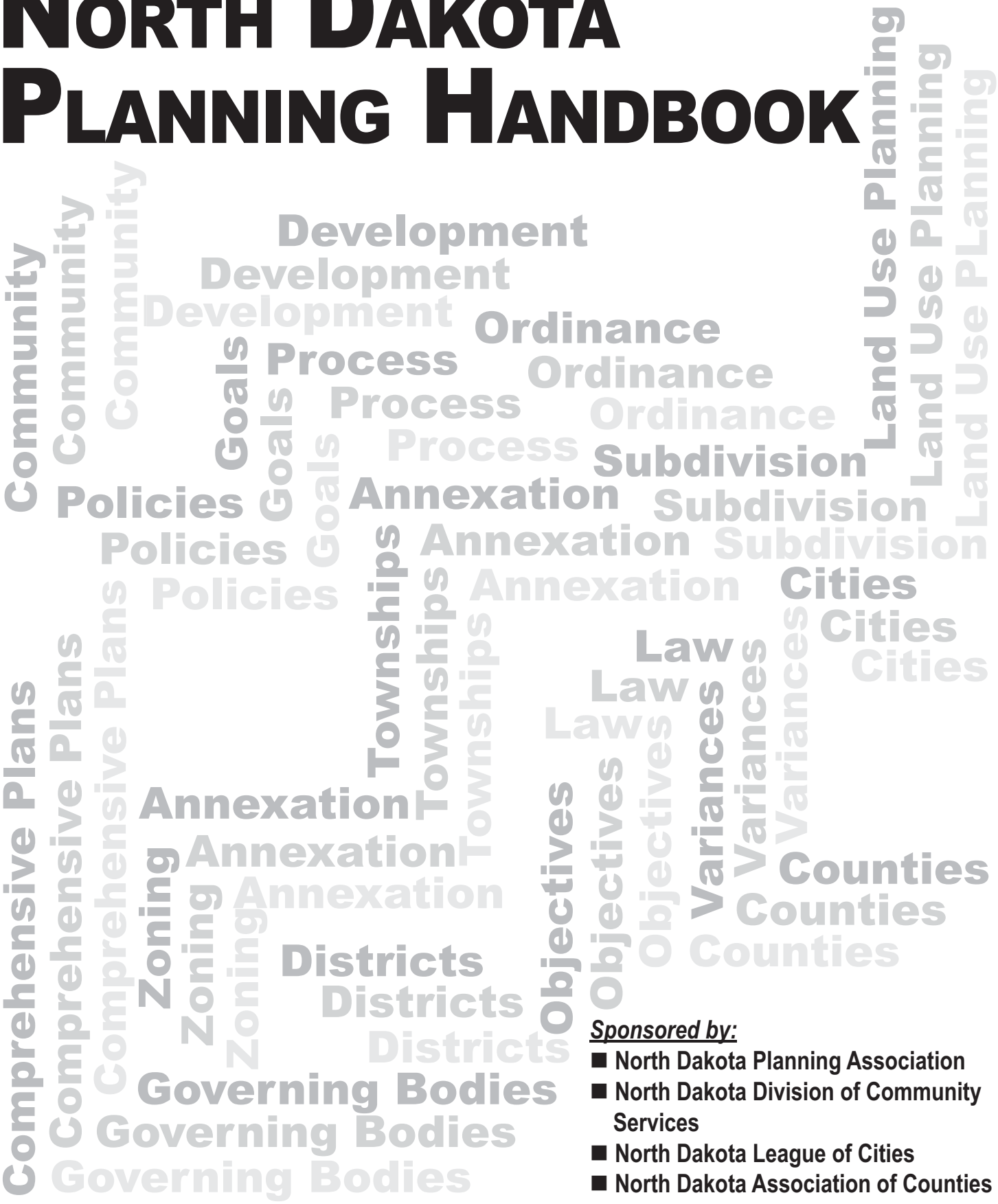
2005 North Dakota Planning Handbook



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2005
North Dakota
Planning Handbook

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North Dakota Planning Association
P. O. Box 444
Bismarck, ND 58502-0444
E-mail: info@ndplanning.org
Web Site: http://www.ndplanning.org

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2005 North Dakota Planning Handbook

I. Introduction

We do not inherit this land from our ancestors;
we borrow it from our children. – Haida Indian saying

Land, in North Dakota, is a key resource. How land should be managed is a key question. The implications of our management will indeed be borne by our children. While the decisions we make must stem from our own values, this handbook explains the tools of local governments (counties, cities, and townships) for managing the land under their control. In this Handbook the term "land use management" means the local government process (planning) of determining the way land should be used and developed in a community, and the implementation (regulation) of tools to ensure that such use and development occurs.

This chapter discusses the overall content of this Handbook, and briefly summarizes the legal basis for land use management by local governments.

A. How to Use This Handbook

This handbook is an educational tool and a reference for citizens and local governments. It is intended to replace the Community Planning Handbook[1] last revised in 1982. It is not a substitute for legal advice from an attorney. Nor is it a complete reference on all land use management or planning. It is intended to be a first source of information on how land use management can be accomplished in North Dakota. As such, it has been organized from general to specific. The most general things to understand about land use management are discussed first, and additional details are added later.

Chapter I explains the general purposes and layout of this handbook, and provides a brief summary of the legal basis for land use management by local governments.

Chapter II explains who has the primary roles in land use management under the laws of North Dakota.

Chapter III summarizes the basic processes of land use management under the laws of North Dakota.

Chapter IV notes the three general purpose types of local government in North Dakota and summarizes their primary differences with respect to land use management.

Chapter V discusses the function of "plans."

Chapter VI discusses the function of "zoning ordinances."

Chapter VII discusses the function of "subdivision regulations."

Chapter VIII discusses the function of "capital improvement plans."

Chapter IX reviews special topics which are applicable to land use management.

Following these chapters are appendices which provide additional information on terms, other resources, and an index to primary topics in the text.

B. The Legal Basis for Planning

The authority to regulate the use of land is given by the United States Constitution to the States, to delegate to local governments in the manner States see fit. Although the legal basis for land use management or planning extends far back in recorded history, its roots in the United States stem from the application of police power to address concerns about "health, safety, morals or general welfare" in cities during the later part of the 19th century. The first law to control the location of land uses (zoning) was enacted in 1867 by the City of San Francisco.[2] The practice of zoning continued to grow during the beginning of the 20th century. In 1928, the Standard City Planning Enabling Act was published by the U.S. Department of Commerce as a recommended basis for States to "enable" municipalities to regulate the use of land. Versions of this model legislation were passed by many states, including North Dakota.

Not surprisingly, land use regulation was and continues to be tested in the courts. Over time a body of caselaw, including Supreme Court decisions, has grown to define the parameters of land use regulation. Generally, the direction of the courts has been toward providing additional flexibility in the types of land use controls which may be used by local jurisdictions. Although dozens of other cases could be cited, the following three cases are among the most far-reaching in their impacts.

Pennsylvania Coal Co. vs. Mahon (1922) In this case, the United States Supreme Court determined that there were limits to the regulation of land, and that there were circumstances under which such regulation could be considered a "taking." A "taking" is an abridgement of the Fifth Amendment which grants private property owners protection from the taking of land for a public use without compensation.

Village of Euclid vs. Ambler Realty Company (1926) In this case, the United States Supreme Court confirmed zoning as a legitimate exercise of police power by a municipality. This case was similar to many others during the same era where zoning was tested in state supreme courts, including one in North Dakota. The result has been long standing support for the practice of zoning.

Penn Central Transp. Co. vs. New York City (1978) In this case, the United States Supreme Court set a test for determining regulatory takings and it found that a reasonable return on property was sufficient to avoid a claim of "takings." The result of this finding was that property owners could not claim a need for compensation for potential profit due to zoning if they could still make a "reasonable" profit.

The First, Fifth, and Fourteenth Amendments to the U. S. Constitution and the caselaw previously mentioned form the legal foundation by which land use can be regulated. Over time, the courts have provided more flexibility to local jurisdictions in the types of land use controls which may be utilized. However, as is the case with any use of police powers for land use management, the basis for any tools utilized in land use management must be clearly identified and related to the welfare of the community. Additional discussion about these tools is provided in Chapters VI and VII. The "enabling legislation" enacted by the states has provided the authority and procedures for local governments to establish regulations for how land could be used within their jurisdiction.

In North Dakota, enabling legislation was first enacted in 1923 for cities, in 1953 for townships, and in 1955 for counties. Occasionally, significant changes in the legislation have been made to respond to new needs, or to correct limitations in the laws. Since the original Community Planning Handbook was written in 1980, several such changes or decisions have been made in North Dakota law. These changes are summarized in Appendix 1.

Land use regulation in North Dakota has its basis in the enabling legislation found in Titles 11, 40, and 58 of the North Dakota Century Code (NDCC). The North Dakota "Century Code is the codification of all general and permanent law enacted since statehood. In very limited instances, the Century Code contains temporary laws. The numbering system for the Century Code is a three-part number, with each part separated by a hyphen. The first part refers to the title, the second to the chapter, and the third to the section. For example, Section 54-35-01 refers to the first section in Chapter 35 of Title 54. The decimal point system is used to designate sections that have been inserted between two consecutively numbered sections."[3] The table on the following page summarizes the location of various parts of enabling legislation in North Dakota for counties, cities, and townships. It also lists the location of several other topics related to land use management.

Enabling legislation not only provides local jurisdictions the authority and general procedures for land use regulation, it also "may mandate certain aspects of planning."[4] In North Dakota the only mandated planning function for local governments is a requirement for Counties to establish solid waste management regulations.

There are three basic types of local governments which have general authority to regulate land use. These are Counties, Cities, and Townships. It should be noted that in addition to these three political subdivisions, park districts are also a political subdivision, and under Chapter 2-04 of the North Dakota Century Code also have authority to zone for airports under certain conditions. This special airport zoning is not discussed in this Handbook.

Guide to Key Chapters of the North Dakota Century Code				
		County Chapters	Township Chapters	City Chapters
Enabling Legislation	Zoning	11-33	58-03	40-47
	Subdivision	11-33.2	none	40-48
	Annexation	none	none	40-51.2
	Airport Zoning*	2-04	2-04	2-04
Other Topics	Platting	11-24	none	40-50
	Home Rule	11-09.1	none	40-05.1
	Parks	11-28	58-17	40-49
	Dedication and Vacation of Land for Public Use		none	40-39
	Ordinances	11-09.1	58-03	40-11

* Airport zoning may be applicable in counties, townships, and cities.

It is important to note the difference between the enabling legislation discussed above, and "home rule authority." The NDCC also gives counties and cities a right, called "home rule authority," to establish certain powers for themselves which extend beyond the authority specifically granted by state law. This additional authority can only be obtained by a county or city after the question has been submitted to a vote and approved in a general or primary election, or in the case of cities, at a regular or special city election.[5] Typically, counties or cities may establish home rule authority in order to give themselves additional flexibility in the way they address certain issues, such as taxing authority.

II. Roles and Terms in Planning

As noted in Chapter I, there are three basic types of local governments which have general authority to regulate land use. These are Counties, Cities, and Townships. This chapter discusses the roles in land use management played by four general groups of people. These groups are: governing bodies, advisory bodies (such as planning and zoning commissions), administrative staff, and citizens. It also explains the meaning of some key terms used in this Handbook.

A. Governing Body

The governing body is the group of elected officials who form the highest authority within a local government. In counties, this body is the County Commission. In cities, this body is the Council or the Commission, depending on the form of government selected by the city. In townships, this body is the Board of Supervisors.

The governing body of local jurisdictions has the authority to pass laws applicable within the jurisdiction's boundaries. It also has the authority to appoint members to other land use management roles, including the appointment of planning commission and zoning commission members.

In counties and townships, the governing body has an additional role of hearing and deciding appeals. In cities, this function may be assigned to an appointed Board of Adjustment.

B. Planning or Zoning Commission

Planning or zoning commissions serve as advisory bodies to the governing body in most instances. The NDCC names the advisory body a planning commission when its role relates to subdivision authority, and a zoning commission when its role relates to zoning authority. The NDCC also allows the same body to serve both functions. Consequently, many cities in North Dakota have a combined body named the Planning and Zoning Commission.

There are certain ambiguities about the authority, roles and processes of city planning commissions and subdivision authority which make it difficult to clearly delineate their role.[6] Generally, cities in North Dakota have placed the planning commission in the review or advisory role for the approval of plats.[7]

The planning commission generally has the responsibility of developing and recommending a comprehensive plan and land use regulations to the elected body for adoption. A zoning commission generally has the same type of responsibility for a

master plan. Additional information about master plans and comprehensive plans is discussed in Chapter V.

C. Administration

In order to properly administer or implement the comprehensive plan and land use regulations, jurisdictions typically appoint officials who are responsible for ensuring compliance with the plans and regulations. These officials may include a zoning administrator, a planner, and/or a building inspector. The persons appointed to these administrative functions may have existing roles in local government, or they may simply have been appointed because they are willing to serve in the administrative role. These and other similar positions are essential to the consistent implementation of the jurisdiction's regulations. Additional information about the administration and enforcement of land use regulations is discussed in Chapters VI and VII.

