

Introduction to Planning and Zoning Workshops for Local Officials

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PowerPoint Presentation	1
Fact Sheets	31
Authorization for City Planning and Zoning	31
Authorization for County Planning and Zoning	33
Iowa Smart Planning Principles – Iowa Code 18B.1	35
Thirteen Elements of a Comprehensive Plan from the Iowa Smart Planning Law – Iowa Code 18B.2	37
The Purpose of a Comprehensive Plan	41
Process for Adopting a Comprehensive Plan Added to Iowa Code by SF 2389, 2010	43
The Zoning Ordinance	45
Roles and Responsibilities – Elected Officials	47
Roles and Responsibilities – Planning Commission	51
Being an Effective Planning Commission	53
Roles and Responsibilities – The Zoning Administrator	55
Roles and Responsibilities – The Zoning Board of Adjustment	57
Special Uses and Conditional Uses (Special Exceptions)	59
Variances	61
Spot Zoning	63
Nonconforming Uses	65
Conflicts of Interest	67
Rules of Decorum for Audience at Board of Adjustment Hearings	69
A Pre-hearing Ethics Checklist	71
Course Evaluation	73

Agenda

- Comprehensive plans
- Zoning ordinances
- Roles of decision makers
- Common zoning issues

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The Comprehensive Plan

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1. The purposes of the comprehensive plan are:
 - a. To involve residents in discussing the future of the community.
 - b. To establish land use patterns that are logical, orderly, and convenient.
 - c. To protect private and public investment.
 - d. To protect environmental resources.
 - e. All of the above are true.
2. The Smart Planning Act of 2010 requires Iowa communities to develop and adopt a comprehensive plan:
 - a. True
 - b. False

3. Which of the following statements are true:
- Comprehensive planning is mandated by the Feds.
 - Planning is a United Nations plot for one-world government.
 - Counties can use planning to tell farmers what to/not to plant.
 - The idea of comprehensive planning originated in the Soviet Union.
 - None of the above are true.

The Comprehensive Plan

- **A statement of *policy*...**
 - not a *regulation*
 - “developed” by the Planning Commission
 - guided by citizen input
 - adopted by the City Council or Board of Supervisors
- Guides physical development of the community
 - Usually with a 10- to 20-year horizon
 - Consider review/update every 5 years to respond to changing conditions
- Serves as the basis for land use decision-making
 - Zoning
 - Public Facilities
 - Infrastructure (roads, water and sewer)

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Planning in Iowa

- Provided for in state law
 - Smart Planning Act (2010):
 - Chapter 18B, Iowa Code
- Comprehensive planning implied in Iowa Code (Chapters 335 and 414) since the 1920s but not explicitly authorized.

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Iowa Code § 18B.2

A [city or county] ...may include the following information, if applicable, when developing or amending a comprehensive plan:

- Public Participation
- Issues and Opportunities
- Land Use
- Housing
- Public Infrastructure and Utilities
- Transportation
- Economic Development
- Agricultural and Natural Resources
- Community Facilities
- Community Character
- Hazards
- Intergovernmental Collaboration
- Implementation

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Why develop a comp. plan?

- Protects/optimizes property values
 - Separates incompatible land uses (balances competing interests of private landowners)
- Provides continuity across time
 - Provides for predictability of future conditions, which encourages investments in property

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Why develop a comp. plan?

- Protects public investments in roads, sewer, water, public facilities
 - Also helps avoid unnecessary investments
- Protects environmental resources

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The comprehensive plan

- Can provide a basis for other plans
 - Urban Renewal plans (Chapter 403)
 - Urban Revitalization plans (Chapter 404)

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Ask yourselves...

- Does your city/county have a comprehensive plan?
 - How old is it?
 - How has your community changed since then?
 - How often does it come off the shelf?
 - During zoning hearings?
 - During other policy discussions?
 - Other times?

