation and the public purpose outlined in the community plan.

It is helpful to take an example from each of the three documents to show how each of them is centered in the basic idea of the public interest.

In Illinois, for example, the enabling legislation for county zoning defines the public interest as the promotion of "public health, safety, morals, comfort and general welfare, conserving the values of property throughout the county, lessening or avoiding congestion in the public streets and highways, and lessening or avoiding the hazards to persons and damage to property resulting from the accumulation or runoff of storm or flood waters . . ." This statement sets the broad framework for the public interest in adopting and using zoning as a regulatory device. Thus, local officials must ensure that their zoning decisions conform to the state enabling legislation.

> *Turn to your state enabling legislation. Find the statement of public purpose for zoning. Outline the key ideas in it, and make a list. Set it aside. (Exercise 10-1)*

With the state enabling legislation in hand (and in particular the public purpose from that legislation), now examine the particular zoning instructions that are given to you from the state. This may include exemptions from zoning, public notice requirements and schedules, and details on the composition and particular duties of the planning commission, zoning board, or zoning administrator.

The next document is the community plan. The community plan may go under a series of different titles—general plan, comprehensive plan, policy plan, or just plain old plan. Within the community plan there will be an extended statement on community goals,

objectives, or policies. These goals, objectives, or policies are statements of the public interest. Many of them will have direct relevance to zoning decisions.

> *Read the goals, objectives, and policies that are outlined in your comprehensive plan. As your read through them, place a check mark next to those that relate to zoning. Make a list and set it aside. (Exercise 10-2)*

The final definition of the public purpose or public interest is contained in the zoning text. Most commonly, the statements of public purpose or public interest are found in two locations in the zoning text. The first, a general statement of public interest, is located near the beginning of the ordinance. The second, a much more particular statement, is usually found as an introduction to each major section of the zoning ordinance. Of special importance is the statement of public interest that introduces each of the principal zoning districts.

> *Take your checklist from the state enabling legislation and take your checklist from the comprehensive plan. Attach them to some convenient place in the zoning ordinance. (Exercise 10-3)*

What you now have is an excellent set of guidelines to use in making zoning decisions. If, in the main, the proposal at hand meets the checklist of public purpose, should you go ahead and vote yes? Not quite yet, for there is still the practical matter of whether or not you are following your own rules.

Procedural Rules for Guiding Zoning Decisions

There are two main sets of rules that must be followed before reaching your decision. The first has to do with the process of zoning—was the application filed in time, was public notice (where required) given in time, was the public hearing (if necessary) held, were the proper steps followed? If the zoning process was correctly followed, there remains the other set of rules.

The other rules deal with the particular zoning question and typically involve one or more of four issues: (1) a change in the zoning map; (2) a change in the zoning text; (3) a variance to the zoning text; or, most commonly, (4) whether the proposed structure or land use meets the minimum standards of the zoning ordinance.

Changes in the zoning map or the zoning text (these are called amendments) are best considered by using your checklist of the public interest. Variances often call for a special set of rules detailed below. To judge whether or not the proposed structure or land use meets the minimum standards of the zoning ordinance, it is necessary to evaluate the proposed structure or land use against the detailed standards of the zoning district into which it falls.

If the proposal meets the public interest, or, if applicable, complies with the rules for variance, and meets the required minimum standards of the zoning district, vote yes. If not, vote no.

Keeping Current

Doing a great job with zoning, or planning for that matter, requires that you, in your role as a planning commissioner or zoning board member, keep up to date. Zoning should change with the time, and changes need to be made. So how do you keep up? Join the American Planning Association and read the magazine *Planning*. Attend planning conferences. Join your state planning association and go to their conferences. Call your colleagues and ask them about particular questions or specific issues.

Best of all, read and note. Read newspapers, magazines, journals, look at television news, check with friends and neighbors. Ask questions. Clip articles and pass them around.

Name three new land uses that should be covered in the zoning ordinance. Are they? How are they covered? What is your method for making the changes? Is a "gentlemen's club" opening near you? So what is a "gentlemen's club"? Some sort of stick? (Exercise 10-4)

Module 11: Special or Conditional Uses

Zoning districts are defined within the zoning text. In each of these districts, two broad classes of land uses are explicitly identified. One additional class is identified by omission. The two explicit land uses are: (1) those permitted by right in the district (no problem here provided the other zoning rules are met); and (2) those that may or may not be permitted depending upon the fit between the proposed land use and the place for which it is proposed. These second category land uses are called special or conditional uses, sometimes they are termed special exception uses. But it is all the same. For convenience, we shall use the term "special uses."

> *Special Uses: Check the zoning for, say, a commercial special use. Find it. Then think about the special use in a particular place. Write your questions. Imagine your answers. Let's see how you stack up. Look at the questions and see what you may have forgotten. (Exercise 11-1)*

Special Uses

So what's an example of a special use? The City of San Bernardino, California, has a zoning district that is called "residential suburban." It is designed for single-family detached homes on lots with a minimum size of 7,200 sq. ft. Single-family homes are, of course, a permitted use in this district. But there are special uses such as convalescent homes, day care facilities for seven or more children, commercial stables, and agricultural uses.

In San Bernardino, these are special uses because they may or may not belong in a specific neighborhood. Consider, for example, the special use "convalescent home." In the average subdivision, a large convalescent home on a small lot would likely lead to land-use conflicts due to increased traffic around the clock, late night/early morning emergency vehicle operation, and outdoor lighting. Such a use would not be appropriate. However, if the proposed convalescent home were located on a large estate carefully screened from its neighbors and with good access drives, the special use permit may be appropriate.

Most zoning districts have a list of special uses. Each of these special uses must be treated as a unique case. To do so requires the careful evaluation of the proposed use itself as well as the particular site under consideration. A special use that fits nicely into one neighborhood may be a disaster in the next. It all depends on the special use itself and the neighborhood.

Reviewing Special Uses

Here's a rule of thumb. If it looks like a frog, hops like a frog, and croaks like a frog, chances are you're looking at a frog. The same holds for special uses. If our convalescent home described above looks like a residential use and if it behaves as residential use does, then grant the special use. If not, don't. This holds true for all special uses. Consider what they are and where they will be. If they are close in appearance and activity to surrounding uses, treat them as you would a normal permitted use. If the appearance and activity are sufficiently different, either modify the proposal or reject the proposal.