D. Citizens

The citizens of a local jurisdiction represent the fourth group of people involved in land use management. They may be involved in a number of ways:

- As the general public, they have the right to provide input on land use decisions including the details of comprehensive plans and land use regulations. They also have the right to offer comments on any other land use decision being made by the advisory body or governing body.
- As petitioners, they have the right to submit applications requesting permission to use or develop land.
- As complainants, they can request redress of grievances where they feel wronged.
- As appellants, they can request consideration of a land use related decision to the appropriate appeals body.

Additional information about procedures relating to citizens' roles are discussed in Chapters V-IX.

E. Terms

There are a number of terms that are essential to the understanding of this Handbook. The following list of definitions provides an explanation of these terms as they are used in this Handbook. Additional terms are defined in the glossary found in Appendix 2.

Comprehensive Plan – an officially adopted document of a local unit of government which provides direction for the future development of the community by establishing goals, objectives, and policies to guide community decision-making and which does so in a manner consistent with a state's planning and zoning enabling legislation.

Zoning – "a police power measure, enacted primarily by general purpose units of local government, in which the community is divided into districts or zones within which permitted and special uses are established, as are regulations governing lot size, building bulk, placement and other development standards…."[8]

Subdivision – "the division of a tract or parcel of land into lots for the purpose, whether immediate or future, of sale or of building development, and any plat or plan which includes the creation of any part of one or more streets, public easements or other rights-of-way, whether public or private, for access to or from such lots, and the creation of new or enlarged parks, playgrounds, plazas, or open spaces."[9]

Ordinance – a law enacted by a local unit of government; used synonymously with regulation.

Enabling Legislation – state law which provides authority to local units of government to establish and enforce a law; in this Handbook it refers to the authority to establish laws relating to land use and development.

Development – human action which causes a site or an area to be modified from the natural landscape including modifications above or below ground or water.[10]

Land Use – the use or development of land or water including below or above surface uses or development.

Community – the general area of a local jurisdiction (county, township, or city) including its people, organizations, businesses and government; or, in some contexts, the government of a local jurisdiction.

III. Process Overview

In Chapter I land use management was described as the local government process (planning) of determining the way land should be used and developed in a community, and the implementation of tools (regulation) to ensure that such use and development occurs. In Chapter II the primary actors involved in land use management were described along with their basic roles. This chapter summarizes the basic processes of land use management under the laws of North Dakota.

A. Land Use Management is an Evolving Process

The North Dakota enabling legislation for land use planning and regulation has evolved over time, and most changes have been made to address perceived deficiencies or issues which became politically significant. The result of this evolution has not been a unified system. Instead, the existing enabling legislation contains inconsistencies in the use of terms and establishment of processes and criteria.

Despite these inconsistencies, the enabling legislation creates a framework for land use management which involves three general processes:

- First, if a jurisdiction wants to avail itself of the authority offered by the enabling legislation, it must develop a plan. This plan is typically called the comprehensive plan. The plan is the overall strategy for land development within the jurisdiction.
- Second, the jurisdiction must enact specific regulations which establish standards and rules for the development and use of land. These regulations address the type of use, general standards about structures, and location of development (zoning regulations), and the standards which development must meet (subdivision or platting regulations). It should be noted that zoning and subdivision regulations can be combined into a single set of regulations often called a land development code. A land development code offers the advantage of a more integrated set of tools for land use management.
- Third, whenever any use or development of land is desired within a jurisdiction, the parties wishing such use or development usually must submit an application. Some uses and some types of development do not require an application because they are granted such use or development by right or exemption within the land use regulations.

It is reasonable to expect that community plans and regulations should be updated periodically. The three general processes outlined above are typically part of a cyclical pattern within the community. This pattern involves adjustments to the plan and the regulations of the community in response to a number of factors which are themselves changing over time:

- The situation within a community is not static, so the needs, plans and vision of the community will change over time.
- The regulations governing development may need to respond to changes in the plans.
- The regulations may also change in order to better accomplish their objectives.
- State and Federal laws and policies may change requiring local regulations to respond to them.
- State and Federal caselaw may determine that certain planning practices or regulations are inappropriate, and local jurisdictions may need to modify their practices, policies and regulations in order to be compliant.
- Community values or pressures from interest groups may cause the local government to modify the plans and regulations.

B. General Steps to Land Use Management Processes

The enabling legislation provides details for how the land use management processes noted above should be carried out. The details of these processes vary somewhat by the type of jurisdiction, but have similar approaches. The similar approaches of these phases are summarized in the following paragraphs.

The general steps for developing a plan are:

- Appoint a planning/zoning commission
- Investigate the community needs with respect to planning and zoning
- Survey and study present conditions and future growth in the community
- Develop the plan, including specific goals, objectives and policies consistent with the community's present and future needs with respect to planning and zoning
- The planning and zoning commission should hold a public hearing complying with all applicable notice requirements. This hearing will provide an opportunity for public input into the process.
- The planning commission should adopt the plan with any changes approved by the commission
- The planning commission should submit the plan with all recommendations to the governing body of the jurisdiction.
- The governing body of the jurisdiction should then adopt the plan, after having complied with the applicable public notice requirements.

The general steps for establishing land use and land development regulations are:

- Establish a planning and zoning commission (if not already established)
- The planning and zoning commission should prepare appropriate regulations or ordinances.
- The planning and zoning commission should hold public hearings on the proposed regulations or ordinances.

- The planning and zoning commission should recommend approval of the regulations or ordinances and submit them to the jurisdiction's governing body.
- The governing body of the jurisdiction should follow the required reading requirements for the proposed land use ordinances and regulations. The governing body of the jurisdiction will also have to hold a public hearing on the regulations or ordinance before its final passage.
- The jurisdiction's governing body should adopt the regulations complying with all applicable notice requirements as set forth in the North Dakota Century Code.
- The regulation, along with its punishment provisions, should be published in an appropriate newspaper.

The general steps of application for approval of land development or land use are:

- Applicant investigates the procedures for approval and obtains necessary application forms
- Applicant completes and submits required application materials to the appropriate administrative official
- When the application is for a permitted use, an administrative official reviews the application and approves it when compliance with local regulations has been verified.
- When the application is not for a permitted use, notice of a hearing is provided to affected parties and published in an official newspaper
- Then the planning/zoning commission holds public hearing on proposed application, and makes a determination about the application, and provides a recommendation to the governing body
- Then the proposed application and recommendation is reviewed by the governing body and a determination is made about the application
- Applicant has the right to appeal a decision to appropriate bodies

There is a process in land use management which is not very evident in the enabling legislation, but should play a significant role in the overall process. It is capital improvements planning. Capital improvements may include roadway construction or reconstruction, sewer and water main replacement or installation, standard street maintenance activities, and public facility improvements (such as replacing a water tower, replacing a fire truck or road maintenance equipment, or an addition to a government building).

Local jurisdictions seldom have the funds to install or maintain the infrastructure that accompanies land development. It requires careful financial planning. The capital expenditures for a single project may require saving funds for several years or bonding for up to 30 years. Therefore, local governments must weigh the tradeoffs between sets of development options, and choose the timing of infrastructure investments.

The general steps for capital improvements planning are:

- Capital needs should be identified based on technical studies, comprehensive plans or future land use plans, and the general knowledge of local government officials.
- When there is an existing plan, the process would also include reviewing completed and uncompleted projects from the previous year's version of the plan.
- Although capital improvement plans are often considered five year plans, it is important to think longer term. Five years is often not enough time to plan big projects or to understand the implications of inserting higher priority projects into the proposed timetable. Understanding what will have to be delayed is often the most critical thing about changing a capital improvements plan. Ideally, the capital improvements planning process will examine standard maintenance costs as well as new development or major infrastructure costs.
- A multi-year plan (typically at least five years) of proposed improvements based on estimated project costs, and estimated or projected available funds is then prepared.
- There is no standard process for adopting a capital improvements plan established by enabling legislation. However, it is reasonable to hold a public information meeting to inform the public and invite input about the approach a local jurisdiction will take for addressing its long term capital and infrastructure needs.

C. Key Operating Principle for Land Use Management

Although there may be inconsistencies or a lack of detail in the North Dakota enabling legislation for land use management, there is a fundamental rule in the field of land use management which can help any jurisdiction to stay out of trouble while practicing land use management. This rule is to **always provide a detailed and relevant rational basis for the land use decisions** made. A great many court cases having to do with land use have been decided on the basis of whether or not there was a rational basis for the decision made by the local government. Many North Dakota communities do not have legal land use experts on their staff to provide the advice needed for making some land use decisions. This does not mean that there is not help available. A number of possible contacts to assist in the land use management process are listed in Appendix 3. In addition, there are times when consulting an attorney is the only wise choice for a local jurisdiction.

IV. Similarities and Differences in Types of Local Government

Chapter II refers to three types of general purpose, local governments which have been given authority by the State to plan land use and enact land use regulations. These are Counties, Townships, and Cities. These three different forms of local government each have unique characteristics in their geographic interrelationships, and in their respective enabling legislation.

This chapter describes the three general purpose types of local government in North Dakota and contrasts their land use management characteristics. It also explains the basic differences between the roles of local governments and the state government in certain land use matters.

A. Counties

Counties are the primary geographic subdivision of the state. There is no overlap in county boundaries or jurisdiction. All counties have governing bodies and certain appointed and elected positions to fulfill certain duties required by State law. However, counties are empowered and not required to zone,[11] and many counties do not have zoning regulations. They may zone any part of their geographic area which is outside city jurisdiction. Counties are also empowered to approve plats which are not within any city's jurisdiction.

County enabling legislation has some key features which are unique among local governments. These include:

- Only counties are required to establish solid waste zoning ordinances.
- Counties must obtain a recommendation from townships with jurisdiction over a proposed plat prior to granting final approval of a plat.
- Counties may require a surety bond to ensure that public improvements are made for a proposed plat.

Although counties have been enabled both to zone and to regulate subdivisions, the enabling legislation requires a cooperative relationship with townships. This is evident from the requirements to consult townships on preparation of comprehensive plans and plat approvals, and the limitations on zoning when a township chooses to establish zoning regulations.

B. Townships

Townships are located within the geographic boundaries of counties. Some townships have established local governments. Such townships are called "organized townships." Organized townships may choose to enact zoning ordinances. North Dakota enabling legislation does not provide townships with the authority to regulate the subdivision of

land. Therefore, the subdivision authority within the territory of organized townships belongs to the government of the county in which they are located or to the government of any city having extraterritorial subdivision authority.

When an organized township chooses to establish zoning authority, its zoning authority supercedes the zoning authority of the county. In the case where both a county and a township have established zoning regulations, the township regulations over-rule the county regulations on any matter the township regulations address. If the township regulations do not address a particular matter, and the county regulations do, the county regulations are applicable even though the county regulations on all other matters are not applicable.

Unorganized townships have no governmental authority and are simply a unit of measure for the Public Land Survey System (PLSS). Therefore, the platting and zoning authority within the territory of unorganized townships belongs to the government of the county in which they are located or to the government of any city having extraterritorial authority (when these local governments have assumed authority for land use regulation).

Township enabling legislation has some key features which are unique among local governments. These include:

- Only townships do not have the authority to regulate the subdivision of land.
- Townships may "relinquish" their zoning authority to Counties.

The potential to relinquish zoning authority to counties is a significant issue. Once a township does relinquish zoning authority, it cannot be regained. Thus, it may be in the best interests of a township to enter into a "joint powers" agreement instead of relinquishing all its zoning authority. A joint powers agreement has the advantage of being able to have time limits and be very flexible. It can be applied to a wide range of topics of interest to the participating governments and can typically be modified at any time by common agreement of the parties.

C. Cities

Cities are located within the geographic boundaries of Counties, but they are more complex governments and have broader powers than townships. Land use authority within a city's jurisdiction is autonomous. That is to say, in North Dakota, where a city has assumed authority for land use planning and regulation, there is no overlap with township or county authority.

City enabling legislation has some key features which are unique among local governments. These include:

- Only cities are empowered to establish extra-territorial zoning and subdivision authority.
- Only cities are empowered to establish an independent board of adjustment.
- Only cities are empowered to annex land.
- Only cities are empowered to prepare major street plans.
- Only cities do not have a provision limiting the ability to restrict the use of land or buildings for farming or ranching, or any of the normal incidents of farming or ranching.

D. Commonalities among governmental types

There are a number of characteristics about land use management provided in the enabling legislation which are common among local governments. These include:

- All appeals may ultimately end up in district court and must proceed according to NDCC 28-34-01.
- All jurisdictions must use a comprehensive plan as a basis for land use regulation.
- All jurisdictions must go through a public hearing process prior to making a decision to adopt or amend a comprehensive plan.
- All jurisdictions must go through a public hearing process prior to making a decision to approve plats, zoning amendments, or certain other decisions.
- All jurisdictions may establish joint powers agreements with other local jurisdictions.
- No County or Township enacted zoning ordinances may prohibit or prevent the use of land or buildings for farming or ranching, or any of the normal incidents of farming or ranching.