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Scenario 1

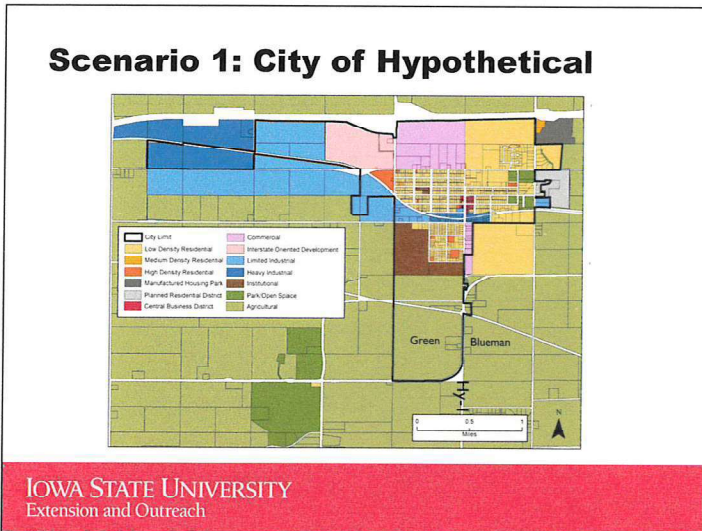
Adam Green owns 40 acres of land on the south side of the city of Hypothetical, west of Highway 1 and within the city limits. Jim Blueman owns a 40-acre parcel east of the highway that does not lie within the city limits. It is directly east of Green's property.

- Both parcels along Highway 1 are primarily farmland, although there are roughly 15 homes scattered in the four-mile corridor along Highway 1 leading to its intersection with Interstate 80. Eight of those homes have driveways opening onto the highway. All 15 homes have been built within the last 20 years.

- The city lacks developable area within its city limits except for Blueman’s property.
- The properties have relatively high corn suitability ratings but are also highly erodible.
- Sewer and water lines abut both Blueman’s property and Green’s property.

What other facts might be important to know as the city considers the future of the south side of the community?

Use the elements of Iowa Code § 18B.2 as you think about your answer.



Scenario 1

- Consider the elements of Iowa Code § 18B.2 as you ponder the future of the south side of the city of Hypothetical.

• Public Participation	• Agricultural and Natural Resources
• Issues and Opportunities	• Community Facilities
• Land Use	• Community Character
• Housing	• Hazards
• Public Infrastructure and Utilities	• Intergovernmental Collaboration
• Transportation	• Implementation
• Economic Development	

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Zoning

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1. The purposes of zoning are to...
 - a. Separate conflicting land uses such as residential and industrial.
 - b. Ensure new development is located according to the comprehensive plan.
 - c. Promote quality development that won't harm public health, safety, or welfare.
 - d. Allow local government to keep tabs on what citizens are doing.

2. The U.S. Supreme Court affirmed the Constitutionality of zoning in which case?
 - a. Brown v. Board of Education
 - b. Euclid v. Ambler Realty
 - c. Kramer v. Kramer
 - d. Scott Pilgrim v. The World

3. The zoning map is part of the zoning code and is subject to the same process for updating:
 - a. True
 - b. False
 - c. What's a map?

4. Which of these is not a type of zoning code?
- Form-based code
 - Euclidian zoning
 - Unified Development Code
 - Performance-based Code
 - Code of Hammurabi

Zoning in Iowa

- Authorized by state law
 - Cities:
 - Chapter 414, Iowa Code
 - Counties:
 - Chapter 335, Iowa Code
- Nearly identical. Both based on a model act from the 1920s.

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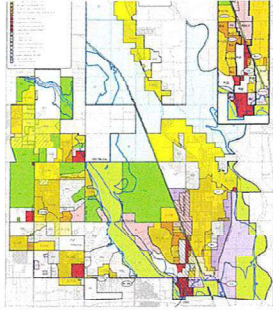
What is a zoning ordinance?

- A *local law*. Typical “Euclidian zoning,” which is the nearly universal form of zoning in Iowa, divides the community into zones or districts, and regulates...
 - land uses allowed within those zones,
 - the sizes of lots within those zones,
 - bulk, height, area, and setbacks of buildings,
 - parking, landscaping, accessory structures,
 - and other stuff...

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Typical “Euclidian” Zoning: Two parts

Map delineates zones, and the uses allowed in those zones.



Text provides regulations that apply in each zone.