While appearance is fairly easy to determine, the type and level of activity is more difficult. First, the special use must meet all of the zoning standards of the relevant district. If not, the applicant may choose to apply for a variance. Failing that, you need go no further—vote no.

Presuming the zoning standards have been met, the next stage is to use your checklist of public purpose. You will recall that your checklist is simply a list of statements taken from your state enabling legislation, comprehensive plan, and the public purpose of your zoning ordinance, especially the public purpose for the zoning district under consideration. Take the checklist and go down point by point, noting questions and comments. When applied, this list will give you a good look at the proposed special use. But recall, you must consider the special use in terms of its exact location and its relationship to surrounding land uses. Remember the frog rule!

The final stage includes two basic ideas: (1) Construct a mental profile of the zoning district and the specific location of the proposed special use; and (2) Develop specific knowledge of the proposed special use and determine exactly how it will perform. To construct a mental profile of the zoning district, consider such items in a special use checklist:

A Checklist for Special Uses

Looking for Unintended Consequences

Traffic: Consider type of traffic (auto, bus, truck, tractor, motorbike) plus an estimate of the average daily traffic for similar use. (Ask your planner for data from the Institute of Traffic Engineers).

Streets: Identify principal adjacent streets and ensure adequate access to and from the site.

Lighting: Type, intensity, direction, timing.

Noise: Levels by day and night.

Signs: Types and size and location.

Maintenance: Time of day or night as well as vehicles involved and worker activity. (Try living behind any popular fast food emporium and listen at 2:00 a.m. to maintenance workers' boom boxes. Then, as the radio sounds fade, listen to the garbage trucks empty the dumpsters.)

Reinforcement: Land uses attract related land uses—gas stations attract car washes, which, in turn, attract auto supply, which, in turn, attract. . . Is this a pattern that you want to introduce?

Vibration: Big machines or controlled explosions shake things—a quarry may be 2,000 feet from a home, but the home may rock with the explosions.

Parking: While the zoning ordinance generally has a special section dealing with parking, look for the typical characteristic of the neighborhood. At night, for example, cars may shine lights through front rooms of homes—no problem, unless, of course, there are dozens of them. Not typical for a subdivision.

Safety: Ask the police. What about kids, seniors, and the disabled? Does the special use invite public safety problems?

Appearance: Does the special use fit the neighborhood? Look to the building, grounds, parking, lighting, and so on.

Volume: Check out solid waste, number of customers/visitors, autos/trucks.

Pollution: All sorts, air, land, or water, surface water, or subsurface water.

Let's see how you did. Go through the checklist and compare your earlier work with it. Did you consider all the factors? Which ones? List them. Then draw up a list of things that you did not consider. Do you see the importance of checklists? Very few people can keep all of these things in mind, so use the checklist. (Exercise 11-2)

To develop specific knowledge of the proposed special use and to understand exactly how it will perform, there are four main sources of information.

First, ask the planner. Based on both experience and research, the planner will help develop the profile of the special use. Second, the American Planning Association offers a subscription Planning Advisory Service. Have your agency join and ask for a written report on the subject. Third, and most important, specific knowledge comes from those who know it best—the applicants. Ask them to address the questions posed in the checklist above. Finally, listen carefully to questions asked at the hearing. Residents will surprise you. They will think of things that you'll find amazing, questions that often will go to the heart of the issue.

So now you have been through the entire process. To evaluate special uses, do the following: (1) apply the frog rule, (2) do your checklist, (3) construct a mental profile of the neighborhood, (4) ask the applicant, and (5) listen to the neighbors. Then compare all these factors. At that point, you'll have the idea and a good decision to boot.

MODULE 12: REZONING

When a zoning map is changed, we call it a rezoning or a map amendment. But changing a zoning map is loaded with consequence. Let's take a common case of changing an agricultural district area into a residential district. What are the consequences?

First, let's return to issues related to agricultural districts and their uses. Modern agriculture is basically a heavy industrial use. In contrast, the residents of a suburban residential district expect peace and quiet and the amenities of a residential environment. Clearly, the stage is set for a major conflict. The basic conflict is this: agricultural and suburban land uses don't mix.

In Richland County, South Carolina, some residents in a district zoned for agricultural and other rural uses are trying to exclude poultry farms. The Columbia *State-Record* reports that a poultry farm proposal to raise 28,000 chickens on 15 acres has generated opposition to prevent "rural communities (from being) dumped on by commercial animal and poultry producers." One resident even claimed, "The agricultural use is killing people." Now recall that this is a district in which agricultural uses are permitted. Imagine if this agricultural use abutted a residential district. Thus, changes to the zoning map are not easy, and careful consideration must be given before reaching a decision. As with most zoning decisions, key information is discovered only when one knows how to ask the right questions. So what are the right questions to ask? Here are some suggestions.

1. Is the proposed rezoning consistent with the comprehensive plan and its land-use plan map? If not, consider amending the comprehensive plan and land-use map before making any change in the zoning map. If the rezoning is consistent, proceed.

2. Any rezoning will involve other zoning districts. Identify all abutting zoning districts and ask yourself if the proposed rezoned area is generally compatible with surrounding districts. A useful technique here is to compare lists of the permitted and special uses in each district.

3. Often an applicant will seek a specific map amendment for the purpose of operating one specific type of business. Be careful. When you approve a rezoning you are approving *any* of the permitted uses for that district, and you are opening the door for any of the special uses for that district. It is poor practice to approve a rezoning for the purpose of allowing a particular permitted use unless one is fully prepared to accept any of the permitted or special uses for that newly rezoned area.

4. While land use generally changes slowly over time, land uses do change, and rezoning is a fact of planning life. There are new technologies, shifting lifestyles, and long-term economic forces that lead to changes of the zoning map. Old central city industrial areas, long abandoned, are converted into lofts for residences. Gasoline stations are half gas-half supermarket. The density of residential neighborhoods increases, and some homes fronting major thoroughfares convert to business uses. These changes are planning matters first, zoning second. In considering a rezoning, ask yourself whether this application represents a substantive shift in land-use planning. If there have been several such applications, it is likely that the matter needs to be considered first in the context of the comprehensive plan.