E. State role in certain land use management cases

The previous sections of this chapter have discussed the nature of local government controls over land use through the use of comprehensive plans, zoning regulations, and subdivision regulations. In general, state government has passed these powers to the local governments. However, the state does have some ability to influence land use. The state has established regulatory control over certain kinds of land uses which are separate from zoning and subdivision controls. The kinds of land uses over which the state has some regulatory capacity include (but may not be limited to) confined animal feeding operations; solid waste management; and energy facility siting. In all these cases, although state authority does influence or affect these land uses, it is not intended to override local land use authority. Instead, it is expected that local zoning and platting regulations will also address these uses. It should be noted that there are certain aspects

of these uses which are not addressed by state regulations at all, and it is up to local governments to address these aspects.

The North Dakota Department of Health has the authority to permit or deny the development of confined animal feeding operations which have either or both a certain number of animals or/and a certain land area use, or a certain proximity to "waters of the state".

The North Dakota Department of Health also regulates the location of land fills and waste transfer stations. The Department of Health exercises control by issuing permits for operation and requiring certain standards to be met at each permitted location.

The North Dakota Public Service Commission regulates the siting of all energy facilities, such as coal gasification plants and electric power plants. Once a formal application has been submitted, a number of other state agencies and relevant counties would be notified. Each of these entities may also have regulations which would have to be satisfied prior to approval of the energy facility.

V. Plans

The starting point for the establishment of land use regulations is a certain type of plan. This plan must provide guidance for land use in a local jurisdiction. In the United States, this "plan" is typically called the comprehensive plan, but it is sometimes also called a general plan or a master plan. The North Dakota Attorney General's office has opined that local jurisdictions in North Dakota must have a comprehensive plan in place as a basis for zoning.[12] North Dakota enabling legislation refers specifically to at least three "plan" types.

- First, there is the comprehensive plan. The comprehensive plan is most consistently thought of as the "plan." Counties, townships, and cities should all use comprehensive plans as a basis for zoning regulations.[13]
- Second, there is the master plan. The master plan is specifically noted in connection with the regulation of subdivisions by cities.
- A third plan mentioned in the enabling legislation is the "street plan." It is also mentioned in connection with the regulation of subdivisions by cities.

While there may be some ambiguity about the role of certain plans referenced in the NDCC, it is essential that all land use regulation stem from a systematic rational basis typically embodied in a plan which has been properly adopted by a local governing body.

The historical development of planning in North Dakota helps to explain why there are different plan references and terms in the enabling legislation. The City planning statute for plan development is the oldest of planning statutes in North Dakota. NDCC 40-48-02 was written in 1929 and amended in 1943. The relevant planning statute for Counties was written in 1943 with amendments in 1955, 1957, and 1981. The relevant planning statute for Townships was also written in 1943 and amended in 1953, 1957, and 1981. NDCC 40-47-03 pertaining to City zoning was also amended in 1981 to include requirements for comprehensive plans. However, NDCC 40-48-02 was never amended to include requirements pertaining to comprehensive plans.

Historically[14], according to William I. Goodman in his book Principles and Practice of Urban Planning in the late 1920's consultants were generally employed by planning commissions to prepare a "Master Plan" which was anticipated to include sections on streets, transit and transportation, parks and recreation, civic appearance, and zoning (Goodman, 1968 pg. 24). When one looks at NDCC 40-48-02 the components of the plan relate to the planning of the day. In the 1960's, T. J. Kent, Jr. was a leading proponent of the comprehensive planning concept in what he termed "The General Plan" which was the "official statement of a municipal legislative body which sets forth its major policies concerning desirable future physical development" (Goodman, pg. 349). It wasn't until this time in history that we see plans being comprehensive in nature, or for that matter taking on the term "Comprehensive Plan". It is no surprise that the latest amendments to the city planning statute in 1943 do not relate to comprehensive plans, because there

was no such thing at that time. On the other hand, the county and township planning statutes through more recent amendments have kept up to date on terminology.

Goodman also makes comments on comprehensive plans which he states are official public documents adopted by the local governing body and serve as policy guides to decisions about the physical development of the community. The plans provide for the manner in which government leaders want the community to develop over a 20-30 year period (Goodman, pg.349). Goodman indicates that the term "general plan" and "comprehensive plan" are used interchangeably, and the term "city plan" is also used by communities. However, the term "master plan" was no longer respected by planners because of the misuse in the past to describe plans which were not general and comprehensive, i.e. "master street plan" or "master park plan" (Goodman, pg. 349). Goodman goes on to explain the aspects of a plan being comprehensive, general and long range. The comprehensive aspect would mean that the plan encompasses all geographical parts of the community and all functional elements with regards to physical development. The general aspect relates to policies and proposals without specific locations or detailed regulations. The long-range aspect goes beyond the pressing current issues to the perspective of problems and possibilities 20 to 30 years in the future (Goodman, pg. 349).

In addition to the previously referenced plan types, there is a fourth type of plan often used in community development called the strategic plan. It is important to note the distinction between comprehensive plans and strategic plans. Typically, strategic plans are not comprehensive in nature, and may not have a land use component. Strategic plans tend to be more short term and to focus on a narrow set of issues such as economic development or housing or downtown redevelopment. Strategic plans do not serve the function of a comprehensive plan which is capable of serving as the basis for land use regulation. Comprehensive plans must always have a land use component that specifies policies about land use and development within the jurisdiction.

A. Description and Contents

The NDCC describes a comprehensive plan as "a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control."[15]

Beyond this brief description, the NDCC does not identify specific elements which must be included in the comprehensive plan. Plans may vary widely with respect to the topic areas addressed. They may also vary in the approach to the content addressed. A comprehensive plan generally includes a strategy for development of land under the local government jurisdiction.

- Often times this strategy is summarized in a "future land use map" which designates the general locations of differing types of land uses such as

commercial, industrial, and residential. It also may identify locations for future public facilities such as water towers, fire stations, and parks. The strategy for land development may also address the phasing of future land development by designating some areas to be developed before other areas.

- In other instances a "comprehensive policy plan" is developed instead. In this type of comprehensive plan the "future land use map" may not be provided at all. Instead it might provide a more detailed set of goals, objectives and policies to provide guidance to the community's development.

Comprehensive plans may also address a variety of other topics such as transportation systems, parks and open space, housing, community/economic development, and community facilities. Typically, these other topics all have some relationship to the development of land. For example, the transportation component may establish the location of a future major roadway which is anticipated to be needed to serve new commercial areas. As another example, the community facilities component might provide a strategy to add sewage treatment facilities or a water tower when the community reaches a certain level of growth in order to be prepared for additional growth.

The format of a comprehensive plan document may vary widely. Typically, the document will include:

- A section about the existing conditions of the community
    - a historical overview
    - housing
    - business and industry
    - public facilities (parks, community buildings, schools)
    - natural resources
    - infrastructure (roads, water & sewer, and communications systems);
- A discussion of projected growth patterns such as the average amount of land being developed, population growth rates, and other measurable changes in the community;
- An analysis of issues facing the community;
- A statement of goals and policies;
- A plan for community development including a future land use map;
- A strategy for implementing the plan.

One additional topic which may not have been a consciously planned component of a comprehensive plan in the past is emergency management. The enabling legislation was amended in 1999 to state that local government land use regulations should address emergency management. Thus it seems appropriate that the comprehensive plan should address emergency management so that the regulations which serve emergency management purposes can have a proper basis. Each county, and many individual cities, in North Dakota have emergency management plans. These plans are very

detailed, and should not be incorporated directly into the comprehensive plan. However, it is important that aspects of the emergency management plan which could influence how development occurs within a community should be incorporated. For example, communities which have floodplain regulations should have plans which address floodplain development within their jurisdictions. Similarly, the location of critical facilities such as hospitals, clinics, nursing homes, emergency response services, schools, utility plants, and electrical substations should be consistent with emergency management principles and plans.

There may be many other aspects of emergency management which could be addressed by the comprehensive plan. It is important to discuss emergency management with the county and/or city emergency manager to learn what kinds of emergency management might be appropriate to address in a comprehensive plan. At a minimum, efforts should be made to coordinate the plans for emergency management and the comprehensive plan.

B. Procedures

The process by which a comprehensive plan is prepared and adopted is directed in the enabling legislation. As noted in Chapter III, the general steps for developing a plan are:

- Appoint a planning/zoning commission.
- Investigate the community needs with respect to planning and zoning.
- Survey and study present conditions and future growth in the community.
- Develop the plan, including specific goals, objectives and policies consistent with the community's present and future needs with respect to planning and zoning
- The planning and zoning commission should hold a public hearing complying with all applicable notice requirements. This hearing will provide an opportunity for public input into the process.
- The planning commission should adopt the plan with any changes approved by the commission.
- The planning commission should submit the plan with all recommendations to the governing body of the jurisdiction.
- The governing body of the jurisdiction should then adopt the plan, after having complied with the applicable public notice requirements.

However, there are some aspects which vary by type of jurisdiction as discussed in the following subsection.

The process typically used for developing a comprehensive plan can take many paths. One well-known comprehensive planning expert summarizes the process for plan development as including the following steps:

- evaluating current conditions,
- identifying objectives,
- projecting where you're going,

- charting alternative ways to get there,
- and, evaluating how you've done.[16]

Generally, the planning/zoning commission is contemplated as the primary agency in the process of developing a comprehensive plan. However, it is important to gain widespread community input. This may mean holding public input meetings; completing surveys about community attitudes and issues; and working with numerous community organizations. Sometimes a separate advisory committee is appointed to assist in the planning process. Additional people to consult include those with an understanding of the community's economic development issues; infrastructure needs; emergency management plans; educational institutions; health care facilities; and parks and recreational issues. The process may also involve obtaining assistance from planning consultants, regional councils, attorneys, or other experts with knowledge about planning procedures.

C. Distinctions

The primary distinction between the plans of different types of jurisdictions is that townships and counties do not have enabling legislation referring to a master plan or street plan. It should be noted that the county planning commission is supposed to work "in conjunction with the township boards of the affected areas to investigate and determine the necessity of establishing [zoning]."[17]

For cities, there is enabling legislation referring to a master plan and a street plan. The relationship and distinctions between these terms is not clearly identified in the enabling legislation. The references to master plans are found in Chapter 40-48 of the NDCC. These references note both purposes and contents of the master plan in more detail than is provided about comprehensive plans referenced in other chapters of the NDCC. The references to street plans are also found in Chapter 40-48 of the NDCC. Guidance from an attorney is strongly suggested on matters relating to street plans.

D. Implementation

There is often a tendency for local governments to go through the process of adopting a comprehensive plan and then get caught up in the day-to-day procedures of zoning and platting review, and not use the comprehensive plan as a tool for guiding the daily decisions. While it is true that zoning and subdivision regulations provide more detail about acceptable development, the comprehensive plan goals, objectives, and policies should guide the daily decision-making process. The comprehensive plan should be used as a benchmark to ensure that decisions made are helping to implement the goals of the plan. Additionally, the plan can sometimes provide direction for ambiguous situations.

Once a comprehensive plan has been adopted by the local jurisdiction, it should be consulted regularly. Whenever a hearing is held for a zoning amendment, a variance, or a conditional use permit, the planning commission[18] should review the pertinent parts of the comprehensive plan to determine whether or not the proposed action is consistent with the plan. If an application is not consistent with the plan, the local jurisdiction should not approve the requested action. If the jurisdiction does approve such an application, it runs the risk of making an arbitrary decision which is contrary to the comprehensive plan.

When a local jurisdiction finds that it is facing decisions where what seems good for the community is inconsistent with the comprehensive plan, it may be time re-evaluate the goals and objectives of the plan. The situation of the community may have changed to the degree that a revised comprehensive plan should be prepared. As a rule of thumb, a community should update its comprehensive plan every 5 to 10 years.

VI. Zoning Ordinances

"There are two basic products that emerge from the planning process—plans and regulations. The first is a blueprint, while the second is a tool. Plans represent goals, things to be achieved, while regulations represent the vehicle to reach those goals."[19] Zoning ordinances are at the heart of land use management. It is the zoning ordinance that has the legal authority to regulate the uses of land in a local jurisdiction. It gives teeth to the plan. It is an implementation tool to help fulfill the goals of the comprehensive plan.

A. Function

Zoning ordinances typically establish a formal application process to regulate the construction of structures on land and the use of land for specific purposes. The North Dakota enabling legislation provides the authority for local governments to regulate "real property."[20] It states that jurisdictions may "regulate and restrict…the location and the use of buildings and structures, [and land] for…residence, …and other purposes."[21] The enabling legislation provides that jurisdictions may establish a permitting process as part of the regulatory structure.

The functions or objectives of zoning regulations are also noted in the enabling legislation. Counties, cities and townships are all intended to use zoning to:

- Regulate or restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of building and [other] structures; the percentage of a lot that may be occupied; the size of courts, yards, and other open spaces; the density of population; and the location and use of buildings, structures and land for trade, industry, residence, or other purposes.
- Provide for emergency management.
- Promote health, safety, and general welfare.
- Facilitate traffic movement and lessen congestion in streets.