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Euclidian zoning

- Basic objectives
 - Separate incompatible land uses
 - Protect private property values by grouping similar land uses together (residential, commercial) and minimizing the negative impacts where incompatibilities must exist

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Criticisms

- Has not kept up with times
 - A hundred years ago, cities were congested and dirty places. The goal was to spread things out and separate noxious uses
 - Today it can act as a barrier to good urban development
 - Raises cost of providing infrastructure (sprawl)
 - Discourages walkability
 - Prohibits or limits many types of housing, raising housing prices
 - Requires major code revisions to allow home-based businesses, mixed use neighborhoods, other ways we want to live and work today.

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Other types of zoning codes

- **Form-based codes** emphasize built form over land use, focusing on building type, form, and design, and less on land uses (although land use is still a factor).
 - They establish zones based on geographic areas (e.g., urban core, suburban, residential, etc.) that may hold a wide variety of land uses
 - The regulations are applied to the buildings and public spaces to ensure compatible scale and architecture, and pedestrian and vehicular flow
 - Function follows form
 - Requires a very different skill-set to administer

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Other types of zoning codes

- **Unified development codes** combine zoning and subdivision ordinances into a single ordinance. They integrate the review process and the regulatory standards. Goals are to...
 - streamline the approval process,
 - present the entire development proposal in a single submission to the community,
 - minimize/eliminate possible conflicts between two separate ordinances.

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Other types of zoning codes

- **Performance-based codes** regulate the location of uses based on performance criteria (generation of noise, pollution, and traffic, and aesthetics and fiscal impact).
 - First employed for industrial uses
 - Difficulty in implementation has hampered its adoption

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Not zoning!

- **The Code of Hammurabi** was one of the earliest and most complete written legal codes and was proclaimed by the Babylonian king Hammurabi, who reigned from 1792 to 1750 B.C. It was a collection of 282 rules, establishing standards for commercial interactions and setting fines and punishments.
- It was carved onto a massive, finger-shaped black stone pillar.



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The relationship of the plan to the zoning ordinance

- According to state law, the zoning ordinance and zoning decisions “shall be made in accordance with a comprehensive plan...”
 - Iowa Code § 414.3 (Cities)
 - Iowa Code § 335.5 (Counties)

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Scenario 2

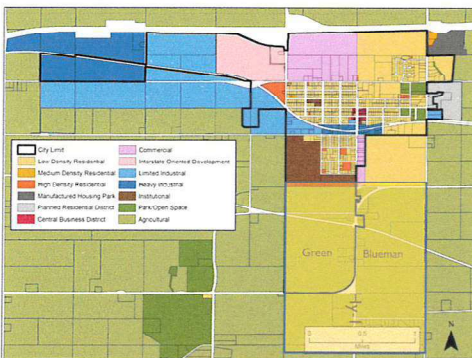
Referring back to Scenario 1, in October 2022 the city of Hypothetical updated its comprehensive plan to designate approximately 160 acres along both sides of Highway 1 between the core of the city toward Interstate 80—including the 40 acres of Blueman’s land, the 40 acres of Green’s land, and about 80 acres farther to the south of Blueman’s land—for future low-density, residential use based on the city’s need for residential land, the ability to extend infrastructure (sewer, water), and the suitability of the land itself for development. Blueman immediately filed an application to rezone his 40 acres from A-1 suburban agricultural to R-5 large-lot residential. The city of Hypothetical approved the rezoning.

Green and three of the area residents sued, arguing:

- Blueman’s property and the surrounding area is predominantly farmland.
- More housing will reduce property values and harm the character of the area.
- More housing will bring more traffic, noise, and be a hazard to school children living in the area.

What are the merits of each side’s arguments? What do you think will be the court’s primary consideration when deciding this case?

2022 Plan: Future Land Use Map



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In accordance with...

- When a community has adopted a separate comprehensive plan, the law “contemplates the zoning ordinance will be designed to promote the goals of that individualized plan.”
» Webb v. Giltner (1991)
- Consistency with the comprehensive plan is “a primary consideration” when evaluating the legality of a city’s [or county’s] zoning action.
» Norton Trust v. City of Hudson (2009)

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In accordance with...

