

Chapter 27: An Introduction To The Growth Management Process

The purpose of Part II of this book is to explain how to resolve your concerns about a proposed development project through the growth management process. This chapter provides an introduction to how the process works with respect to a specific development project. An understanding of this process is crucial to determining which strategy options may provide your best path to victory. Subsequent chapters in this Part of the book will explain how to maximize the likelihood of resolving your concerns through each process.

PROCESS OVERVIEW

The goal of the process should be to manage growth in a way that preserves quality of life for existing and future residents while minimizing restrictions on the use of property. The process should begin with a master plan²⁰⁹ drafted by a broad cross-section of residents, business owners, government officials and other interested parties working collaboratively. If done well, the plan will set forth a consensus view of how a town, city, county, or region should grow.

Zoning is the principle tool used to implement the goals and objectives set forth in the master plan. The local zoning ordinance²¹⁰ will group compatible uses together into *zoning districts*. The ordinance will set forth the purpose of each district along with criteria for determining which parcels of land should be assigned to each district. For each district the ordinance will also contain a list of uses permitted by right and by special exception permit, conditional use permit, or special use permit. The ordinance will limit the intensity of uses, such as number of houses per acre. Specific standards will be provided for ensuring compatibility between uses within the same district such as how far buildings should be set-back from streets, height restrictions, the percentage of a lot or site that can be covered by buildings, parking requirements, etc.

A set of zoning maps will be prepared that implement the overall land use plan set forth in the master plan. The maps will be designed to separate incompatible uses such as residential neighborhoods and industrial activities. Additionally, mapping will strive for other goals, such as locating the highest intensity of use where roads, sewers, and other infrastructure have excess capacity or increased in capacity are programmed.

²⁰⁹ A master plan may be known as a comprehensive plan, general development plan, or by a variety of other titles.

²¹⁰ A zoning ordinance may also be known as the land use code, development regulations or other names. But in the context used above, zoning ordinance means that body of local law which sets forth zoning districts, criteria for establishing districts, the uses permitted within each district and performance standards.

A number of specific permits and approvals are needed prior to developing a tract of land. To obtain each permit-approval the applicant must demonstrate that the project meets various standards with respect to roads, water and sewage, schools, environmental protection, and a number of other factors.

There are more than 3,000 counties, parishes, or “equivalent” places in the United States. Additionally, there are also more than a thousand cities in the U.S. with a population of 25,000 or greater²¹¹ along with numerous other smaller municipalities - towns and boroughs. Many of these local jurisdictions have land use and zoning authority. You would think that with so many jurisdictions there would be dramatic differences in how growth management works from town to town, county to county, and from state to state. In many ways though, land use regulation is remarkably consistent throughout the nation. This is because local zoning laws are enabled by State statutes which in turn derive authority from the U.S. Constitution. Because of this common basis you will likely find that the growth management process in your area strongly resembles the following generalized description.

DEVELOPMENT REVIEW

Most projects will go through development review steps similar to that described in this section. Some projects, particular larger ventures, will undergo further evaluations which are described in the following sections.

1. The process usually begins when the applicant (property owner and/or development company) has an initial, informal discussion with the local planning director, their staff, members of the local legislative body, and/or the chief executive. Through these discussions the applicant hopes to learn of likely obstacles to project approval.
2. The applicant submits a concept or sketch plan for review by planning staff who then draft comments to the local planning commission. The comments will focus on compliance with concept plan requirements set forth in the local zoning ordinance and other applicable regulations. If the ordinance requires a finding of consistency with the master plan, then staff comments will address this issue as well.
3. The planning commission will hold a hearing on the concept-sketch plan, but the purpose will not be to approve or disapprove. Instead, the commission will inform the applicant of y potential conflicts with zoning ordinance requirements and other relevant issues. Public notice is given of the hearing, though it may be limited to an announcement in the legal section of a local newspaper or a sign posted on the site. An opportunity for public comment is frequently provided during the hearing.