Additionally, the enabling legislation provides that for at least one type of local jurisdiction (city, county, township), zoning regulations have the following additional potential functions:

- lessen governmental expenditures;
- conserve and develop natural resources;
- protect and guide the development of non-urban areas;
- encourage orderly growth;
- facilitate adequate provisions for transportation, water, sewage, schools, parks, and other public requirements.

B. Distinctions

As noted in Chapter IV, there are both similarities and differences in the details of the zoning enabling legislation for townships, cities, and counties. The following paragraphs summarize the main points about zoning in North Dakota:

- For counties, cities and townships, zoning must be done "in accordance with a comprehensive plan."
- For counties, cities and townships, the zoning regulations may divide all or any parts of the jurisdiction into districts, and may establish regulations for each district which must be applied uniformly within each district, but may differ from district to district within the jurisdiction.
- For counties and townships, zoning regulations may not "prohibit or prevent the use of land or building for farming or ranching, or any of the normal incidents of farming or ranching."
- "Farming or ranching" has been defined as "cultivating land for production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit."[22]
- For counties and townships, zoning regulations may regulate the "nature and scope of concentrated feeding operations permissible in the [jurisdiction]."
- However, for counties and townships, the regulation of concentrated feeding operations has been limited by a clause in the enabling legislation which says "if a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the [governing body] shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation."[23]
- For counties and townships, the regulation of concentrated feeding operations is allowed, but the preclusion of development of concentrated feeding operations is not. The State enabling legislation specifies that counties and townships may govern the location of concentrated feeding operation development based on the size of the operation.
- Counties and townships may not prohibit, through regulation, the reasonable diversification or expansion of a farming or ranching operation.
- County planning commissions are supposed to work "in conjunction with the township boards of the affected areas to investigate and determine the necessity of establishing [zoning].
- For cities, the advisory body responsible for zoning is to be known as the zoning commission, although if a city has a planning commission, it may be appointed as the zoning commission.

C. Components

There is not one standard way to organize the components of a zoning ordinance. However, they typically have the following parts:

- Zoning map – illustrates the boundaries of zoning districts and the geographic extent of the jurisdiction's zoning authority.
- Zoning district regulations – identify the purpose of each zoning district, describe types of uses allowed in each district, and establish standards specific to uses within each district.
- Administrative and enforcement procedures – explains the processes that must be followed for compliance with zoning regulations including permits, rezoning requests, variance requests, and conditional use requests.
- General provisions – include definitions of key words, rules of interpretation, (other sections which are applicable to the document or the jurisdiction as a whole instead of pertaining only to a specific zoning district), and the geographic extent of its authority.
- Introductory provisions – include things like the title and purpose of the ordinance, the legal basis for its authority, and the effective date.
- Other parts typically address non-conforming uses; conflict with other laws; and violations and penalties.

The zoning district regulations typically contain several subparts including district purpose; permitted uses; conditional uses; dimensional requirements; and other requirements.

- The district purpose statement is especially helpful in protecting a community from legal challenges. It should provide a clear explanation of why the district was established. It is helpful to state the purpose in terms of public health, welfare, and safety, as well as, how it relates to the objectives of the comprehensive plan.
- The permitted uses subpart is usually a list of land uses which the ordinance allows within a particular district. As long as the dimensional standards for development and construction are met, no special permits are required for permitted uses.
- The conditional uses subpart is usually a list of land uses which the ordinance allows when specific additional requirements are met. Some of these requirements are often stated in the ordinance in order to provide guidance and aid in the consistent decision-making about conditional uses.
- The dimensional requirements typically include setback requirements of structures from property lines or other features; permitted levels of lot coverage; maximum building heights; and minimum lot sizes. These standards should be directly related to the objectives of the particular zoning district.

- Other requirements may include special standards only applicable to specific zoning districts, or standards which provide additional guidance about site development within the district. Examples of this kind of requirement may include requirements about parking, fences, landscaping, and signs.

1. Zoning Map

The zoning map is a key part of the zoning ordinance. It illustrates the physical location of each type of zoning district. A single zoning district classification may have more than one location within a local government's jurisdiction. The boundaries of zoning districts must be clearly distinguishable and the zoning district clearly designated. It is often useful to define the basis of the boundary in the text of the zoning ordinance in order to provide a way to settle any questions about district boundaries. Some other key things to remember about zoning maps include:

- The official zoning map should always be kept in a designated location as may be required by enabling legislation and the zoning ordinance.
- The official zoning map should be designated as such and should bear signatures of designated local government officials.
- The official zoning map should always contain the date of latest approval.
- Previous versions of the zoning map should be kept in order to address potential questions about the timing of changes in regulations which may result in impacts to parcels.

2. Zoning Text

The zoning ordinance must contain both a map of the defined zoning districts and the text which specifies the general and detailed requirements for each district. The zoning map should be specified by reference in the zoning text. The zoning text should also contain the components listed previously.

The text has two main jobs to do: (1) it must be written in a way that reduces ambiguity as much as possible; and (2) it must be written to be as functional as possible. This means in part that it is written in a way that makes it easy to enforce and to interpret. This is why there is usually a section on the purpose of the ordinance and a section containing definitions of terms. Any term which should be interpreted in a specific way in order to ensure proper enforcement and understanding is a good candidate for the definitions list. One of the common approaches to interpreting land use regulations is to state that the terms used should have the normal dictionary meaning unless a specific definition has been established by the land use regulation.

The State enabling legislation does not provide a lot of detail about zoning ordinance components. What detail it does provide should be carefully implemented in local regulations in order to reduce the potential for litigation. It is recommended that an attorney be consulted regarding the implementation of any zoning ordinance or amendment to an ordinance.

D. Procedures

The zoning ordinance should contain careful explanations for procedures to be followed in the utilization of the ordinance. In addition to following procedures written into the regulations, planning commissions may be wise to adopt bylaws that govern additional rules of procedure pertaining to how their meetings are run, and how they will handle conflicts of interest and ex parte communications.[24]

1. Adoption

The process for adoption of a zoning ordinance has been described in general terms in chapter II. It is recommended that an attorney be consulted about the adoption process prior to its initiation in order to reduce the potential for dispute. Interestingly, the North Dakota Century Code includes language that says an ordinance, resolution, or regulation may be presumed properly adopted three years after its apparent adoption.[25]

2. Administration

Once an ordinance has been adopted, it must be applied to the jurisdiction in order to accomplish its objectives. "The bottom line in effective zoning after the passage of a well-drafted ordinance is administration. [If] a local community cannot or will not provide effective, professional administration, it should not consider getting involved with zoning."[26] Typically, a person or local government department is appointed by the governing body to act as the administrator of the zoning ordinance. This appointee may function in several capacities, including to:

- Serve as the initial point of contact for any person having questions about zoning or wanting to report a zoning violation;
- Receive and give the board of adjustment, or local governing body, all applications for appeals, amendments, variances, and conditional use permits;
- Inspect construction projects if there is no building inspector to ensure that the ordinance standards are being met;
- Report all zoning violations to the appropriate jurisdictional entity for action;
- Maintain updated copies of the zoning map and ordinance.

Administration also involves record-keeping. Without accurate, detailed record-keeping, a zoning ordinance cannot be fairly administered. This means keeping detailed minutes; tracking changes when zoning regulation and zoning map amendments are made; recording all requests for variances, conditional use permits, and other requests along with the resulting decisions; and tracking annexations. It is especially important to be able to know when these land use management decisions and actions took place in order to determine compliance.

3. Variances

The NDCC contains language that allows some change from the literal application of the zoning ordinance. This process is commonly known as a "variance." In counties, this authority to "adjust the application or enforcement" is given to the board of county

commissioners.[27] In cities, this authority to "determine and vary the application of the regulations" is given to a board of adjustment.[28] The enabling legislation for townships does not identify a variance process. It should be noted that "variance" procedures are a part of some township zoning ordinances currently in use in North Dakota.

This "variance" process has the potential to be misused, often times by over-use. A good rule of thumb is that when a variance is routinely sought and applied to a zoning approval process, it is time to re-examine the ordinance and change its language so that what is commonly being approved via variance can become an accepted situation within the ordinance. This allows the community and the applicants a cleaner, less time-consuming process.

Variances in land use regulation have historically been appropriate only to "avoid the confiscatory effect that would follow a literal enforcement of some term of a zoning ordinance operating to deprive an owner of all beneficial use of his land."[29] Typically, the following standards should be met in order for a variance to be granted:

- A hardship must exist which results from unique circumstances relating to the land parcel within a zoning district.
- A hardship should not be caused by the owner or applicant, but rather due to the characteristics of the parcel itself.
- Approval of the variance will have no adverse effect on the public or on neighboring property.
- Approval of the variance will not grant rights unavailable to other parcels in the same zoning district. Thus, variances should never be granted for uses.

4. Conditional uses

The zoning requirements of a particular zoning district identify allowable uses within the district. Some of these uses may be "permitted" and require only an application for a building or use permit to submitted by an applicant and approved by a zoning administrator or building official. In addition to permitted uses, zoning ordinances typically contain language that allows some uses in addition to the permitted uses to be used under certain conditions. These "conditional uses" cannot be approved without a hearing process. The hearing process, like all public hearings, requires advance notification and certain hearing procedures. A decision can only be made after the appropriate process has been completed. The hearings for conditional uses are typically held by the planning/zoning commission. The planning commission will then recommend an action to the governing body regarding the conditional use application. The NDCC does not specifically refer to conditional uses, but the conditional use process is widely used in the United States and in North Dakota jurisdictions. For these types of uses, the jurisdiction establishes certain standards or conditions which must be met in order for approval of the conditional use to be obtained. The conditions to be met are often designed to protect neighboring properties from nuisances or negative impacts which might otherwise result from the conditional use. It is important that proceedings

and decisions for conditional uses be consistent, and that careful record keeping and findings of fact be done.

5. Enforcement

A zoning ordinance is a law, and is generally binding on all property within a jurisdiction. For a zoning ordinance to have any effect on land use, it is essential that citizens comply with the regulations. The enabling legislation for counties, cities, and townships all indicate that the local jurisdiction should establish a means to enforce the zoning regulations. The zoning administrator (or a local official) is typically responsible for enforcement.

Many zoning violations may be unintentional and can be corrected by (1) merely asking the property owner to take the appropriate action, and (2) rechecking the situation at a later time. Those violations which cannot be voluntarily corrected should be processed through legal channels. Any violation of a zoning regulation can be handled as any other violation of a city, county or township law. It is essential that careful records be kept about all the actions taken by the zoning administrator and the local jurisdiction. Each contact attempt and the response (or non-response) by the violator should be carefully documented in order to provide a basis for court action if it becomes necessary.

When a simple conversation with the property owner does not result in compliance, additional steps need to be taken. The NDCC does not detail appropriate steps for enforcement. One approach is an escalating process intended to use increasingly stronger pressure to obtain compliance. The escalating process typically includes the following steps:

- Hold a telephone or personal conversation notifying the violator of the violation and explaining what is necessary in order to be in compliance.
- Send a letter following up on the past conversation and reviewing the details as discussed in the conversation, and asking compliance by a specified reasonable timeframe.
- If compliance does not occur within the timeframe noted in the first letter, a certified letter (with a return receipt requested) should be sent. This certified letter should document the past attempts to obtain compliance, explain the results of continued non-compliance, re-state what is required to be in compliance, and order compliance within a reasonable timeframe.
- If compliance does not occur within a reasonable time (as established in the certified letter) then, action should be taken to bring the violation to an appropriate court for remedy.

Small communities seldom have resources available to take zoning violations to court or initiate other legal proceedings. As a result, it may seem safe for a violator to remain in violation. It is important that a community undertaking zoning regulation do so with the clear expectation of addressing violations. Otherwise, the zoning is not being fair to

the citizens who are abiding by the regulations, and it essentially makes community actions regarding the ordinance potentially arbitrary.

6. Appeals

The NDCC specifies appeals processes for three different situations. These situations are: decisions by city zoning administrators; decisions by city boards of adjustment; and enactment of ordinances or any other zoning decision by city, county, or township governing bodies. In summary, the processes are:

- City zoning administrator decisions may be appealed to a city's board of adjustment.
- City board of adjustment decisions may be appealed to the city governing body.
- A city governing body decision regarding an appeal may be appealed to district court.
- Appeals from zoning decisions of counties and townships are not specified, except that appeals to decisions of the governing bodies may be made to district court as noted previously.

The process for an appeal to district court is identified in NDCC 28-34-01.

A board of adjustment may be appointed by a city governing body to provide a means to hear and decide appeals, and review any decision made by a city's administrative official. (Note that it is possible for a city governing body to appoint itself as the board of adjustment. If it appoints itself as the board of adjustment, appeals from the board would be made directly to district court.) Additionally, the board of adjustment may be given responsibility to review other matters as established by a city zoning ordinance. The governing body of a city is given the authority to appoint an alternate to the Board of Adjustment so that if a member cannot attend a meeting, the alternate can be at the meeting. This is particularly important because a 4/5 approval is required in order to make a decision.