- There is a strong presumption of the validity of a city ordinance, including any amendments.
- Courts reviewing zoning ordinances should not substitute their judgment as to the propriety of the city's action when the reasonableness of the ordinance or its amendment is *fairly debatable*.
 - » Neuzil v. City of Iowa City (1990)
- A decision is fairly debatable when the reasonableness of the board's action is open to a fair difference of opinion.
 - » Norton Trust v. City of Hudson (2009)

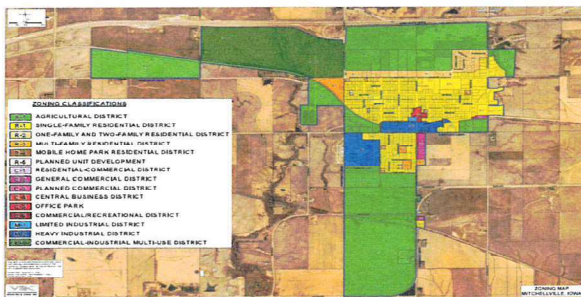
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Planning vs. Zoning

- The plan is a *policy statement*.
- The zoning ordinance is *law*.
- The plan directs *future* land use.
- The ordinance regulates land use *today*.

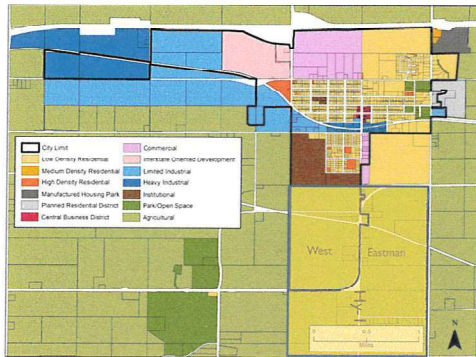
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Contrast: Current Zoning Map



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Contrast: Future Land Use Map



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Zoning Roles

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1. The elected body can impose conditions as a part of rezoning.
 - a. True
 - b. False
2. The planning and zoning commission...
 - a. Is appointed by the elected body (city council or county board)
 - b. Determines whether the content of a sign that a business wants to erect is suitable
 - c. Is the final decision maker on rezoning requests
 - d. Is an advisory body to the elected body (and occasionally to the zoning board of adjustment) on planning and zoning matters

3. The zoning board of adjustment can overrule the elected body's rezoning decision.
 - a. True
 - b. False

4. The elected body can overrule the zoning board of adjustment's decision on a variance.
 - a. True
 - b. False

Elected body

- **Elected body (city council/county supervisors)** is ultimately responsible for actions that set overall land use policy for the community
 - Initiating work on comprehensive plan,
 - Adopting and amending zoning ordinance,
 - Text and map
 - Approving major site development plans,
 - Appointing board/commission members.

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Conditional Rezoning

- City council/County supervisors may impose reasonable and necessary conditions if agreed to in writing by property owner prior to public hearing of legislative body (conditional rezoning agreements).
 - » Iowa Code § 335.7 (counties)
 - » Iowa Code § 414.5 (cities)

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Planning Commission

- **Planning and zoning commission** is an independent advisory body to the elected body. Zoning duties are set out in zoning ordinance.
 - Recommendations to elected body on zoning ordinance adoption and amendments
 - Text
 - Map (rezoning)
 - Recommendations to zoning board of adjustment (if required by ordinance).
 - Directing preparation of comprehensive plan or special studies (on request of elected body)

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Zoning Administrator

- **Zoning administrator** administers the zoning regulations
 - Review and approve administrative permits as provided in the zoning ordinance
 - Zoning permits
 - Minor site plans
 - Temporary use permits
 - Intake of applications for development requests (rezonings, variances, SUP, etc.)
 - Technical review, assistance to decision makers

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Zoning Board of Adjustment

- Performs a “quasi-judicial” function:
 - Interpret and apply the standards of the ordinance to requests made by landowners.
- The ZBA’s job is narrowly defined by state law.
 - Variances, special exceptions, and appeals.
 - *No role* in rezoning requests.
- The ZBA’s decisions are final at the local level; i.e., only subject to judicial review.

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ZBA overruling elected body?

- The elected body may provide for its review of variances *granted* by the board of adjustment before its effective date and may *remand* a decision to grant a variance back to the board of adjustment *for further study*.