MODULE 13: VARIANCES

A variance (in some states called a "variation") is a minor exception to the zoning rules that, if granted by proper authority, allows an applicant to do what could not otherwise be legally done. The key phrase is *minor exception*.

Typical zoning rules are spelled out so that an applicant either meets the zoning rules or does not. A lot either meets the minimum lot size specified in the zoning ordinance or it does not. A building height is either at or below the maximum zoning height or it is not.

Variances, or minor exceptions to the zoning rules, are designed to deal with the myriad cases in which some proposal nearly or just about meets the zoning rules, but not quite. Obviously, it would be unreasonable, in most cases, to reject a zoning application featuring, say, a lot size of 8,499 sq. ft. in a zone requiring a minimum lot size of 8,500 sq. ft. The variance process allows you to grant minor relief from strict zoning standards under specific conditions.

Evaluating Variances

There are two principal sources of information in evaluating variances—state enabling legislation and the zoning ordinance. These documents will typically spell out both the process that must be used in treating variances and the standards that must be used in evaluating variances. The process used in treating variances is usually spelled out in great detail and must be followed to the letter.

The standards for evaluating variances are also spelled out, but they often leave considerable room for interpretation. Various court cases within a state may clarify some of the unsettled territory, but you and the zoning staff are left with a fair amount of discretion. Since the substance of the normal variance application is usually close to meeting zoning standards, the question becomes, how close is it to meeting those standards?

> *Prepare a variance checklist. Make a list of the standards used in evaluating variances in your state enabling legislation. To that list, add the variance standards contained in your zoning ordinance. Last, ask your planner or attorney to provide additional standards from court cases in your state. (Exercise 13-1)*

What are some typical standards and things to consider? While there are differences between states, the overriding theme is this: variances may be granted only for minor changes to zoning standards. The word "minor" means small, almost trivial, changes to the zoning standards. Thus, variances should not be given to "uses" within districts—that is, if some use is not a permitted or special use in a zoning district, then the variance procedure should not be used to allow a use that would otherwise be prohibited. Such variances are not minor, they are major. In addition to this theme of minor changes, there are other common considerations.

- Unique: The hardship caused by zoning standards is unique to the property and is not shared by neighbors and other similar properties.
- Effect: The effect of the zoning standards is to deny a property owner reasonable use of the property.

- Self-imposed: The applicant did not bring the burden upon himself or herself through some action, but instead had the burden imposed upon them.
- Consequence: The variance should not cause any land use or parcel of land to become nonconforming, nor should it be used to allow a nonconforming land use or parcel to continue.

In addition to these common considerations, local officials should also consider whether the applicant has shown that:

1. The variance would comply with the statement of public purpose or intent for the zoning ordinance generally and the zoning district under consideration specifically.
2. The variance will not harm nearby properties.
3. The variance will not harm people associated with nearby properties.
4. The variance will not change the character of the nearby area.
5. The variance is the minimum necessary to permit reasonable use of the property.

Consider the variance request of a famous New York Yankee, Don Mattingly. Mattingly asked for a variance to build a fence around his property in order to protect the privacy of his family and to increase their safety. From your variance checklist or the item identified above, try and identify important factors and reach a judgment. (Answer is provided at the end of this module.) (Exercise 13-2)

Notes on Procedure

You may hear the term *quasi-judicial* to describe the procedure taken in dealing with variances. This term merely means that the variance process is treated somewhat like a regular trial in court. There are, of course, precise rules on how such trials are to be conducted. So, too, there are rules on how a variance procedure is to be conducted.

These rules will vary from place to place according to state enabling legislation and court rulings. The city attorney of Tempe, Arizona, recently advised city council members and members of the board of adjustment that they may no longer hear or read any comments on any proposed variance except in public hearing. Think of the practical implications: no conversation between planners and officials, no reading of reports or letters, no talking to citizens except in public hearing.

The *Arizona Republic/Phoenix Gazette* further reports that the city attorney also concluded (from two Arizona appellate court decisions) that the city council may not hear new arguments when considering a decision by the board of adjustment, but must limit themselves to a review of the hearing record of the board of adjustment or, perhaps, summaries of that record. Further, the attorney concludes that the city council may reverse the board of adjustment only if the council concludes that the board of adjustment erred in reaching its decision. Obviously, this will make it increasingly difficult for the city council to overturn the board of adjustment's decision. This provides some insight into the notion of quasi-judicial and how important process is.

Because the variance process involves a quasi-judicial setting, there are general procedural rules that must be considered. The first of these is to follow the variance procedures outlined in the zoning ordinance precisely. If, for example, your variance procedures require at least 15 days notice of a public hearing, it means at least 15 days, not 14, 10, or 12 days. Similarly, if the procedure requires such public notice to be published in a general circulation newspaper for the area involved, that's what it means, and neighborhood fliers just won't do. The quickest way for a judge to reverse a variance decision or to cause the process to be repeated is a finding that you have violated your own rules of procedure.

During the hearing process a second consideration is that the burden is on the applicant to show why the application meets the standards for variances. The burden is not on the local government, and if the applicant cannot demonstrate that the standards are met, the variance should be denied.

Third, regardless of the opinions of people present at the variance public hearing, the attention of decision makers must remain focused on the standards governing variances and upon the testimony as it relates to those standards. Note that the standards say nothing about the attitudes or feelings of concerned citizens. Thus, petitions for or against some application are merely expressions of opinion and should be considered as such.

Fourth, separating fact from opinion is sometimes a real challenge, and so is separating opinion from expert opinion. Expert opinion is grounded in education and experience and in the application of that education and experience to the case at hand. Without study of the problem, expert opinion is of little value. Further, expert opinion should be limited to those few topics that a person is expert in.