7. Amendments

As noted earlier, zoning regulations are likely in need of fine-tuning or even major changes over time. The NDCC provides a process for amending zoning regulations. Generally, this process is the same as the process for enacting the zoning regulations in the first place. Key aspects of the process include review and recommendation by the planning/zoning commission, public hearings with appropriate public notice, and adoption by the governing body.

VII. Subdivision Regulations

Subdivision regulations have a large impact on how land develops. While zoning regulations determine acceptable uses of land, it is the subdivision regulations that determine the physical layout of development. "Subdivision regulations direct the separation of one or more parcels of land from a larger parcel, setting standards for ultimate development."[30] They address the pattern of lots and the location of streets. "Subdivision regulations often give a community its only opportunity to ensure that new neighborhoods are properly designed."[31] Like zoning, the subdivision regulations are the law. Subdivision regulations are another implementation tool to help fulfill the goals of the comprehensive plan.

It should be noted that subdivision regulations and zoning ordinances can be combined into a single set of regulations often called a "land development code." A land development code offers the advantage of a more integrated or coordinated tool for land use management.

A. Function

Subdivision regulations are intended to address the following topics:

- Subdivision location and layout consistency with the county comprehensive plan or a city master plan
- Street locations and continuity, and capacity to facilitate fire protection
- Drainage and utility easements or rights-of-way
- Dedication and reservation of land for public use
- Hazard mitigation
- Standards for public improvements such as streets, curb and gutters, water and sewage facilities.
- Provisions to ensure completion of public improvements
- Provisions for recreation, light, air, avoidance of congestion
- Easements for building setback lines

B. Distinctions

As noted in Chapter IV, North Dakota enabling legislation gives cities and counties the authority to regulate the subdivision of land, but not townships. The following paragraphs summarize the main points about subdivision regulation in North Dakota:

- For cities, planning commissions must adopt regulations governing the "subdivision of land" that provides for proper arrangement of streets in relation to existing and planned streets and to a master plan before exercising the powers conferred by Chapter 40-48 of the NDCC.

- For counties, planning commissions appointed to exercise county zoning authority are to prepare proposed regulations controlling the subdivision of land.
- The area in which counties may regulate subdivision excludes any area within the corporate limits of a city. The area within a city's extraterritorial zoning authority is also excluded.[32]
- As with county's zoning authority, their subdivision regulations may not "prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming."[33]
- A county requiring the approval of plats as a prerequisite to the subdivision of land must request a township board of supervisors and the county planning commission make a recommendation to the governing body on the plat request prior to making a decision about the plat. However, these recommendations are not binding on the county board of commissioners.
- A county has the option to regulate the subdivision of land in one of two ways: either by requiring the approval of plats as a prerequisite to the subdivision of land; or without the requirement for plat approval prior to the subdivision of land.[34]
- A city has territorial jurisdiction over the subdivision or platting of land within the corporate limits of the city, and the area outside its municipal boundaries over which it has extended, by ordinance, its subdivision regulations. The extent of this extension of subdivision regulatory authority is limited by certain rules pertaining to the population size of a community and other factors. [35]
- The exact guidelines about the agency (governing body or planning commission) having authority over the division of land are not clear. If there is any question pertaining to this issue, it is best to consult an attorney. It would also make sense to submit an inquiry to the Attorney General's office to clarify some of the finer points.
- A city planning commission may contract for services as it may require, however the governing body has the authority to set the limits of the funding available to the planning commission. The basis of funding for the planning commission may include a tax levy as described by NDCC 57-15-10 subs. 14. (See 40-48-07.)

C. Components

The North Dakota Century Code does not address the components of subdivision regulations to the extent it does for zoning regulations. One may, however, infer components from the stated purposes and authority of subdivision regulations. Typically, subdivision regulations have the following parts:

- Design standards for land parcels – establish minimum lot sizes, easements required, minimum right-of-way widths and other street requirements, drainage plan requirements, and other similar types of requirements.

- Criteria establishing the conditions under which the division of land will be allowed – identify the circumstances under which platting is required; define the types of improvements which must be provided before land can be divided or sold; and similar types of requirements.
- Contents of the plat – define what the plat must contain including such details as the relationship of the land to one hundred year flood elevations; adjacent land parcels; existing and proposed easements; proposed property lines and pins; property descriptions; standards of measurement; and similar types of requirements.
- Administrative and enforcement procedures – explain the processes that must be followed for the review and approval of plats; establish procedures to deal with cases where plats are not developed in accordance with approved plans; and establish guidelines pertaining to variances.
- General provisions – include definitions of key words, and the geographic extent of its authority.
- Introductory provisions – include items such as the title and purpose of the ordinance; the legal basis for its authority; and the effective date.
- Exactions – the required dedication of land for easements, right-of-way, and park land or other public uses.

D. Procedures

1. Adoption

The process for adoption of subdivision regulations has been described in general terms in chapter II. It is recommended that an attorney be consulted about the adoption process prior to its initiation in order to reduce the potential for dispute. As with zoning regulations, a public hearing process must be followed prior to the adoption of subdivision regulations.

2. Administration

Once subdivision regulations have been adopted, it must be applied to the jurisdiction in order to accomplish its objectives. Typically, a person or local government department is appointed by the governing body to act as the administrator of the regulations. This person or agency functions in several capacities, including:

- Serving as the initial point of contact for any person having questions about platting.
- Acting as a liaison or point of contact between an applicant and the government agencies involved in the review process.
- Explaining the platting requirements and the purpose of the requirements to both the applicant and relevant government agencies.
- Reviewing plat applications and preparing reports and agendas for proposed plats.

- Maintaining appropriate records of all proceedings.

However, the review process is also aided by county or city attorneys, engineers, and other staff people.

3. Variances

The NDCC contains language that allows some change from the literal application of the ordinance. This "variance" process has the potential to be misused, often times for over-use. A good rule of thumb is that when a variance is routinely applied to an approval process, it is time to re-examine the ordinance and change its language so that what is commonly being approved via variance can become an accepted situation within the ordinance. This allows the community and the applicants a cleaner, less time-consuming process to permit that which is being allowed through the variance process. While the term "variance" is not used in the enabling legislation, a similar function is conferred to County Commissions by NDCC 11-33.2-08.

4. Plat Approval

The main function of subdivision regulations is to manage the division of land and approve proposed plats upon conformance with all relevant requirements. The basic plat approval process includes the following steps:

- Sketch Plan – The applicant presents a conceptual plan or general layout of the proposed plat in terms of streets, lots, and blocks. The sketch plan also shows existing conditions, surrounding land uses, and characteristics of the land where the proposed plat will be located. The planning staff review the proposed conceptual design and existing site conditions, and comment on issues to resolve. If it appears that the proposed concept will be able to meet local government requirements, the applicant will move on to the next phase: Preliminary Plat.
- Preliminary Plat – The applicant presents more technical information such as the exact measurements, the names of the subdividers, legal descriptions, the name of the plat; locations of easements; statement of proposed use of the subdivision; means to provide for streets blocks, lots, street names, etc. At this stage, the administrator circulates the proposed plat to a technical committee for their review of such issues as consistency with stormwater drainage plans; future street network requirements; and future land use plans and zoning requirements. The planning/zoning commission reviews the plat and recommendations from the technical committee, and considers major issues such as the following:
    - Does the subdivision conform to the comprehensive plan?
    - Are public services available to serve the proposed development?
    - Does the subdivision fit the established capital improvements plan?
    - Is the public capable of providing the supporting services for the proposed development?
    - Are there any outstanding problems unique to the proposal which might threaten the public welfare?

- Does the subdivision conform to the requirements of the subdivision regulation?

Typically, the applicant will receive preliminary plat approval with conditions which must be met in order to receive final plat approval. If the preliminary plat is approved (with or without conditions), the applicant can move on to the final stage: Final Plat.

- Final Plat – The applicant now prepares a final version of the plat which addresses all concerns noted in the previous review process, and which provides all final details required by the subdivision regulations. At this stage, the applicant typically must: provide proof of a clear title to the property to be subdivided; provide any required guarantees for the installation of required improvements; transfer titles for land being dedicated to the public; and meet such other conditions as were required during the preliminary plat review process. An applicant may wish to phase the development of the area approved in the preliminary plat in order to reduce the upfront cost of development. It is typically allowable to present only a part of the preliminary plat for approval as a final plat as long as this phasing is consistent with the capital improvements plan of the local government. As each phase of a final plat is presented for approval, it should be evaluated for consistency with the preliminary plat as approved. When it has been determined that a final plat meets all the requirements, it is forwarded to the local governing body for approval.

Subdivision regulations often contain a shorter or less rigorous process for small subdivisions such as lot splits.

5. Enforcement

While subdivision regulations generally do not have the same type of enforcement issues which zoning regulations do, there are enforcement issues. It is necessary to state in the text what the consequences of non-compliance are under state law. One of the stipulations of most subdivision regulations is that no land shall be sold until after the platting process has been completed. In most cases the local governing body retains the final authority to direct the enforcement of the regulations. One of the critical issues in subdivision regulations is the appropriate implementation by the applicant of the proposed and required improvements to the subdivision. As noted previously, a governing body may require guarantees such as a surety bonds for improvements. If an applicant fails to properly install the required improvements, the local government may make the improvements itself and pay for the cost of the improvements from the surety bond. A local government also retains the right to enforce its regulations like any other ordinance.

6. Appeals

An appeals process pertaining to subdivision regulations of cities is not specified in the NDCC. However, the same language which pertains to county zoning regulations applies to county subdivision regulations. Any person or persons who are dissatisfied by platting decision of the governing body may appeal the matter to a district court. The process for an appeal to district court is identified in NDCC 28-34-01.

7. Amendments

As noted earlier, subdivision regulations are likely in need of fine-tuning or even major changes over time. The NDCC provides a process for amending subdivision regulations. Generally, this process is the same as the process for enacting the subdivision regulations in the first place. Key aspects of the process include review and recommendation by the planning/zoning commission, public hearings with appropriate public notice, and adoption by the governing body.

VIII. Capital Improvement Plan

Capital improvement plans (CIP's) are the financial timetables for community facility investments. These facilities are typically one-time investments, although sometimes they will need to be reconstructed or replaced several decades later. Capital improvements often include water and sewer lines, roadways, fire and law enforcement equipment, government buildings, and parks or recreational facilities, and water and wastewater treatment facilities. Capital improvements plans are budgetary tools to help a community schedule major investments in a manner that fits their anticipated income. But they should also function as construction management tools to plan the order and timing when facilities should be constructed. For example, the ideal time to install or replace water and sewer lines in city street rights-of-way is before the street is constructed or reconstructed. Reversing the order almost ensures a community will spend more money because they will have to tear up and replace part of the roadway in order to complete the water and sewer line installation. The capital improvements plan should not be treated as an independent document. The comprehensive plan should be consulted to determine what the plan intends for development of a particular area. For instance, it would be a waste of money to install large sized water and sewer mains where the anticipated level of use would only require medium sized facilities.

A. Function

The CIP is essentially a balance sheet showing proposed expenditures by project and year; and anticipated revenues by source and year. Thus, the keys to a successful CIP process are "good individual project proposals,"[36] and careful projections of revenues. Individual project proposals may have several different elements, but they should always include:

- descriptions of the project location and limits,
- relationships to any other projects which are dependent on the project in question,
- anticipated starting date and length of project,
- details about the actual activities to be undertaken, and
- the cost estimate, and the basis of the cost estimate.

Revenue projections should include all sources of income available for capital projects and bonding capacity. Potential sources of income may include:

- property tax revenues,
- bonding capacity,
- enterprise fund revenues,
- reserve funds set aside for capital projects,
- revenues from development projects such as impact fees, and
- sales tax earmarked for capital improvements.

The balance sheet format should allow one to determine that there is a positive ending balance for each year in the proposed plan.

B. Distinctions

Some helpful points about capital improvements plans include:

- Outlying year project estimates should be on the high side in order to ensure that there are sufficient funds for a project when its turn comes. Construction costs always seem to increase. Estimates are usually less certain years in advance.
- It is important to include all the costs associated with a particular project in the estimate. For example, engineering fees and attorneys fees, contingency funds, appraisal fees, and bonding fees are all often costs associated with a major infrastructure project.
- The number of years included in a CIP should be determined by when projects will need to be completed, and when they are anticipated to be funded. At a minimum capital improvement plans should extend out five or six years, because projects may need to be on the "radar screen" that far in advance in order to complete all the necessary steps prior to construction. Engineering, right-of-way, and property acquisition may occur up to three years prior to the year of construction. If feasibility studies or environmental studies are needed, it is best to start them at least two years prior to the start of engineering. A detailed short term capital improvements plan is essential. However, a longer range and less detailed plan is also useful in order to properly consider project prioritization, and the order in which projects should be programmed. This allows for timing of related multiple year projects to be fit into the broader scheme of other community priorities.
- It is important to consider operational costs of new capital improvements as well as the original expenditure. It does little good to build a new facility if the community does not have the annual funds necessary to operate it after construction.
- The CIP ought to be a constantly evolving document. Project information should be updated as new and better information becomes available or as the scope of a project changes. Circumstances within the community may cause priorities to change and the order of planned improvements may shift. Revenues may increase or decrease from the projected amounts. Interest rates may change.
- It is important to document the details of proposed projects and anticipated revenues, but a simple balance sheet should show the overall plan with year by year planned projects, projected revenues, and anticipated net capital fund balance. For larger communities, this simple balance sheet will likely need to be more complex to show annual projects and available funds by project area such as streets, water and sewer, public safety, parks and recreation, and others.
- One final note should be made about the relationship of the capital improvement plan and the official "street plan." The NDCC specifies that the planning and zoning commission may prepare an official street plan. Certain constraints are placed on development once this official street plan is filed. No improvements of any sort can be made to any street nor can a building be erected which requires access to the street unless it is accepted as a public street by the local

jurisdiction or corresponds with a street shown on the official master plan or adopted street map. It is recommended that an attorney be consulted on the interpretation and application of this provision of the NDCC and how it relates to other requirements of the NDCC.