²¹¹ See http://www.census.gov/prod/2002pubs/00ccdb/cc00_tabC1.pdf

4. The applicant submits a more formal plan, which may be known as a site plan, development plan, preliminary plan, or by another title. For the purpose of this description, I'll call it the preliminary plan.
5. Staff will again generate comments to the planning commission on the preliminary plan. The comments address compliance with applicable regulations and any other relevant issues.
6. The planning commission holds a public hearing on the preliminary plan. This time the commission will be obligated to make one of three decisions on the plan: approval, approval with conditions, or disapproval. The commission may also table a decision to allow the applicant, staff, or the public additional time to address specific issues. Public notice is given of the hearing and the public is afforded an opportunity to comment during the hearing.
7. There will usually be a process for appealing the decision of the commission, which must be filed within a short period (10-30 days) following the date of the decision. The appeal will be heard by a local hearing board or officer, the local legislative body, or the state trial court acting in an appellate capacity.
8. A project will frequently come back before the planning commission in the form of a final plan. The issues the commission is required to consider are usually narrower than those at play during the preliminary plan stage. So *please* do not wait until the final plan stage to present your concerns to the commission. Instead, you need to discuss your issues with staff at the earliest opportunity after you become aware of the project then present your concerns and recommendation before the commission at both hearings.
9. Those aggrieved by the final plan decision may again have an opportunity to appeal.
10. Once final plan approval is granted the project will not come back before the planning commission. Instead, the remainder of the process will consist of staff review of more detailed plans for compliance with the requirements for various specific permits and other approvals. Of course, the more detailed plans must conform to the project depicted on the preliminary and final plans approved by the Planning Commission. If all goes well building permits will be issued along with other approvals such as a grading permit, a well and septic permit, etc.

In addition to the normal development review outlined above, a project may also be required to go through the following additional processes.

MASTER PLAN AMENDMENT

A master plan serves as a blueprint for how a local jurisdiction should grow. A good master plan will be designed to foster the growth scenario most effective in preserving and enhancing quality of life for current and future residents. An amendment should be required whenever a development project is proposed which would cause growth patterns to significantly diverge from that envisioned in the

master plan. The quality of life implications of the project should be thoroughly studied in a process open to the public, particularly to those residents most directly affected. The goal of the amendment process should be to determine if the quality of life benefits of the project justify deviating from the growth scenario set forth in the master plan. If it will, then the plan should be amended. Planning staff and the planning commission will coordinate the amendment process and make recommendations. The local legislative body is usually the final decision-maker on master plan amendments.

ANNEXATION

Annexation is a process used to expand the area of a town, city, or other jurisdiction. This act can be critical to providing a local jurisdiction with the increased tax base needed to fund essential programs. Frequently, the goal of those requesting annexation is to gain access to public water, sewer, and other infrastructure which allows development at densities greater than that possible with wells and onsite sewage disposal systems²¹². However, annexation has also been used to increase the profits derived from development by shifting a site from a jurisdiction with stringent quality of life protection measures to one with lesser restrictions. Proposed annexations should go through the same thorough and open review process applied to master plan amendments. In fact, if annexation of the subject property was not envisioned in the plan, a master plan amendment should be required as well. As with a master plan amendment, planning staff and the planning commission will coordinate the annexation process and make recommendations. The local legislative body is usually the final decision-maker on annexation requests.

ZONING TEXT AMENDMENT

When a new master plan is adopted or an amendment is made it is frequently necessary to modify the zoning ordinance to achieve the goals and objectives contained in the plan. If the required changes are minor, then this may be accomplished through a zoning text amendment as opposed to rewriting the entire ordinance. Additionally, a development company may request a zoning text amendment to allow a mix of uses or density not permitted by the present zoning ordinance. This should not be viewed as being bad. In fact, many zoning ordinances do not allow the use of innovative growth management techniques such as Traditional Neighborhood Design²¹³ or other *Smart Growth* and *New Urbanism* approaches. However, text amendments should be evaluated for cumulative impacts to quality of life. If the amendment has the potential to take growth in a direction differing from that set forth in the master plan, then it should be evaluated through the intensive scrutiny applied to a master plan amendment. Planning staff and the planning commission will usually coordinate the text amendment process and make recommendations. The local legislative body is usually the final decision-maker on zoning text amendments.