Finally, prepare a detailed report on both the testimony and your conclusions. This report is often termed "findings of fact." The findings represent the case history of the hearing and the work of local officials. Such a finding should explicitly identify:

1. All documents and exhibits.
2. List of all standards in the zoning ordinance plus the facts and relevant testimony related to each of the standards.
3. The evidence for each of the standards and a conclusion by virtue of the weight of the evidence for each standard.
4. Findings of fact, beginning with the application and the identification of the various parties of interest, a list of all documents/exhibits, and descriptions of the property and surrounding land uses plus zoning. Read through the document standard by standard and identify relevant facts for each and then for the conclusion. Write out your principal conclusion plus any conditions (if applicable). Then prepare findings in final form for approval and distribution.

No doubt about it. Variances are rarely an easy matter. The quasi-judicial setting makes it even more difficult. You must stick by the rules and standards. Every effort should be made to avoid contact with interested parties outside of the hearing itself. The standards call for judgement and discretion, a weighing of evidence, as well as an evaluation of the quality of the evidence. Then it's a matter of writing it all up so that the judgment makes sense. Thus all it takes is the wisdom of Solomon coupled with the simple and clear, yet elegant, writing of E.B. White. Who said zoning was easy?

And on the Mattingly case . . . the fence was approved.

Module 14: Nonconforming Uses and Lots

Zoning ordinances are adopted to bring order, stability, and predictability to land uses within a community. This doesn't happen overnight because new zoning rarely, if ever, starts with a clean slate—some development preceded it. This means that as soon as the ordinance is adopted, the problem of nonconformance—legal nonconformance—exists.

Nonconformance may even be created when a community rezones from one district to another. In either case, the new zoning creates nonconformances because something preexisting does not comply with new limitations on use (e.g. residential only) or dimensions (e.g. minimum lot size or width).

This nonconformity occurs in two major ways—first, a "use" nonconformity occurs when someone is using the land for a purpose that is not permitted in the relevant zoning district. For example, in a newly zoned residential area, there may be a barber shop or diner, neither of which is permitted in a residential district. Thus the barber shop or diner would be a nonconforming use. Indeed, any use that is not permitted in the district by right or a special/conditional use is a nonconforming use. If the use is otherwise legal (i.e. not violating some other law), it is a legal nonconforming use.

In the same residential district, there are two homes on lots that have 30-foot front yards instead of the 40 feet required for the zoning district. These two lots are nonconforming. Each parcel in our community must meet all of the zoning standards governing such things as lot size, lot width, lot depth, and setbacks, or the lot becomes legally nonconforming. So we have two basic types of nonconformance: nonconforming uses and nonconforming lots.

Since the whole idea of zoning is to ensure compatibility between uses grouped by zoning district and to provide minimum standards for every lot within a district, every zoning ordinance contains provisions to decrease nonconforming land uses and lots. But they remain a knotty problem.

Here's why. At the instant a zoning ordinance is first adopted, some land uses and some lots are bound to be legally nonconforming. As amendments to the zoning text and map are made, other land uses and lots also become legally nonconforming. Because land uses, structures, and the lots occupied change slowly over time, legal nonconformance is an ongoing trouble spot.

> *The Akron Beacon Journal reported that a new immigrant, who was unfamiliar with the zoning ordinance, was charged with zoning violations for operating a slaughterhouse in downtown Canton, Ohio. Is this a nonconforming use? Would it be treated in the ordinance as any other nonconforming use? (Answer comes later.) (Exercise 14-1)*

What's to be done about these legally nonconforming uses and lots? Here are the basic principles underlying their treatment.

Rule 1: Don't let them expand.

Rule 2: Help them contract.

Rule 3: Avoid deterioration by encouraging maintenance and repair.

Rule 4: No stops and starts.

We'll treat three of these rules in additional detail.

No Expansion

A nonconforming use may be expanded in terms of the intensity of the use and/or in terms of extending the structure for the nonconforming use. Consider the case of a legal nonconforming physician's office in a residential area. An expansion could occur either by hiring additional employees, increasing patient traffic, or other means that would increase the intensity of the nonconforming use. An expansion could also occur if the building itself were expanded for medical purposes. Zoning ordinances commonly prohibit any expansion of the use itself or that part of the structure that is devoted to the legal nonconforming use. (Some communities may permit a very limited expansion through a variance process.)

Help Them Contract

There are several conditions to consider here. The contraction of a nonconforming use or lot can occur in a series of ways. First, the intensity of the nonconforming use or the extent of lot violation of the zoning rules may be diminished. Such events are to be encouraged. Second, one must consider a continuum of nonconformance:

Let's say that we have a nonconforming use that is wildly out of place given the zoning district and the zoning rules. How about a legally nonconforming auto repair shop in a quiet residential district? Such a use would occupy point A on our continuum. Over time, the auto repair shop changes to, say, a video store, which, while nonconforming, is less of a neighborhood problem than the auto shop (Point B). Finally, the video store is replaced by an insurance agent's office (still nonconforming), which is far more compatible with the neighborhood than either the auto repair shop or the video store and thus occupies point C. Clearly, in moving from A to B to C we have lessened the extent of nonconformance and achieved greater compatibility with existing residential uses. Zoning ordinances commonly provide for such a transfer to occur in spite of the fact the use or lot remains nonconforming.

No Stops and Starts

Sometimes, for whatever reason, legal nonconforming uses cease to exist. When such uses are discontinued for any extensive period, most zoning ordinances require conforming uses thereafter. The typical time covered ranges from six to 12 months—that is, if a nonconforming use is discontinued for six months, only conforming uses will be allowed in the future.

A related situation occurs when the structure is damaged or partially destroyed. If the damage involves 50 percent or more of its market value at the time of the partial destruction, the nonconforming use may not be replaced. Any new use or building must conform to the rules of the relevant zoning district.

The operator of a small, legally nonconforming saw mill operator proposes to diminish noise by enclosing his operation and building higher noise barriers—increasing nonconformity but decreasing neighborhood pollution. Check the nonconformance section of your zoning ordinance and come to a conclusion. (Exercise 14-2)

While this module features legal nonconforming uses and lots, there are other types of nonconformance—signs and accessory uses are common ones. Because these are typically inexpensive to correct, most zoning ordinances require that they be eliminated or phased out over some brief period of time.

Although zoning rules on nonconformance are fairly clear, the application is more complex. Determining when a nonconforming use is diminished, as you did in the exercise above, is no easy matter. Neither is the common trade-off between stopping a nonconforming use and thereby causing the buildings and grounds to deteriorate. Nonconforming uses and lots are difficult regulatory territory.