C. Components

Capital improvement programs or plans typically have three components: 1) an overview of the CIP process and benefits from the process, 2) a presentation of financial data showing the historical and projected revenues and expenditures, and 3) listing of projects recommended for funding within the timetable of the CIP. This third section should identify how proposed projects relate to the comprehensive plan, and how the project should be financed.[37]

D. Procedures

There are many ways to prepare a CIP. The following ten steps are suggested by Michael Chandler:[38]

1. Design the Process. This is the step where a local government decides who will be involved in developing the CIP and what each person's role will be. Key players may include people involved in managing public works, engineering, planning, finance and administration.
2. Establish CIP Procedures. This step determines how project information will be collected, what kind of timetable is needed to complete the CIP process, and how the data will be evaluated to compile the CIP.
3. Establish Criteria for Capital Expenditures. A distinction between a capital expenditure and an operating expenditure must be made. Typically the key criterion is whether or not it is a one-time or long term investment. However, the size of a planned expenditure is also a factor. For a small community, a $2500 expenditure may require careful budgeting and must be part of a capital investment plan. Capital expenditures may include other costs besides infrastructure investments.
4. Inventory Existing Capital Facilities. Often the capital investment involves the replacement or repair of existing facilities. These types of investments should have their age, condition, and original cost determined to help project future costs and define priority.
5. Determine Status of Previously Approved Capital Projects. Actual funds expended in previously approved capital projects may vary from projected funds. The actual expenditures will determine whether more or less funds than projected are available for future projects.
6. Prepare Project Requests. Various local government departments may each have their own needs. These should be based on the criteria for capital expenditures

established earlier. It is beneficial for the requests to all follow the same format in order to be sure the same kind of information is obtained for each request.

7. Perform the Financial Analysis. This step identifies the funds available for capital investment by estimating the projected revenue over the life of the CIP and subtracting the estimated operations expenditures over the same time period. This may actually be very complex because of different revenue streams and variations in operational expenses.
8. Review the Proposed CIP. This step reviews project requests for completeness, accuracy, and consistency with CIP guidelines, and then, assesses their feasibility and consistency with the comprehensive plan. This is where the prioritization of projects is done to fit the funded projects to the projected level of capital funding.
9. Adopt the CIP. Typically this step involves a public hearing by the planning commission and/or governing body, prior to official adoption by the governing body.
10. Monitor the CIP. Monitoring the revenue streams and capital project costs can help by responding early to opportunities or needs for additional adjustments.

While these ten steps are a useful approach, for small communities it may be overkill. Many small communities are not able to handle more than a few capital investments in a year, and while not easy decisions, the choices are much more limited.

IX. Special Topics

There are a number of special topics which relate to land use management in general and have significant impacts on the effectiveness of land use management. Much of the time, when there is a legal problem with an action by a local government, the problem pertains to procedural issues and not to issues of judgement. Some of the most common areas where local government may run into trouble include: public hearings and notification, findings of fact, conflicts of interest, and ex parte communications.

A. Public Hearings and Notification

Public hearings are a part of most procedures in zoning and subdivision regulation. They are required for ordinance amendments, subdivision plat approval, variances, and conditional use permits. Any public hearing requires publication of a public notice in advance of the hearing date. Enabling legislation specifies how far in advance notice must be provided, who must be notified of the hearing, where publication of the notice must be done, and what information must be included in the public hearing notice.

It is a common requirement for a public notice to be published in an official newspaper of the local government having jurisdiction over the matter. It is important to know when public notices need to be submitted to the official newspaper in order to ensure publication far enough in advance to meet the advance notice requirement. Public notice requirements may also include a mailed notice to certain property owners or citizens in the vicinity of a proposed zoning or subdivision action.

It is important to identify exactly who must be notified of a public hearing early enough to ensure they receive the appropriate notice information in the appropriate manner and time. In some cases, there are timelines within which zoning or subdivision decisions must be made. It is very important to be aware of all matters of timing to make sure that due process is carried out. For example, if a township has a fifteen day advance notice requirement for publication of a public hearing notice, and the township's official newspaper publishes only weekly and requires notices to be submitted three days before publication, there may only be five days from the date of a previous regularly scheduled monthly meeting until notice must be submitted to the newspaper to meet the timetable for the next regularly scheduled monthly meeting.

B. Findings of Fact

Zoning and subdivision decisions often provoke strong emotional comments at hearings. However, it is not emotion, but the facts of a case that must be used to determine the appropriate decisions. Moreover, when a land use decision is made, the findings used to arrive at the decision must be clearly documented. In order to strengthen a local government's position if it ends up in court, it is essential that findings

of fact be clearly established. The following guidelines, developed by Gary A. Kovacic and Mary L. McMaster, should be used in developing findings before making a decision. [39]

First, it is important to identify assumptions. This is a matter of connecting all the logical dots. Even though everyone at a hearing is in agreement on an assumption, if it is not stated for the record, it leaves a gap in the decision process which may cause the decision to be overturned by the courts.

Second, whenever a land use decision is based on a condition, make sure the condition being imposed and the impacts of the project are clearly and logically articulated. Without this connection between the impact and the condition, the decision may seem arbitrary.

Third, when a project has been modified since findings were written, make sure the changes do not require a re-writing of the findings. If there are additional impacts or changes to the previous impacts, it is likely that the conclusions pertaining to a case may change or even be strengthened.

Fourth, make sure if state guidelines or local regulations require certain findings in order to make a certain decisions, that the findings meet the letter of these requirements.

Fifth, avoid findings that merely re-state the law. If one does not apply the specific facts upon which a decision is based, the decision will appear baseless.

Sixth, "put your findings in clear and understandable language."[40] Too much jargon may cloud the logic behind a decision. It is best to use plain common language to make the finding.

Seventh, be very careful to avoid decisions that may be considered discriminatory. This often happens when an assumption about a group or class of people is made. Any such attribution to a group must be strongly supported by the facts and reviewed with a local attorney.

Lastly, it should be noted that these findings must end up in the minutes of the meeting as well. To merely discuss these things and not put them into the minutes is to remove the record upon which your decision will be defensible in court.

C. Conflicts of Interest

Conflict of interest under North Dakota law is a complex topic. When a local government official believes a conflict of interest may exist or questions if there could be a conflict of interest in any situation, the attorney advising the applicable local government agency should be consulted.

D. Ex Parte Communications

"Ex parte" communications are those oral or written communications between a decision-maker of a governmental body and an advocate for some issue which is being considered by the same governmental body which do not take place on the public record or during a public meeting. It is highly recommended that such communications be prohibited in order to preserve the integrity of the decision making process and to protect all parties from the appearance of wrongdoing.

E. Zoning District Types

Typically, zoning districts are designed to group compatible uses together and keep incompatible uses separated. Zoning districts often fit into categories like:

- Residential
- Commercial
- Industrial
- Public/Institutional
- Agricultural

A zoning ordinance may specify variations of these general categories of zoning districts in order to create districts that respond to specific situations within the community. For example, there may be a Highway Commercial district that defines appropriate land uses adjacent to high volume roadways. There may be several different residential districts, such as Low Density Single Family Residential or High Density Multiple Family districts which establish the density levels of dwelling units within that district.

F. Extraterritorial Authority

North Dakota enabling legislation gives cities the ability to establish zoning and subdivision controls beyond their municipal boundaries. Counties and townships do not have this authority. This is typically called extraterritorial authority, or extraterritorial zoning and subdivision control. Extraterritorial authority can be exercised only by explicitly establishing the subdivision and/or zoning authority via an ordinance (similar to the process of establishing zoning and subdivision controls within municipal boundaries). Changes to the enabling legislation occurred in 1997 and subsequent years which have changed some of the procedures related to establishing this authority. It is advisable to consult an attorney before initiating the process to ensure all necessary actions will be completed. One of the main features of the North Dakota enabling legislation regarding extraterritorial authority is the distance to which cities can establish authority beyond their municipal boundaries. As of this writing, there are three categories:

- Cities having a population of less than 5,000 at the last official regular or special federal census can extend their authority up to 1 mile.
- Cities having a population of 5,000 or more, but less than 25,000, at the last official regular or special federal census can extend their authority up to 2 miles.

- Cities having a population of more than 25,000 at the last official regular or special federal census can extend their authority up to 4 miles.

The actual area over which extraterritorial authority can be established is not exactly 1, 2, or 4 miles, since the enabling legislation further specifies that the extension of this authority may be to each quarter quarter section of unincorporated territory the majority of which is located within 1, 2, or 4 miles as the case may be.

G. Additional Land Use Control Tools

In recent years a number of new zoning tools have begun to emerge in the United States to address limitations which have been found with the traditional tools of zoning and subdivision regulation. While North Dakota enabling legislation does not explicitly grant the use of any of these tools, they are mentioned here to provide local governments with a direction to research if they wish to add options to they way they may currently manage land use within their jurisdiction. Among these tools are:

- Planned Unit Developments (PUD's)
- Overlay Zones
- Floating Zones
- Incentive Zoning
- Transfer of Development Rights (TDR's)
- Cluster Development

It is beyond the scope of this Handbook to explain the theory and potential use of these or other tools which may be emerging in the field of land use management. It is recommended that local government attorneys or land use planning experts be consulted regarding the appropriate use of such tools in North Dakota.

Appendix 1 - Attorney General's Opinions and Statutory Changes

This appendix provides reference materials pertaining to statutory changes, and Attorney General opinions which apply to the practice of planning in North Dakota.

Attorney General Opinions

Attorney General opinions provide guidance on interpretation and application of North Dakota statutes and caselaw when these opinions are requested by certain authorized individuals and organizations. The North Dakota Century Code authorizes the Attorney General to issue written legal opinions only to the following individual and entities:

- State officers
- State agencies
- Either branch of the State Legislature
- County State's Attorneys
- City governing bodies
- City attorneys
- Water resource boards
- Soil conservation districts

Attorney General opinions protect a public official who follows it from liability, even if a court would later disagree with the Attorney General's opinion. Hundreds of Attorney General opinions have been issued. The complete set of opinions has been indexed by subject and is available via the Attorney General's website. Many of the Attorney General opinions respond to questions about some aspect of North Dakota enabling legislation. The following list summarizes the specific topics addressed under the zoning subject heading of the previously noted index.

Subject	*Date*	*Reference*
Abandoned motor vehicle - zoning ordinances - city extraterritorial jurisdiction	05/21/04	2004-L-34
Building code - relationship to zoning	11/08/95	95-F-11
Cities - extraterritorial authority - effect on county liquor license	10/24/97	97-F-10
Cities - extraterritorial authority - effect on county zoning	10/28/96	96-L-188
Cities - extraterritorial authority - fire code	06/08/98	98-F-18
Cities - extraterritorial authority - hearing - map	05/16/95	95-L-112
Cities - extraterritorial authority - overlap of authority - landowner rights	12/27/96	96-L-246
Cities - newly annexed lands	04/24/02	2002-L-24
Comprehensive plan	06/10/01	2001-L-17
Conservation - nonprofit corporation - county authority	12/21/99	99-L-128

Subject	*Date*	*Reference*
Corporate farming - land acquired for conservation by nonprofit corporation - county zoning and authority	12/21/99	99-L-128
County - may not regulate hunting through zoning	11/04/03	2003-L-48
County - transfer of township authority	05/17/99	99-F-07
County zoning - authority regarding conservation ownership by nonprofit corporation	12/21/99	99-L-128
County zoning - conflict of interest - appearance of impropriety doctrine	03/09/95	95-L-60
County zoning - effect of city extraterritorial authority	05/16/95	95-L-112
	10/28/96	96-L-188
County zoning - subdivision plat approval	03/24/93	93-F-04
Flood insurance program - adoption of flood insurance study and rate map - incorporation by reference - must reenact ordinance to adopt new map	10/29/04	2004-L-66
Liabilities	06/01/01	2001-L-17
Solid waste disposal facilities - townships may impose tipping fees	08/24/93	93-F-13
State land - city has no zoning authority unless granted by state	04/06/98	98-L-38
Township - transfer of authority to county	05/17/99	99-F-07
Townships - filing zoning ordinance with county auditor - vote by electors at annual meeting	10/18/94	94-F-30

Statutory Changes

A number of changes to North Dakota enabling legislation have been made by the North Dakota State Legislature in the time period since the first Planning Handbook was published. The following list summarizes the general topic and legislative session of the change.