- » Iowa Code § 335.10 (counties)
- » Iowa Code § 414.7 (cities)

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Zoning Board of Adjustment Actions

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1. Which body is ultimately responsible for granting a special/conditional use permit?
 - a. Zoning board of adjustment
 - b. Iowa Department of Natural Resources
 - c. Federal Bureau of Investigation
 - d. International Monetary Fund
2. For the zoning board of adjustment to make any decision it takes an affirmative vote of:
 - a. A majority of members present at the meeting
 - b. A majority of the entire board

3. The zoning board of adjustment cannot deny a request for a conditional use permit; it can only attach conditions to its approval.
 - a. True
 - b. False

4. The zoning board of adjustment can only attach conditions to a conditional use permit, not a variance.
 - a. True
 - b. False

Conditional/Special uses

- Each zoning district has a list of permitted uses ("uses by right"). *Conditional uses, special uses, special exceptions* appear in the ordinance as a list of uses that must go through the ZBA for approval.

- The zoning ordinance will list criteria that the landowner must meet in order for the ZBA to grant the special exception.
 - Usually 4 or 5 criteria focused on compatibility of the proposed special exception with the neighborhood.

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Conditional/Special uses

- **Purpose** is to make sure slightly-out-of-character uses can be made to "fit" with surroundings.
 - Home occupations
 - Cell/wind towers
 - Duplexes
 - Drive-thru businesses
 - Special events
 - Relaxation of dimensional requirements

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Variations

- A *variance*, if approved by the ZBA, is an authorization to use property in a manner generally *forbidden* by the ordinance.
- A list of “acceptable variations” will not be found in a zoning ordinance.

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Types of Variations

- *Dimensional variance* – permits relaxation of height, bulk, setback, and related building requirements.
- *Use Variance* – permits use of land otherwise not allowed in the zoning district.
 - Your ordinance may (should) prohibit ZBA from granting use variations.
 - Why?

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Variations

- A *variance* can only be granted if the landowner proves that an *unnecessary hardship* will result if the zoning regulations are enforced.
- The intent of the standard is to prevent the property from being *worthless as zoned*.

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Variances - Example



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Unnecessary hardship means...

1. Land in question cannot yield **reasonable return** if used only for purpose allowed in that zone;
2. Plight of owner is due to **unique circumstances** and not to general conditions in neighborhood;
3. The hardship must not have been **self-created**; and
4. Use to be authorized by variance will not alter **essential character of locality**.
 - o Greenawalt v. Davenport ZBA, (1984)

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Unnecessary hardship

- The burden is on the landowner/applicant to show all four elements.
- Failure to demonstrate any one of them requires the ZBA to deny the request.
 - Greenawalt v. Davenport ZBA, (1984)
- Note that the unnecessary hardship standard does *not* apply to conditional/special uses. The standards in your ordinance apply.

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Rule of thumb

A variance should prevent a hardship, not grant a special privilege not available to other landowners faced with similar situations.

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What about setbacks?

- Required setbacks can be changed for all property owners by amending the zoning code.
- If you want to allow the relaxation of setbacks in some circumstances, consider allowing the reduction of a percentage of a setback through a conditional/special use permit.
 - Write criteria into ordinance as a CUP
 - Better practice than frequent variances (that likely do not meet unnecessary hardship standard).

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Conditions on variances and conditional/special uses

- ZBA may place conditions on variances and special exceptions, to ensure that the use is compatible with surroundings.
- If it cannot be made compatible, permit should not be granted.
 - (follow ordinance standards)
- Once imposed, conditions can be enforced the same as ordinance provisions.

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Appeals

- [The] board may... reverse or affirm, wholly or partly, [the decision] appealed...and to that end shall have all the powers of the officer from whom the appeal is taken.
 - Iowa Code § 414.12
- The party challenging the decision has the burden to show why it was wrong.
- The ZBA should consider a reasonable interpretation by the zoning administrator; however, the ZBA is free to interpret the ordinance differently.

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ZBA voting - True or false?

- A majority vote of *all members* of the ZBA is required to grant a variance or conditional/special use permit or reverse a determination of the zoning administrator; not just a majority of those in attendance.

- » Iowa Code § 335.17 (counties)
- » Iowa Code § 414.14 (cities)

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Record of ZBA decisions

- ZBA shall make written findings of fact on all issues presented in any proceeding.
- Detailed minutes, or minutes and a transcript of the hearing have been found to satisfy this requirement.
- The intent is "to enable a reviewing court to determine ...the factual basis and legal principles upon which the board acted."