Now, back to our immigrant slaughterhouse. It's a nonconforming use all right, but it's not a *legal* nonconforming use. It's a simple zoning violation. Remember, for a legal nonconforming situation to occur, the use or lot must be nonconforming and legal at the time the zoning ordinance was first adopted or later amended. Anything else is a zoning violation.

MODULE 15: HEIGHT AND BULK REGULATION

While the nature of zoning has evolved over time, one prominent fixture of zoning that has undergone little change is the regulation of height and bulk. Height simply deals with the heights of structures that are permitted on a parcel. Bulk is a clumsy term that deals with the relationship between buildings on a parcel and the size of the parcel itself.

Height

Why regulate the heights of buildings? What difference does it make if an apartment house is 32, 36, or 54 feet from top to bottom? Well, it's fairly simple. First, any building casts a shadow. And the shadow it casts determines whether or not adjoining or nearby buildings get sunlight. The idea that all buildings should have access to sunlight (or moonlight) rests in the notion that people should have solar access in and around their buildings.

A more practical reason, however, is immediately clear. There are height limits on buildings because fire ladders go only so far. If the building is 39 feet and the fire ladder stretches to 32 feet, the difference between living and dying is 7 feet.

More recently, building heights have been examined in the context of solar power. Height is limited to preserve solar access and to capture solar radiation for heating, cooling, and lighting buildings. This, of course, involves not simply the height of buildings, but also their orientation and latitude.

Finally, the height of buildings is related to wind tunnel effects. Tall buildings, coupled with prevailing winds and adjoining structures, produce some strange wind currents. Just try walking on a windy day from an open area into any large structure (regardless of height) and you will note the effect. Wind patterns change dramatically as one approaches the building, from areas of calm to a real vortex. The taller the building, the greater the effect.

> *Do you know your height limitations? For each zoning district? Write them out by zoning district. Then, ask the planner why the height limits are what they are. Also, review the definition—what is included in the term "height"? Living space? TV antenna? (Exercise 15-1)*

But it isn't just the height of buildings. Zoning ordinances commonly deal with other questions of height—fences, accessory use buildings, and signs. These are typically outlined in separate sections of the ordinance and are not detailed here.

Bulk

There are common zoning standards that define bulk regulation. These standards have everything to do with the size of the main structure compared to the lot on which it rests. The oldest regulations deal with the question of setbacks and yards.

Setbacks and Yards

What's a setback? That's the distance, practically speaking, between the wall of your house and your property line. This may be the front wall, side wall, or rear wall of your house and

so there are setbacks for the front, rear, and side yards. Similarly, setbacks are also established for commercial, industrial, or agricultural uses, but the principle is the same—the distance between your wall and the property line (See Figure 1).

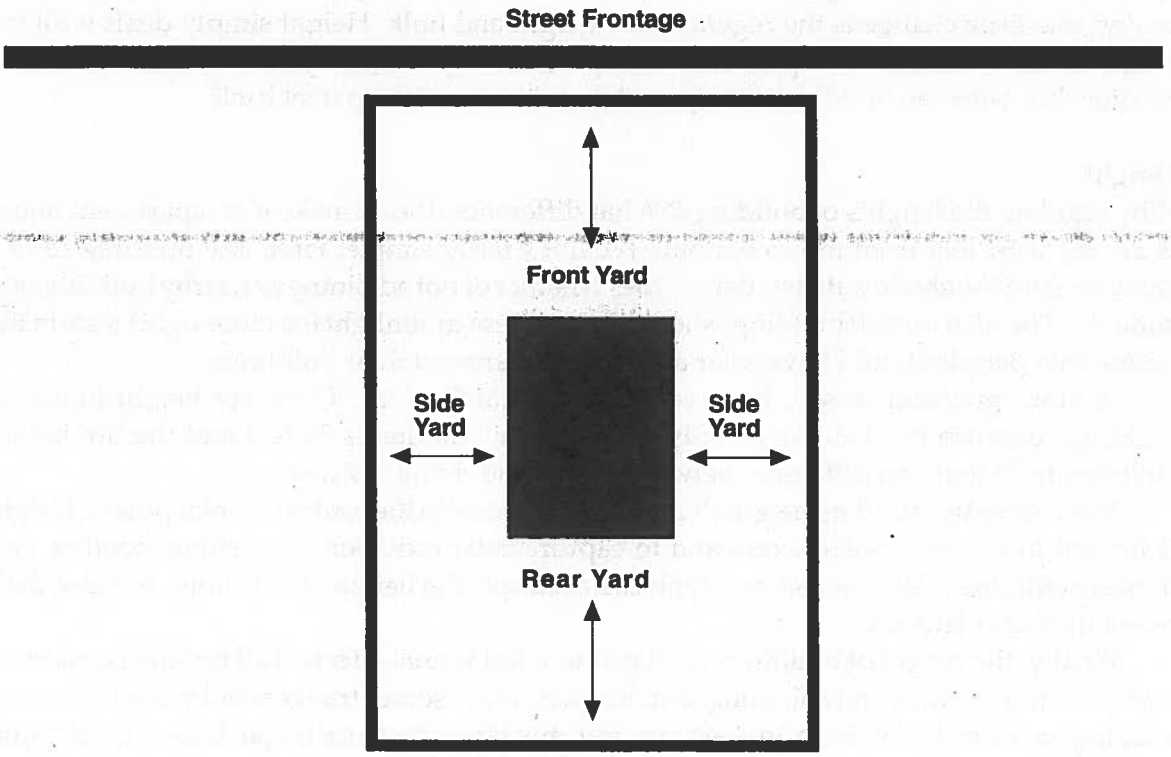


FIGURE 1. SETBACKS ARE YARDS

Now let's add one more detail. If the space between a wall of the main structure and the property line is open, free, and clear, we have a yard—front yard, side yard, and rear yard. (Sometimes the word yard is used instead of setback, but they typically mean the same thing.)