²¹² Onsite sewage disposal include septic systems, package sewage treatment plants, etc.

²¹³ Traditional neighborhood design provides a mix of housing types at relatively high densities with neighborhood scale retail commercial in a layout that facilitates travel by car, bicycle, or transit.

REZONING

Most local jurisdictions will have three processes for changing how land is zoned. First, zoning will frequently be adjusted when a new master plan is adopted. Second, during the ten to twelve years between master plan updates there will be a process where the need for zoning adjustments is studied comprehensively. Third, a land owner may petition for a rezoning at anytime, though approval is usually granted only when it is found that the original zoning assignment was a result error or that various factors have changed to a degree which makes current zoning inappropriate. If a rezoning proposal has the potential to take growth in a direction differing from that set forth in the master plan, then it should be evaluated through the intensive scrutiny applied to a master plan amendment. Planning staff and the planning commission will coordinate the rezoning process and make recommendations. The local legislative body is usually the final decision-maker on rezoning requests.

PLANNED UNIT DEVELOPMENT

Many local zoning ordinances include Planned Unit Development (PUD) zoning districts. Within the PUD district greater flexibility is allowed with respect to mixes of uses and density. PUD districts are usually applied to larger tracts of land. Frequently the proposed site must be rezoned to allow the PUD. If the PUD has the potential to take growth in a direction differing from that set forth in the master plan, then it should be evaluated through the intensive scrutiny applied to a master plan amendment. Planning staff and the planning commission will coordinate the PUD process and make recommendations. If rezoning is involved then the local legislative body will usually be the final decision-maker on a PUD. Other wise, the Planning Commission or a planning director will be the final decision-maker.

SPECIAL EXCEPTION PERMIT, CONDITIONAL USE PERMIT, OR SPECIAL USE PERMIT

These three permits are very closely related. Most local zoning ordinances will list uses allowed *By-Right* along with those requiring a Special Exception Permit, a Conditional Use Permit, or a Special Use Permit. Uses requiring one of these permits are usually compatible with those allowed by-right within the same district, but it may be necessary to add conditions to achieve full compatibility. For example, a special exception permit, conditional use permit, or special use permit is frequently required to locate a church or other house of worship within a residential district. With day care and the many other activities taking place at churches, this use can result in quality of life impacts akin to those of retail commercial uses, like a neighborhood shopping center. Most local zoning ordinances will require a formal hearing on the permit to evaluate the potential for compatibility issues. Conditions may then be added to the permit to address issues such as buffering for visual and noise impacts, lighting restrictions, and so forth. If impacts rise to the point where they cannot be resolved with conditions then the permit may be denied. However, there may be a legal standard requiring a finding of *extraordinary impact*²¹⁴ in order for the denial to stand up on appeal. Planning staff will be responsible for studying applications for these three permits and will make a

²¹⁴ The extraordinary impact test usually requires a finding that the impact of the proposed use at the proposed location will be significantly greater than if the same use were proposed for most other similarly zoned sites in the jurisdiction.

recommendation to the decision-making body, which is frequently a hearing board such as a Board of Appeals or Adjustments.

SPECIAL HEARING

When a project includes a use that is similar to, but not identical, to those allowed in a zoning district then a special hearing may be required to determine if the use is permitted. A special hearing before the planning commission, a hearing officer or board may also be required for certain uses that tend to be problematic.

VARIANCE

This last review process is by no means the least, especially with respect to the controversy it creates. A variance should be used rarely and only when absolutely necessary to allow the owner some reasonable use of their property. A variance is usually granted to allow a use which is otherwise prohibited by the zoning ordinance or to relax standards such as building setbacks and height limitations. Some jurisdictions grant variances so frequently that the intent of zoning ordinance is undermined by allowing incompatible uses in such close proximity that quality of life is degraded. Planning staff will study variance requests and make a recommendation. The final decision-maker on a variance request may be the planning director in the case of an *administrative* variance, but the final decision-maker should be a hearing board, a hearing officer, or the planning commission.

In the next chapter further background will be provided on the decision-makers introduced above.