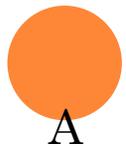
The background features a light orange grid pattern on the left side, with several vertical lines of varying thicknesses extending across the page. In the lower-left quadrant, there is a cluster of five solid orange circles of different sizes, arranged in a roughly circular pattern.

# **PLANNING AND ZONING COMMISSION AND ARCHITECTURAL REVIEW BOARD**

**Training Session: May 2013**

# WHAT IS PLANNING

- Planning, also called urban planning or city and regional planning, is a dynamic profession that works to improve the welfare of people and their communities by creating more convenient, equitable, healthful, efficient, and attractive places for present and future generations.
- Planning enables civic leaders, businesses, and citizens to play a meaningful role in creating communities that enrich people's lives.
- Good planning helps create communities that offer better choices for where and how people live. Planning helps communities to envision their future. It helps them find the right balance of new development and essential services, environmental protection, and innovative change.



# COMMUNITY BENEFITS

Planning benefits communities in the following ways:

- Shapes the future
- Identifies local issues
- Identifies public values
- Ties programs together
- Promotes public involvement
- Attracts appropriate development
- Increases certainty
- Protects natural resources
- Improves public service efficiency
- Minimizes land use conflicts
- Promotes good design



# PLANNING CHARACTERISTICS

- Creates order and predictability
- Promotes efficient use of resources
- Identifies alternatives and procedures
- Promotes community health and future viability



# THE PLANNING COMMISSION

- Adopts the City's Comprehensive Plan
- An advisory group to the governing body on issues and activities related to planning, platting, land use regulation and community development
- Has limited decision power, but can have considerable influence
- Is responsible for keeping planning and land use related issues in perspective for the community



# THE COMMISSIONER

## ○ The commission's authority and duties

- Prepare and submit to the Board of Alderpersons (city council) a comprehensive plan for the systematic and organized development of the city.
- Review, recommend, and administer measures necessary to implement the comprehensive plan
- Make recommendations on land use applications, regulations and actions
- Serve as the Architectural Review Board

## ○ How the commission operates

- Advisory Role: Advises the Board (the Board has the authority to approve, deny or change the commission's recommendations)
- Regulatory Role: Adopts the comprehensive plan
- Procedural Role: Conducts fair meetings and makes fair decisions

## ○ Standards for commission decision making

- Using common sense, ascertaining consistency with the comprehensive plan and compliance with rules and regulations
- Considering what is in the best interest of the larger community
- Quasi – judicial role (CUP) requires making appropriate findings (findings are a statement of evidence and reasoning used to arrive at a decision; must be supported by facts; are a “road map” that details the commission's reasoning process used to progress from evidence to decision; are documented as part of the minutes (record) and outline description of application, statement of facts, reasons for approval or denial, and conditions of approval)
- The record is a collection of all evidence presented and should serve as the foundation for the commission's decision. Findings and the record help protect from legal challenges and explain decisions- even unpopular ones.
- Legislative acts are presumed valid without supporting findings. A legislative action will be upheld unless the Commission / Board acted arbitrarily, capriciously or without evidentiary basis.

# THE COMMISSIONER- CONT'D

## ○ Legal aspects of commission conduct

- Ex parte communication occurs when a commissioner has private communications with someone who has an interest in a matter before the commission. It provides the commissioner with information not available to other commissioners which may influence his/her decision outside the public session. To correct ex parte contact, a commissioner should disclose the communication and substance of the conversation at the meeting (get the evidence on record) and state whether you can still provide unbiased input, consideration and decision.
- A commissioner has a Conflict of interest when the commissioner has a substantial financial interest in a matter before the commission. A commissioner cannot vote on any matter in which he/she has a substantial financial interest and should recuse him/herself from the room.
- All meetings are open to the public (with certain exceptions). The public should be given reasonable opportunity to observe governing decision making.
- Public hearings should be published in the local paper, and when practical notice should be placed on site. Mailing or email notification should be provided

## ○ Comprehensive plan, zoning, platting and other land use regulations.

# THE COMPREHENSIVE PLAN

- Developed with public input and reflects the vision and direction of the residents
- Adopted (approved) by the commission
- Requires a public hearing
- A blueprint for guiding community development
- A flexible document, not a uniform template
- A visionary document attempting to anticipate future events and needs
- A statement of policies, goals, and standards
- Provides a policy framework for decision-making regarding land use, transportation, housing, public facilities, and economic development.
- Includes information on the many facets of a community including demographics, physical conditions, land use, environment, transportation, legal matters, and fiscal conditions.

# ZONING

- The zoning code is a tool used to implement the comprehensive plan. It is the conventional method of land use regulation that divides a municipality into districts or zones and adopts regulations concerning land use, placement, and building size, and space.
- It classifies land according to use and density (residential, commercial, industrial) and establishes standards governing each use.
- Zoning Code Components:
  - Map depicting zoning districts including residential
  - Text indicating permitted, conditionally permitted, and
  - prohibited land uses
- Promotes public safety, health, and general welfare, segregates incompatible land uses and activities, protects property values, regulates property use in accordance with community standards and values, creates uniform land use regulations, establishes ground rules for development through public process, prevents or reduces nuisances, conserves land for appropriate uses.