TABLE 1: POTTAWATTAMIE COUNTY, IOWA, SETBACK REQUIREMENTS (BY FEET) IN THREE ZONING DISTRICTS

Zoning District	Front	Rear	Side	Abutment* Highway
Suburban Residential	50	50	25	75
Urban Residential	25	10	25	50
Highway Commercial	25	25-50**	25-50**	25

*If a side of a lot abuts a highway, the setback is increased.

**If a commercial district abuts a residential district, the setback is also increased to 50 feet. Otherwise the setback is 25 feet in rear and side for lots in the highway commercial district.

Here's an example from Pottawattamie County, Iowa. A setback is defined as "The required minimum horizontal distance between the front, rear, or side lines of the lot, and the front, rear, or side lines of the building. . . . Setbacks may also be referred to as required yard." The exact length of the setback varies by zoning district.

As should be evident from Pottawattamie County, setback lengths increase in suburban and rural districts, and

decrease in urban zoning districts. Setbacks are also used here to minimize friction between districts by requiring larger setbacks when a commercial lot abuts a residentially zoned district.

What planners have learned about setbacks and yards is simple: If good fences make good neighbors, good setbacks make even better neighbors. But in addition to this bit of obvious common sense, setbacks also ensure:

1. Sunlight: Houses that are side-by-side with little setback effectively cut off solar radiation, leaving one or more walls in permanent shadow.
2. Access: It helps to be able to walk around a house or business with ease. Setbacks can provide easy and convenient access.
3. Maintenance: If you can't get to it, you can't fix it. Setbacks provide the space.
4. Open Space: Setbacks and the yards they provide generate a sense of open space.
5. Privacy: Setbacks between adjoining buildings provide a sense of privacy. You also avoid the window-to-window effect: looking out your window right into the window of another building.
6. Line of Sight: Setbacks provide a clear line of sight not only to streets but to back yards.
7. Buffers: Setbacks are used to minimize land-use conflicts in at least four areas: When commercial or industrial uses abut a residential district, setbacks are increased to separate the uses. When residential districts abut agricultural districts, setbacks are increased. When any lot abuts a street that is planned for enlargement, the setback is increased. When any lot abuts another that is scheduled for public use, the setback is increased.

> *Review your setback/yard requirements for your zoning districts. Given items 1 through 7 above, do you see any problems with them? (Exercise 15-2)*

Setbacks are established for good cause. Yet if every single land use conforms exactly to the minimum setback requirement, things get boring very quickly. As an example, if every house in a large subdivision is exactly 25 feet from the street, the subdivision takes on the regular pattern of a checkerboard. Many communities are varying setback requirements such that the *average* setback remains as established, say, for the block, but that individual buildings along the street may vary by five or so feet. (See Figure 2, next page.) Such variation creates a more interesting landscape and establishes unique neighborhood features.

Finally, go back to the basic principle. Good setbacks make good neighbors, and as the potential for land-use conflict increases, so too should setbacks. Check your ordinance again. Does it follow this principle?

Lot Coverage

Lot coverage standards are a relatively common feature in many zoning ordinances, but the idea called Floor Area Ratio (FAR) is in newer ordinances. It is total floor area of a building divided by the total area of the lot. Both floor area and total area of the lot are expressed in square feet.

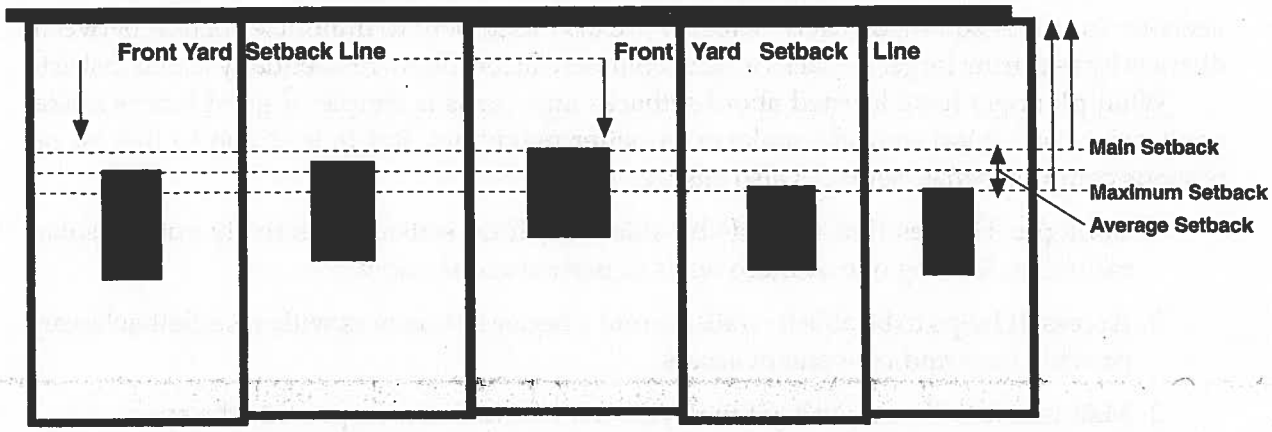


FIGURE 2: VARYING THE PLACEMENT OF BUILDINGS ON FRONT YARD SETBACK LINES MAKES FOR AN INTERESTING SETTING

What FAR provides is an index of the intensity of the proposed development. Thus any one FAR may be compared to any other FAR. Further, communities set FAR standards within zoning districts so that land uses within the district must fall below FAR standards and so that development intensity is consistent throughout the district.

Take an example. A 2,500 sq. ft. convenience store is proposed for a 10,000 sq. ft. lot. Divide 2,500 sq. ft. by 10,000 sq. ft. for a Floor Area Ratio of 0.25. A high rise would have an FAR several times greater since it has a much larger floor area divided by a relatively small lot.

> *Planner's Trivia: What is the FAR of the Sears Tower? There are 3,943,125 sq. ft. of floor space in the tower. The lot on which the tower is built contains 128,934 sq. ft. So go figure! (Exercise 15-3)*

The Village of Frankfort, Illinois, provides FAR maximums for residential, commercial, and industrial districts.

It's evident that Frankfort allows its highest intensity use in the General Industrial district. A FAR of 1.5 means that for every 1 sq. ft. of lot area, a builder may have 1.5 sq. ft. of floor area. Given additional zoning standards requiring space for parking, access drives, loading, and front, side, and rear yards, it is evident that the building will go up rather than spread out across the lot. In practice, this may work out to be a three-story structure.