– A-Line Iron & Metals v. Cedar Rapids ZBA (2010)

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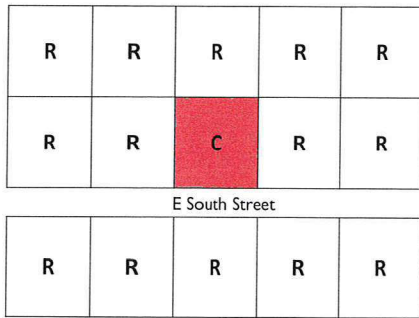
Common Zoning Questions

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Draw lines to match each term with its correct definition:

Nonconforming use	When a public servant is in the position of deciding between her public duty and her private interests.
"I second the motion" means...	A small area on a zoning map with a zoning designation that is inconsistent with its surrounding uses.
Spot zoning	A use that was legal when established, but now does not meet current zoning regulations.
Conflict of interest	A small area on a zoning map (1) with a zoning designation that is inconsistent with its surrounding uses, (2) where the parcel is not particularly adapted for the designated use, and (3) the designation is inconsistent with the comprehensive plan.
Illegal spot zoning	"I agree with the motion." "Let's discuss the motion."

Spot Zoning?



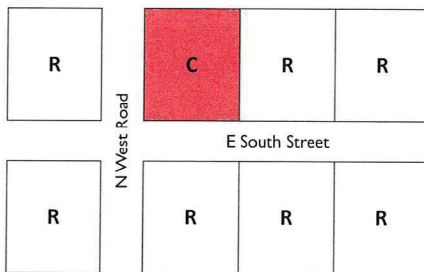
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“Illegal” spot zoning

- A small zone of inconsistent use...
- that benefits an individual landowner...
- where the parcel is not particularly adapted, and...
- cannot be supported by a comprehensive plan,
 - either is inconsistent with the plan, or
 - no plan has been adopted by the city.

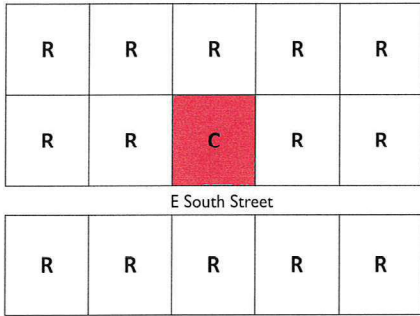
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Spot Zoning?



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Spot Zoning?



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Nonconforming Uses

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Nonconforming uses

- “Uses” that were legal when established, but do not conform to regulations of the current zoning ordinance.
 - Nonconforming uses
 - Nonconforming structures
 - Nonconforming lots
- Zoning ordinances must allow nonconforming uses to continue (cannot force closure, removal) to protect prior investments in property.

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Abandonment

A nonconforming use may lose its protection if the use is **abandoned**.

Abandonment implies intent.

It is permissible for zoning ordinances to dispense with subjective intent ("abandoned"). Such ordinances may effectively extinguish nonconforming uses based solely on discontinuance of that use for a specified period of time.

- Smith v. Cedar Rapids ZBA (1990)

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Court pronouncements

A nonconforming use may lose its protection if the use of the property is **enlarged** or **extended**.

- The use at the time the ordinance became effective is the standard of comparison.

An **intensification** is permissible so long as the "nature and character of the use is unchanged and substantially the same facilities are used."

- An increase in business, standing alone, does not constitute an illegal enlargement, but rather a permissible intensification.

» City of Okoboji v. Okoboji Barz (2008)

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Destruction rule

- Every ordinance likely has a 50% (or so) of assessed value destruction rule that permits city/county to prevent redevelopment of the nonconforming use.
- Purpose is to bring properties into conformity with current regulations.
 - The property investments protected by the nonconforming use provisions no longer exist.

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Summing up nonconforming uses

"The prohibition against expanding or enlarging a nonconforming use defends against the growth of a pre-existing aggravation. That pre-existing aggravation (the nonconforming use) survives as a matter of grace. The public is not required to expand upon that grace to its increasing aggravation."

» Stan Moore Motors v. Polk County ZBA (1973)

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Conflicts of Interest

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Conflicts of interest

Common law

- Conflicts of interest arise when a public servant is in the position deciding between public duty and private interests.
 - Wilson v. Iowa City (Iowa Supreme Court 1969)

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What is a conflict of interest?