Subject	*Session*	*NDCC Reference*
Comprehensive plan requirements	1981	11-33; 40-47; 58-03
County subdivision regulation	1981	11-33.2
Municipal extraterritorial zoning authority	1981	40-47
County zoning commission membership	1985	11-33
Definition of a qualified elector	1985	40-51.2
County waste management	1993	11-33
Township notification of county plat review	1995	11-33.2
Municipal board of adjustment appeals	1995	40-47
Township zoning ordinance violation penalties	1995	58-03
Municipal extraterritorial zoning & subdivision	1997	40-47;40-48
Municipal annexation agreements & mediation	1997	40-51.2
Municipal extraterritorial zoning procedures	1999	40-47
Definition of farming and ranching; concentrated feeding operations regulation	1999	11-33; 58-03
Definition of emergency management; floodplains	1999	11-33,33.2; 40-47; 58-03
Definition of freeholder	2001	58-03

Appendix 2 - Glossary of Terms

This appendix provides a list of commonly used planning terms and provides definitions as they were established in the original Community Planning Handbook.

Board of Adjustment - A five-member body on the city level appointed to hear and decide zoning appeals. The North Dakota Century Code (NDCC) refers to a separate board of adjustment only for cities; in the case of counties and townships, however, the board of county commissioners or the board of township supervisors may act as a board of adjustment in hearing and deciding appeals.

Capital Improvements Plan - One of the tools used to insure implementation of the community plan, this specialized plan addresses the scale (size), location, cost and timing of public improvements. Including a financial balance sheet of anticipated revenues and expenditures, and a prioritization of the community's desired public improvements, the capital improvements plan helps the community decide what improvements to provide where, when, and at what cost.

Community - Used in this handbook to refer to any local political subdivision: city, county, or township.

Comprehensive Policy Plan - One of the two basic types of community plans used by localities to shape and guide their development. The comprehensive policy plan addresses all of the important aspects of a community's development through goals, objectives, and policies which are stated as general guidelines for action.

Conditional Uses - Land uses in a zoned district which may be permitted, provided the use would have no significant ill effects on adjacent property and would pose no threat to the public welfare and safety.

Conservancy Zones - Areas within a community designated as sensitive environmental lands. Only light land uses, such as recreation and conservation, are permitted.

Detailed Comprehensive Plan - One of the two basic types of community plans used by localities to shape and guide their development. The detailed comprehensive plan addresses all of the important aspects of a community's development through goals, objectives, and policies which are specific and detailed, often including accompanying maps.

Dimensional Standards - Included as part of the zoning ordinance, these are basic requirements for all land uses within zoned districts. The standards include, at a minimum, requirements for setbacks from roads, lots, and other buildings; minimum lot size; and building heights.

Environmental Performance Standards (EPS) - Criteria designated to insure the protection of environmentally sensitive lands in a community. The criteria are based on the performance of the natural system, and developers must demonstrate that their prospective projects would maintain those performance standards.

Executive Officer - The chief administrative officer in a political subdivision: the mayor, the president of the board of county commissioners, or the president of the board of township supervisors.

Extraterritorial - That area outside the corporate limits of a political subdivision which may be included in a community's planning and land use regulation.

Final Plat - Scale drawings, engineering and survey maps, and related materials which a subdivider must provide for final approval of a proposed subdivision. The final plat is the last step in the three-step subdivision approval process.

Fiscal Powers - The authority of communities to tax and to spend tax dollars in the public interest.

Goal - Long-term desired outcome or condition toward which a community works.

Governing Body - The elected or appointed officials in a community which have legal authority to make decisions on behalf of the public: the city council or commission; the board of county commissioners; and the board of township supervisors.

Jurisdiction - The geographical area within which a community has decision-making authority, including planning and zoning authority.

Master Plan - Term used interchangeably with "community plan," referring to the comprehensive guide for community development.

Objective - A short-term accomplishment which helps a community achieve a long-term goal.

Ordinance - A law or regulation.

Permitted Land Uses - Those land uses which are allowed, across the board, in a zoned district.

Plan - The written compilation of the goals, objectives, and policies for all important aspects of a community's development.

Plan Adoption - The process required by state law in order for the community plan and land use regulations to have official, legal status. The process involves public hearings and formal adoption by the planning and/or zoning commission and the governing body.

Planning Commission - The appointed body responsible for developing the community's goals, objectives, and policies; and for preparing, adopting, and administering the community's comprehensive plan.

Planned Unit Development - A zoning technique that allows large-scale developers to mix land uses within a zoned district; to vary the existing zoning standards; and to develop projects over a multi-year period.

Plat - A piece of land or the representation of that land on a map or in a photograph.

Police Powers - In planning terminology, the authority to regulate the use and subdivisions of land in a community.

Policy - A guideline for action which helps a community achieve short-term objectives and get closer to long-term goals.

Preliminary Plat - Scale drawings, engineering and other specialized maps and information which a subdivider must submit for preliminary approval of a proposed subdivision. The preliminary plat is the second step in the three-step subdivision approval process.

Public Hearing - An essential, legally-required part of the plan and land use regulation adoption processes, the public hearing is a formal opportunity for citizens to comment on the plan and regulations.

Sketch Plan - Drawings which present the general layout of a proposed subdivision and which must be submitted by a developer as the first step in the three-step subdivision approval process.

Street Plan - Representation of a community's existing and proposed street patterns. Once filed with the register of deeds, a community's official street plan gives the planning and/or zoning commission exclusive jurisdiction over platting. In addition, no improvements of any kind can be made to any street unless that street is identified in the plan. Further, no sewer lines or buildings can be constructed along any streets that are not approved in the street plan.

Subdivision - Refers to the parceling of land into lots suitable for development. The term is also used to refer to a housing development in a community.

Subdivider - Refers to the individual, company, corporation, or other organization responsible for the development of subdivided land.

Subdivision Regulations - Regulatory tools used to control how the land in a community is subdivided and developed.

Technical Review Committee - A group of specialists appointed by the planning and/or zoning commission to review and comment on developers' plans for proposed subdivision developments. Usually includes the community's engineer and other specialists selected by the commission.

Zoning - Regulatory tool to control how the land in a community is used. Zoning is designated to insure compatibility of land uses, and, thus, to help protect the public safety and welfare.

Zoning Administrator - The person appointed by the community to administer the zoning ordinance. The authority and duties of the administrator will vary according to jurisdiction, but generally include: providing information about the ordinance; receiving applications for permits; reporting violations; inspecting construction projects; and updating the zoning map and ordinance text.

Zoning Amendments - Official changes made to the zoning ordinance. Requires, by law, amendment adoption process including public hearings.

Zoning District - Area within a community identified for a specific land use or uses.

Zoning Map - An essential part of the zoning ordinance. The map shows the community's land use districts. The map can be a parcel map or aerial photographs.

Zoning Ordinance - An enforceable set of land use regulations including the zoning map and the zoning text.

Zoning Test - An essential part of the zoning ordinance. The text explains and interprets the zoning map and specifies the land uses that are and are not permitted within the districts.

Zoning Variance - An exception to the zoning ordinance made on a case-by-case basis when a property owner would suffer significant hardship because of the ordinance. Variances do not require a change in the map or text.

Appendix 3 – Contacts, References, and Resources

The information noted in this appendix will, in some cases, become dated quite quickly. However, it is being provided to give some additional resources to anyone desiring more information on particular topics relating to land use management. It is hoped that the Internet links listed here can be listed on one or more North Dakota related websites, and maintained and updated as the links to resources change. This information is by no means exhaustive and provides only a starting point for additional research which may assist local governments and citizens in the efforts to build our communities.

Contacts

- North Dakota League of Cities
  Phone: 701-223-3518
  Toll-free in state: 800-472-2692
  Fax: 701-223-5174
  Web Site: http://www.ndlc.org/

- North Dakota Association of Counties
  PO Box 877
  1661 Capitol Way
  Bismarck, ND 58502-0877
  Phone: 701.328.7300
  Fax: 701.328.7308
  E-mail: ndaco@ndaco.org
  Web Site: http://www.ndaco.org

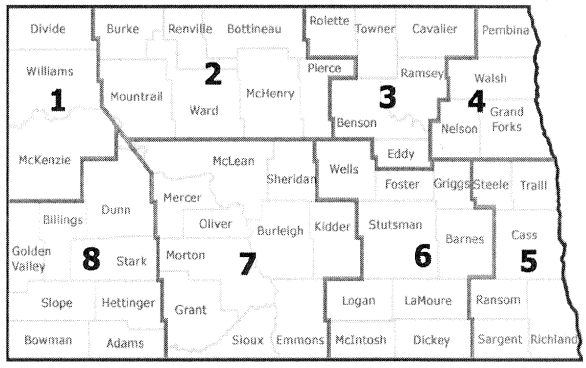
- North Dakota Township Officer's Association
  Web Site: http://www.ndtoa.com/

- North Dakota Attorney General
  State Capitol
  600 E. Boulevard Ave.
  Dept. 125
  Bismarck, ND 58505
  Phone: 701 328-2210
  E-mail: ndag@state.nd.us
  Web Site: http://www.ag.state.nd.us/

- North Dakota Planning Association
  P. O. Box 444
  Bismarck, ND 58502-0444
  E-mail: info@ndplanning.org
  Web Site:
  http://www.ndplanning.org

- Division of Community Services, Department of Commerce
  State Capitol
  600 E. Boulevard Ave.
  Dept. 125
  Bismarck, ND 58505
  Phone: 701 328-2210
  E-mail: ndag@state.nd.us
  Web Site: http://www.ag.state.nd.us/

- Regional Councils



(Contact details on next page)

Region 1
Tri County Regional Development Association
22 East Broadway, 2nd Floor
PO Box 697
Williston, ND 58802-0697
(701) 577-1358 Phone
(701) 577-1363 Fax
sandrah@ci.williston.nd.us

Region 2
Souris Basin Planning Council
4215 Burdick Expressway East
Minot, ND 58701
(701) 852-4988 Phone
(701) 838-8955 Fax
info@sourisbasin.org

Region 3
North Central Planning Council
Memorial Building
PO Box 651
Devils Lake, ND 58301
(701) 662-8131 Phone
(701) 662-8132
rickncpc@gondtc.com

Region 4
Red River Regional Council
Chase Building
516 Cooper Avenue, Suite 101
Grafton, ND 58237
(701) 352-3550 Phone
(701) 352-3015 Fax
rrrc@state.nd.us

Region 5
Lake Agassiz Regional Council
417 Main Avenue
Fargo, ND 58103
(701) 239-5373 Phone
(701) 235-6706 Fax
info@lakeagassiz..com Email
www.lakeagassiz.com Web Page

Region 6
South Central Dakota Regional Council
210 10th Street SE
PO Box 903
Jamestown, ND 58402
(701) 252-8060 Phone
(701) 252-4930 Fax
scdrc@daktel.com

Region 7
Lewis and Clark Regional Development Council
400 East Broadway
Bismarck, ND 58501
(701) 255-4591 Phone
(701) 255-7228 Fax
lcrdc@lewisandclarkrdc.org Email
www.lewisandclarkrdc.org Web Page

Region 8
Roosevelt-Custer Regional Council
200 Pulver Hall
Dickinson, ND 58601
(701) 483-1241 Phone
(701) 483-1243 Fax
info@rooseveltcuster.com

References

The following two lists are references which are strongly recommended for anyone involved in the practice of land use planning and regulation. The first list is reprinted, by permission from the APA website. It was originally compiled by Stuart Meck, AICP, and Shannon Paul for the April 1997 PASMemo published by the APA. The second list is a list of favorites by North Dakota professional planners.

The Essential Planning Library

Anderson, Larz T. *Guidelines for Preparing Urban Plans*. Chicago: Planners Press, 1995.
Building on the concepts in T. J. Kent's *The General Urban Plan* (see below), Anderson provides guidelines for the preparation of a comprehensive plan. He starts by identifying the client and participants, finishes with implementation of the plan, and in between covers data collection, analysis, and plan preparation. Anderson also includes a useful checklist of topics to include in a local or metropolitan plan.

Arendt, Randall et al. *Rural by Design*. Chicago: Planners Press, 1994.
Nominally focused on rural planning, the text gives guidance on neotraditional planning techniques, sprawl avoidance, greenways, cluster development, open space, and farmland preservation. Second printing improved the quality of already elegant sketches. Includes a good bibliography.

Bair, Jr., Frederick H. *The Zoning Board Manual*. Chicago: Planners Press, 1984.
Tame the variance/special exception beast by sharing this manual with your zoning board members. In it they will learn all they need to know about the development of zoning, the scope of their powers, and rules of procedures.

Brough, Michael B. *A Unified Development Ordinance*. Chicago: Planners Press, 1985.
Excellent source for any planner drafting a unified development ordinance; pulls together zoning and subdivision control into one document. This volume serves as a guide for ordinance language and commentary. Intended for smaller and mid-sized communities.