TABLE 2: FLOOR AREA RATIOS IN THE VILLAGE OF FRANKFORT, ILLINOIS

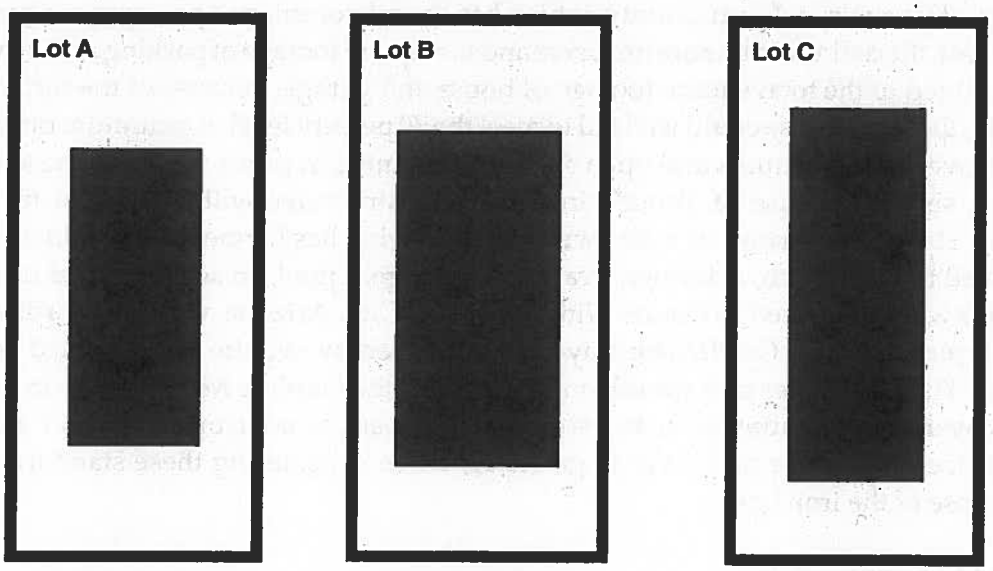
Zoning Districts	FAR Maximums
Commercial	1.2
Industrial	
Limited	0.6
General	1.5
Multifamily	0.3

At the other extreme, the FAR maximum for the multifamily district is 0.3. So for every 1 sq. ft. of lot area, there may be 0.3 sq. ft. of floor area. Keep in mind that just as in the general industrial district, there are also yard, parking, and access requirements.

Check your zoning definition of lot coverage or open space. Describe what is included and what is not included. (Exercise 15-4)

Figure 3 shows the relationship between lot size and floor area and the resultant FAR. Once the FAR is established, you then compare it to the maximum permissible FAR for the relevant zoning district.

FIGURE 3. FLOOR AREA RATIOS



Lot A	Lot B	Lot C
Floor: 5,000 sq.ft.	Floor: 6,000 sq.ft.	Floor: 7,000 sq.ft.
Lot: 10,000 sq.ft.	Lot: 10,000 sq.ft.	Lot: 10,000 sq.ft.
F.A.R.= 0.50	F.A.R.= 0.6	F.A.R.= 0.7
Coverage = 50%	Coverage = 60%	Coverage = 70%

In using FAR, the definition of both floor area and lot size is important. Floor area often includes all living and/or working space plus space devoted to accessory uses, enclosed porches, attics (provided sufficient headroom is available), and floor space used for mechanical or electrical equipment.

While FAR sets the overall level of land-use intensity, the ratio by itself would not guarantee anything except the required FAR maximum.

Maximums in Lot Cover

Lot coverage maximums, also referred to as the "footprint" of the building, set a maximum percentage of the lot area that may be covered by buildings. For example, a lot coverage maximum at 0.25 for a residential district would mean that the building could cover no more than 25 percent of the lot. As with FAR, lot coverage maximums generally increase as one moves from residential to commercial to industrial districts.

Another way to achieve a similar result is through open space minimums, where some fraction of every lot must remain in open space. Thus the flip side of a lot coverage maximum

of 0.25 or 25 percent is an open space minimum of 0.75 or 75 percent. Both open space minimums and lot coverage maximums are intended to set limits on the space occupied by buildings on any one lot. They also are designed to maintain consistent levels of open space or lot coverage throughout any one zoning district.

Once more definitions are important. Routt County, Wyoming, using open space minimums, defines open space as "Land . . . that is not covered by streets, parking, driveways, or structures." An alternative definition of lot coverage, taken from Woodstock, Illinois, is the area of the zoning lot occupied by the principal building and accessory structures. These definitions are considerably different and deserve a closer look.

Take this case. A residentially zoned lot has 10,000 sq. ft. The proposed house and garage take up 1,500 sq. ft. Under the Woodstock definition for an R-1 residential district, the house and garage would occupy 15 percent of the lot, well under the 30 percent lot coverage maximum. However, in Routt County, which has the mirror image open space requirement of 70 percent, the definition is more inclusive and the square footage of parking and driveways must be added to the total square footage of house and garage. Because of the difference in definition, the same house could well fail to meet the 70 percent level of minimum open space.

Lot coverage maximums and open space minimums can prove troublesome to enforce over time simply because of Toner's iron law: All structures will expand to fill the lot provided. Think for a second of your own home and what has happened over time—a patio here, a shed there, a porch, a dormer, a carport, a garage, a pool, an addition, and on and on.

That's what happened to Donna Winslow in Sun City, Arizona, where, according to the *Arizona Republic/Phoenix Gazette*, she may be forced to remove a patio cover erected nearly 20 years ago. The patio cover plus the other structures on the lot place Ms. Winslow in violation of a lot coverage maximum set at 40 percent. If the board of adjustment doesn't give her a variance, the patio cover may have to go. Thus, when considering these standards, add a healthy dose of the iron law.

A Good Question

If, like the authors, you have a bit of trouble understanding why one would need both FAR and lot coverage/open space requirements, there is a simple explanation—sort of. All a lot coverage standard does is to tell you what percentage of a lot may be covered by a building. It does not tell you how tall the building might be. FAR, on the contrary, gives you a good indication of the density of the building and thus a decent understanding of its height. So far, so good. Now, that being the case, why would an ordinance contain both height limits and FAR? Or, why height limits, lot coverage, and FAR?