- Familial relationship with the applicant or landowner.
- Financial dealings with the applicant or landowner.
- Financial interest in the outcome.

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A conflict of interest exists when...

- The member's interest is different from that held in common with members of the public.
- The interest must be "direct, definite, capable of demonstration, not remote, uncertain, contingent, unsubstantial or merely speculative."

– Bluffs Development v. Pott. County BoA (1993)

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In case of conflict of interest...

- Must disclose circumstance and nature of conflict prior to hearing.
- Must decline to vote on matter.
- Must leave the table where board/commission is sitting (better to leave room altogether).
 - Your board's rules of procedure may say how the issue of *conflict of interest* is handled.

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Conducting meetings

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Meeting Tips

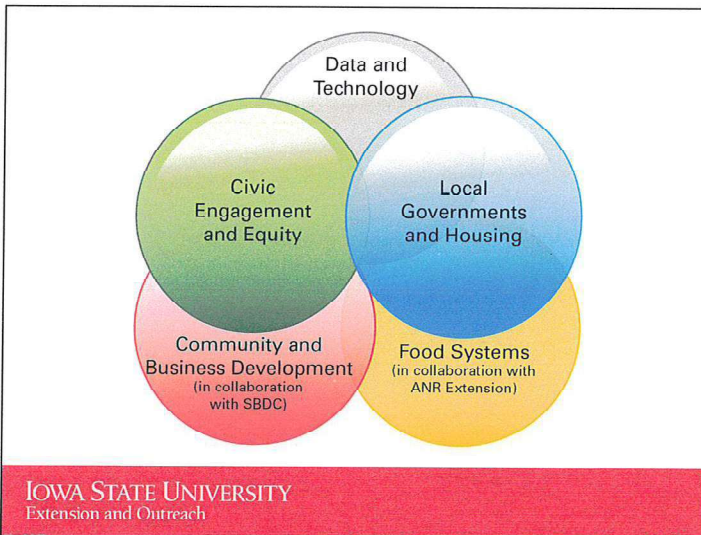
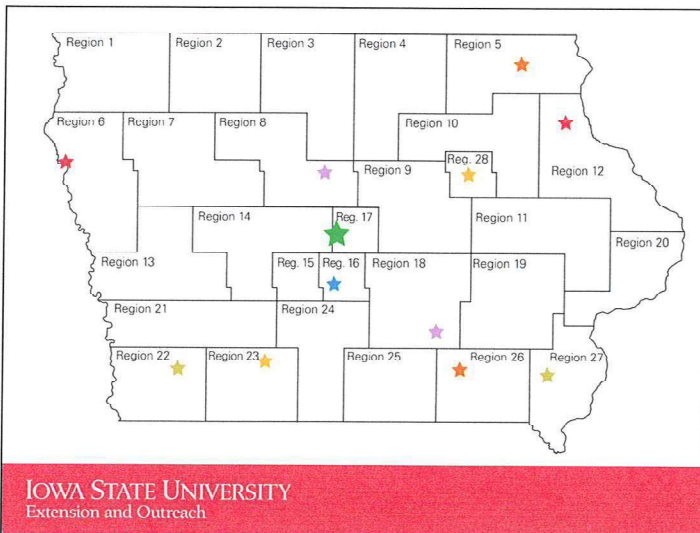
- Chair can limit length of comments before beginning (3-5 minutes each).
- Those wishing to speak must come forward (can't speak from the cheap seats).
- Speaker must direct comments/questions to chair (not applicant, staff, or other audience members).
- No applause or heckling should be tolerated.
- Limit discussion to case at hand (and ask that they be *relevant* to case at hand).
- ZBA/PC may request more information and hold record open. Schedule date/time to continue proceeding.

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Meeting Tips

- Board and commission members should refrain from discussing merits of case before motion is made.
 - This includes engaging in conversation with applicant or audience members.
- Chair should not make motions
 - "I will entertain a motion..."
- Person who seconds a motion may speak against it.
 - "I second" means "let's discuss it," not "I agree."

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Keep up to date

The Midwest Planning BLUZ
(The Blog on Land Use and Zoning)

www.blogs.extension.iastate.edu/planningBLUZ

Summaries of recent court cases and legislation relevant to planning and zoning decision makers

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Thank You

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