## ZONING- CONT'D

- Changes to the zoning code requires a public hearing in front of the commission, 15 days published notice of the hearing. The commission makes a recommendation to the Board. A negative recommendation or a protest petition (30% effected property owners) will require a super majority approval by the Board.
- The commission makes recommendations on conditional uses (public buildings or clubs)
- Decisions must be based on land use considerations and not on other factors such as tax dollars or personality conflicts.
- Appeals: the Board makes the final decision as to land use and zoning regulations (not the commission) so any lawsuit filed challenging a zoning ordinance or refusal to rezone would need to be defended by “the whole record”.



## SUBDIVISIONS

- Process of dividing parcels into smaller parcels
- One of the principle tools for shaping our communities
- In CLP land is already subdivided
- May have requests for dedications (park, road)
- May have request for lot consolidations
- May have requests for boundary adjustments
- Subdivision requires a recommendation from the commission, a public hearing, consistency with the comprehensive plan, compliance with the zoning and subdivision codes, a public hearing and decision by the Board of Alderpersons.



# THE LEGAL FRAMEWORK

**Zone Code:** Separates a city into districts to regulate the intensity of development, uses of land, and development standards.

- **“By right”** - Allows certain uses without any discretionary review.
- **“Conditional”** – Allows certain uses if specific conditions are met.
- **Variances** – a limited waiver of zoning standards to accommodate unique physical characteristics of a property.

**Police Power:** The basis for all land use regulation. Authorizes local governments to take action to “protect the health, safety, and general welfare” of its residents.

## Limitations on the Police Power

- **Preemption** – local land use regulations may not conflict with state or federal law.
- **Takings Clause** – requires compensation if regulations overly limit private property rights.
- **Due process** – no deprivation of life, liberty or property.
  - Substantive – vested rights.
  - Procedural – notice and hearings.

## Limitations on the Police Power

- **Equal Protection** – requires similarly situated persons to be treated in equal manners.
- **First Amendment** – allows freedom of speech and expression.



# DESIGN GUIDELINES REVIEW

- U.S. Supreme Court, *Penn Central Transp. Co. v City of New York* (1978)
  - “...this Court has recognized ...that States and cities may enact land use restrictions or controls to enhance the quality of life by preserving the character and desirable aesthetics features of a city....”
- Aesthetic regulation permissible if reasonably related to public health, safety and welfare.
- Cannot violate general laws (first amendment rights – freedom of speech; constitutional principles of due process; hearing and appeal process)
- Must be reasonable and non-discriminatory (consistency, rational basis for decision, must not be arbitrary and capricious, reference to design guidelines, clear findings)
- Legal authority to consider design and aesthetics does not allow the following decision:
  - “I can’t put my finger on it, but this is a very unattractive building, it doesn’t fit in, and I can’t see approving it.”



# DESIGN GUIDELINES REVIEW- CONT'D

## **Design Guidelines**

- Reflect values of community
- Allow for diversity in community

## **Implementation**

- Easy to understand and interpret
- Design review process is clear
- Public process is “transparent”
- Determine consistency with the guidelines on a project by project basis. Evaluate compatibility with the desired community character
- Do not design the project for the applicant (Designing a project in a public hearing generally does not produce good results. Use study session as an alternative to allow early input in an informal setting)



# DESIGN GUIDELINES REVIEW- CONT'D

## **Impression**

- Initial thoughts right after you roll out the drawings
- Based on your knowledge and experience in the community and in design review
- Allows for a “first impression” which may or may not be your final thoughts on the project

## **Analysis**

- Examine what caused your initial impression:
  - Design and materials: individual building elements
  - Overall massing and scale: height, size
  - Site plan and landscaping
  - Compatibility with existing neighborhood character
- Have you looked at the whole of the project as well as the individual parts?
- Your analysis may confirm your “first impression” or cause you to rethink things

## **Conclusions and Findings**

- Compare with design guidelines. Review the staff report. Can you make the necessary findings to support your decision?
- Compare your findings with your initial impression. Are your findings consistent with other decisions made in similar circumstances?

## **Follow Up**

- Are projects coming before the ARB in compliance with the guidelines.
- Have projects turned out the way we thought? Are we getting the right results?
- If not examine the guidelines and implement changes where necessary.



## SUGGESTIONS

- Understand rationale of architect or designer before reaching decision.
- Consider design techniques to solve land use conflicts. Application of context sensitive design features.
- Signature architecture is okay, but where appropriate, only.
- Seek clear plans with sufficient details (Ask for colors and materials boards)
- Be wary of artistic enhancements (perspective drawings and elevations can be misleading)
- Ask for street-level renderings or accurate computer simulations where necessary.



# ARB PROCESS

- Per the City Code, the ARB has the authority to review all new construction and exterior structure alteration plans, and the applicant cannot receive a building permit until it has ARB approval.
- However, the City Planner, has authority to administratively approve applications where the City Planner determines that the proposed improvement will not significantly impact the exterior of the property.
- The ARB may approve, deny, or approve the application with conditions/modifications.
- Appeals: If the ARB denies an application, the applicant has 14 days appeal to the Board of Alderpersons. The Board can then uphold or overturn the ARB's decision.
- If the Board of Alderpersons upholds the ARB's denial, the applicant has 30 days to file suit in Circuit Court.