What to make of all this? Zoning ordinances have been around for the better part of 70 years. In that time, the zoning ordinances are copied, amended, and copied anew. They move from community to community. In the process, zoning standards are copied and amended. Over time, the public purpose is muddied and then lost. So here's the point—Be able to explain the public interest in each of the standards of your zoning ordinance. If you can't explain it, you might want to ask why it's needed.

TRAINER'S GUIDE
CHAPTER 3: ZONING

Education Goals

- Acquaint the learners with the purpose, framework, and process of zoning.
- Relate the learners' general knowledge to the specifics of zoning ordinances and implementation in his or her community.
- Prepare the learners to understand their roles in the zoning process.

Materials Needed (*one for each learner*)

- Community's zoning ordinance or text
- Community's zoning map (if separate document from ordinance)
- State enabling statutes or summary of statutes
- Community plan
- Copies of additional variance standards decided in state court
- Zoning case studies (*optional*)

Time Needed for Exercises
Approximately 10 minutes per exercise

Teaching Method
These exercises are geared more toward reading the supplementary materials and open discussion. It is still useful to have the learners make notes on their exercise worksheets. To help make the learning more involving, prepare some case studies or exercises from the local community. Read the local newspaper to get information and ideas, or visit the local zoning administrator and ask for assistance.

Exercise: Module 9

Zoning Map

9-1. Examine your zoning map.

- Write down the number of districts that you see.

- Now see if you can spot a zoning district that appears to be out of place—one that may put conflicting land uses side by side. This may be a source of trouble.

Zoning Text

9-2. Look at your zoning text.

- Find the statement of public purpose or public intent.

- Is it clear and specific?

- Easily understood?

9-3. Now turn to definitions. Find the word "lot." Note the many variations. The word "lot" is obviously an important one and needs precise definition. Any idea why?

9-4. In your zoning ordinance, find the section on a residential district.

- Is there a statement of public purpose?

- What is it?

- Identify the permitted and special uses.

- What uses are prohibited?

- Describe, in general, the rules that apply to permitted or special uses.

9-5. Want to know why signs are difficult to regulate? Take just one land use, let's say an auto dealership, and write down all the various signs that are commonly found.

- Did you include the huge inflatable characters? Yes, those are signs, too.

- Now think of all the types of business there are. Multiply that number by the number of business uses alone. Get the idea?

9-6. Read the administrative section of your ordinance. Answer the following questions.

- How may one file for a zoning change?

- How much time does the planning commission have to review a zoning change?

- When is it appropriate for the applicant to file with the zoning board of appeal?

EXERCISE: MODULE 10

How to Make Zoning Work

10-1. Go to your state enabling legislation. Find the statement of public purpose for zoning. Outline the key ideas in it, and make a list below. Take it out of the binder and set it aside.

10-2. Read the goals, objectives, and po]licies that are identified in your comprehensive plan. As you read them, place a check mark by those that relate to zoning. Make a list below. Take this sheet out of the binder and set it aside.

10-3. Take your checklist from the state enabling legislation and your checklist from the comprehensive plan. Attach them to some convenient place in the zoning ordinance (preferably in this binder).

Keeping Current

10-4. Name three new land uses that should be covered in the zoning ordinance.

a.

b.

c.

- Are they?
- How are they covered?
- What is your method for making the changes?
- Is a "gentlemen's club" opening near you?
- So what is a "gentlemen's club"? Some sort of stick?

EXERCISE: MODULE 11

Special or Conditional Uses

11-1. Special Uses: Check the zoning for, say, a commercial special use. Find it. Then think about the special use in a particular place.

- Write your questions.

- Imagine your answers. Let's see how you stack up.

- Look at the questions in this module section and see what you may have forgotten.

11-2. Go through the checklist and compare your earlier work with it. Did you consider all the factors? Which ones? List them.

- Next, draw a list of things that you did not consider.

- Do you see the importance of checklists? Very few people keep all of these things in mind, so use the checklist.

EXERCISE: MODULE 13

Variances

13-1. Prepare a variance checklist.

- Make a list of the standards used in evaluating variances in your state enabling legislation.

- To that list, add the variance standards contained in your zoning ordinance.

- Last, ask your planner or attorney to provide additional standards from court cases in your state. Put these into your binder.

13-2. Consider the variance request of a famous New York Yankee, Don Mattingly. Mattingly asked for a variance to build a fence around his property in order to protect the privacy of his family and to increase the family's safety. From your variance checklist or the checklist items identified in this module, try and identify important factors and reach a judgment. (Answer provided at the end of the module text.)

EXERCISE: MODULE 14

Nonconforming Uses and Lots

14-1. The *Akron Beacon Journal* reported that a new immigrant, who was unfamiliar with the zoning ordinance, was charged with zoning violations for operating a slaughterhouse in downtown Canton, Ohio.

- Is this a nonconforming use?

- Would it be treated in the ordinance as any other nonconforming use? (Answer in the text)

No Stops and Starts

14-2. The operator of a small, legally nonconforming saw mill proposes to diminish noise by enclosing his operation and building higher noise barriers—increasing nonconformity but decreasing neighborhood pollution. Check the nonconformance section of your zoning ordinance and come to a conclusion. What is it?

EXERCISE: MODULE 15

Height and Bulk Regulations

15-1. Do you know your height limitations? For each zoning district? Write them out by zoning district.

- Next, ask the planner why the height limits are what they are.

- Also, review the definition—what's included in the term "height"?

- Living space?

- TV an tenna?

Setbacks and Yards

15-2. Review your setback/yard requirements for your zoning districts. Given items 1 through 7 in the module text, do you see any problems with them?

Lot Coverage

15-3. Planner's Trivia: What is the FAR of the Sears Tower? There are 3,943,125 sq. ft. of floor space in the tower. The lot on which the tower is built contains 128,934 sq. ft. So go figure!

Maximums in Lot Cover

15-4. Check your zoning definition of lot coverage or open space. Describe what is included, and what is not included.