Burchell, Robert W., and David Listokin. *The Fiscal Impact Handbook*. New Brunswick, N.J.: Center for Urban Policy Research, 1978.
A planning classic. Comprehensive treatment of the topic of cost-revenue analysis and the limitations of different approaches. Also handy is *The New Practitioner's Guide to Fiscal Impact Analysis* by the same authors (Center for Urban Policy Research, 1985), which contains updated demographic multipliers. Sadly, both titles are out of print.

***Community Builders Handbook Series*. 7 vols. Washington, D.C.: Urban Land Institute, 1981-1992.**
This series includes the following titles, published as separate volumes: *Recreational Development Handbook* (1981); *Office Development Handbook* (1982); *Shopping Center Development Handbook*. 2nd ed. (1985); *Mixed-Use Development Handbook* (1987); *Business and Industrial Park Development Handbook* (1988)); *Residential Development Handbook.* 2nd ed. (1990); and *Downtown Development Handbook.* 2nd ed. (1992). Long considered a "must have" reference series. Some titles are dated, but these books still prove themselves to be the best single source of information on their topics. Each volume consists of a general overview of a development type and case studies of successful developments.

Daniels, Thomas L., John W. Keller, and Mark B. Lapping. *The Small Town Planning Handbook*. 2nd ed. Chicago: Planners Press, 1995.
Focuses on the special circumstances and needs of rural towns, especially those with populations of 10,000 or less. Sections include the planning process, planning commissions, economic analysis, housing, transportation and circulation, capital improvements programs, zoning ordinances, and economic development. Good nuts-and-bolts guidance.

DeChiara, Joseph, Julius Panero, and Martin Zelnik. *Time-Saver Standards for Housing and Residential Development*. 2nd ed. New York: McGraw-Hill, 1995.
Another one-stop reference source. Incorporates some material from DeChiara and Lee Koppelman's popular earlier volume *Urban Planning and Design Criteria* (McGraw-Hill, 1979). The most popular chapter is likely to be "General Planning and Neighborhood Organization."

Faludi, Andreas, ed. *A Reader in Planning Theory*. New York: Pergamon, 1973.
Essays on the full complement of 20th century planning theory, such as rational planning, advocacy planning, and incrementalism in planning. Of particular note are Paul Davidoff's "Advocacy and Pluralism in Planning," and Martin Meyerson's "Building the Middle-Range Bridge for Comprehensive Planning."

Freilich, Robert H., and Michael M. Shultz. *Model Subdivision Regulations*. 2nd ed. Chicago: Planners Press, 1995.
Includes a short history of subdivision regulations, the model subdivision regulations themselves, and commentary. The appendix includes an excerpt on subdivision control from the 1928 Standard City Planning Enabling Act, a summary of the American Law Institute's Model Land Development Code, and practical administrative forms and checklists.

Gans, Herbert J. *People, Plans and Policies*. New York: Columbia University Press, 1991. A brilliant, thought-provoking collection of essays on city planning, poverty, racism, and environment and behavior. "City Planning in America, 1890-1968: A Sociological Analysis" speaks volumes about the underlying values and biases, especially that of physical determinism, affecting the development of planning in the U.S. The reader should also look for the earlier version of this book, *People and Plans* (Basic Books, 1968), which contains several excellent pieces on suburban and new town development omitted from the current edition.

Gold, Seymour M. *Recreation Planning and Design*. New York: McGraw-Hill, 1980.
Don't let the date fool you--this is still the best text on recreation planning around. Gold provides the necessary foundation for recreation planning, including concepts and principles, recreation measures, supply and demand analysis, goal formulation, and implementation. Unfortunately it is out of print.

Gordon, Gerald L. *Strategic Planning for Local Government*. Washington, D.C.: International City/County Management Association, 1993.
This book walks you through the strategic planning process. It begins with definitions and progresses through analysis, programs, review, and organizational considerations. Also includes a chapter on forecasting. Many will find the sample environmental scans, goal statements, and implementation plans (from California, Indiana, Michigan, New Jersey, and Kansas) helpful.

Greenberg, Michael R. et al. *Local Population and Employment Projection Techniques*. New Brunswick, N.J.: Center for Urban Policy Research, 1978.
Highly useful treatment of all types of projection techniques for local governments. Check out the clever Newling model for projections based on density ceilings. Includes computer programs.

Hedman, Richard, and Andrew Jaszewski. *Fundamentals of Urban Design*. Chicago: Planners Press, 1984.
An excellent primer on urban form. This volume encourages architects and planners to remember and consider context, preservation, purpose, and building form when reviewing plans for new buildings or urban growth. Hedman played a significant role in the development of San Francisco's famed Urban Design Plan. In many ways this text is an intellectual heir to Unwin's *Town Planning in Practice* (see below).

Jacobs, Jane. *Death and Life of Great American Cities*. New York: Modern Library, 1993.
"This book is an attack on current city planning and rebuilding," wrote Jane Jacobs in 1961. The "current city planning" she was attacking flourishes today. *Death and Life* details Jacobs's thoughts on the essential conditions of diversity in a city's fabric, conditions that make it exciting, attractive, and safe, and cause constant renewal. As pertinent and bracing today as it was 36 years ago. Originally published by Random House in 1961.

Jones, Bernie. *Neighborhood Planning*. Chicago: Planners Press, 1990.
This practical guide is intended for both professional planners and the citizens they serve. Jones explains how to translate citizen concerns about neighborhood issues and opportunities into an implementable plan document. Includes a sample citizen survey, tips on organizing public workshops, and several goal-setting exercises. **Kendig,**

Lane et al. *Performance Zoning*. Chicago: Planners Press, 1980.
Text and commentary for a performance zoning ordinance that regulates uses and structures based on the impacts that each is likely to have. An alternative to conventional zoning district designations. Proposes permanent landscape "buffer yards" to eliminate or minimize use conflicts. Out of print.

Kent, Jr., T. J. *The Urban General Plan*. Chicago: Planners Press, 1990.
Kent's unsurpassed classic on the history, purpose, scope, clients, and use of the urban general or comprehensive plan. This timeless book is an absolute must. Reprint of the 1964 Chandler Publishing Company edition.

Krueckeberg, Donald A., and Arthur L. Silvers. *Urban Planning Analysis*. New York: Wiley, 1974.
Clearly written introduction to basic quantitative techniques of urban planning and policy analysis. Solid chapters on survey research and analysis, population forecasting, transportation modeling, and program analysis and selection. Out of print.

Listokin, David, and Carole Walker. *The Subdivision and Site Plan Handbook*. New Brunswick, N.J.: Center for Urban Policy Research, 1989.
Contains a model ordinance with commentary for subdivision and site plan review. Good discussion of development standards and makes the case for reducing excessive standards. Well illustrated.

Lynch, Kevin. *The Image of the City*. Cambridge, Mass.: MIT Press, 1960.
Paths, edges, districts, nodes, and landmarks are the shorthand Lynch developed to categorize the public image of the city. This original and innovative work has had a major influence on urban design.

McHarg, Ian. *Design with Nature*. New York: Wiley, 1992.
Pioneering, inspirational work on environmental planning. Notable for its use of map overlays to identify land development constraints, this text shows how to graphically integrate environmental information.

McLean, Mary L., and Kenneth P. Voytek. *Understanding Your Economy*. Chicago: Planners Press, 1992.
Nuts-and-bolts explanation of how to do economic analysis for comprehensive planning and how to select strategies that build on the local economy's strengths. The best book on the subject.

Mandelker, Daniel R. *Land Use Law*. Charlottesville, Va.: Michie, 1993.
Excellent single-volume treatise on land-use controls that has been cited by the U.S. Supreme Court. Well organized with an appreciation of the problems faced by planners. Good bibliographies at the conclusion of each chapter. Supplemented annually.

Marsh, William M. *Landscape Planning*. 2nd ed. New York: Wiley, 1991.
Complete treatment of landscape planning fundamentals with chapters on technical topics such as soil classification, development capability, sedimentation, runoff, microclimate, slopes, stormwater, and topography.

Mertes, James D., and James R. Hall. *Park, Recreation, Open Space and Greenway Guidelines*. Washington, D.C.: National Parks and Recreation Association, 1995.
An essential resource for park and open space planning. Includes sections on creating a planning framework, developing level of service guidelines, and classifying various open space resources. Provides numerous formulas to allow municipalities to customize the park planning process.

Moskowitz, Harvey S., and Carl G. Lindbloom. *The New Illustrated Book of Development Definitions*. New Brunswick, N.J.: Center for Urban Policy Research, 1993.
Helpful commentary and illustrations back up the definitions, which may be used in comprehensive planning and land development. The most complete reference on the subject. Frequently used by PAS researchers.

Mumford, Lewis. *The City in History*. New York: Harcourt, Brace, 1961.
Sweeping, masterful historical analysis of city development all over the world. Describes why cities came about and what their continuing function is.

Nelson, Arthur C., and James B. Duncan. *Growth Management Principles & Practices*. Chicago: Planners Press, 1995.
A basic text covering urban growth areas, adequate public facilities ordinances, special area protection, financing, and state and regional approaches.

***Parking Generation*. 2nd ed. Washington, D.C.: Institute of Transportation Engineers, 1987.**
The leading resource for determining the average parking occupancy of a land use or building. Airports, bowling alleys, single-family residences, and warehouses are all here. Helpful in establishing standards for zoning codes.

Patton, Carl V., and David S. Sawicki. *Basic Methods of Policy Analysis and Planning*. 2nd ed. Englewood Cliffs, N.J.: Prentice-Hall, 1993.
Rigorous but clear treatment of methods of policy analysis. Covers problem definition, data collection, methods of evaluating alternatives (including discounting, forecasting, and sensitivity analysis), approaches to presenting conclusions, and evaluation of implementation. Good case studies. An instructor's manual is also available.

Rubenstein, Harvey M. *A Guide to Site Planning and Landscape Construction*. 4th ed. New York: McGraw-Hill, 1996.
If you do site plan preparation or reviews, you need this well-illustrated, practical, and highly readable book.

Schilling, Joseph M., and James B. Hare. *Code Enforcement*. Point Arena, Calif.: Solano Press, 1994.
While this book has a California orientation, it offers a solid grounding in code enforcement management, investigation, and prosecution. Good treatment of non-criminal approaches, including mediation and administrative hearings.

Scott, Mel. *American City Planning since 1890*. Chicago: Planners Press, 1995.
The standard text on American city planning history through 1969. Reprint of University of California edition, 1969.

So, Frank, S., and Judith Getzels, eds. *The Practice of Local Government Planning*. 2nd ed. Washington, D.C.: International City Management Association, 1988.
This book, in its various editions, defines the practice of planning in the U.S. Covers comprehensive plan preparation, planning agency organization, capital budgeting, zoning, subdivision control, urban design.

***Transportation Planning Handbook*. Englewood Cliffs, N.J.: Prentice-Hall, 1992.**
An Institute of Transportation Engineers publication. Basic transportation planning material in one reference book. Here's where to begin your travel forecasting project, locate the definition of an activity center, or determine the capacity of an unsignalized intersection.

***Trip Generation*. 2 vols. Washington, D.C.: Institute of Transportation Engineers, 1991-1995.**
Second volume is a 1995 update to first edition. Aids the planner in estimating the number of vehicle trips generated by a particular land use using different independent variables (e.g., number of dwelling units, amount of gross leasable area). Based on more than 3,200 trip generation studies. The data are based on automobile-heavy suburban sites. Updated regularly.

Unwin, Raymond. *Town Planning in Practice*. New York: Princeton Architectural Press, 1994.
The best book on city planning ever written. A masterful exposition on the fine points of site planning, such as the arrangement of streets, squares and other public places, and buildings. Lushly illustrated with town plans and photos. Unwin shows how to plan cities at the human scale. Show this book to the local civil engineering firm that does ugly subdivision design in hopes of behavioral modification. Reprint of original 1909 edition published by T. Fisher Unwin.

North Dakota Planner Favorite References

Arendt, Randall et al. *Rural by Design*. Chicago: Planners Press, 1994.

De Chiara, Joseph and Lee Koppelman. *Urban Planning and Design Criteria*, 3rd ed. New York: Van Nostrand Reinhold Company, 1982.

Freilich, Robert H., and Michael M. Shultz. *Model Subdivision Regulations*. 2nd ed. Chicago: Planners Press, 1995.

Moskowitz, Harvey S. & Carl G. Lindbloom. *The New Illustrated Book of Development Terms*. New Brunswick: Rutgers University Center for Urban Policy Research, 1993.

Planning & Environmental Law *(previously Land Use Law & Zoning Digest).* **(Monthly publication from American Planning Association)**

So, Frank, S., and Judith Getzels, eds. *The Practice of Local Government Planning*. 2nd ed. Washington, D.C.: International City Management Association, 1988.

Solnit, Albert. *The Job of the Planning Commissioner*. 3rd ed. Chicago: Planners Press, 1987.

Internet Links/Resources

1. American Planning Association http://www.planning.org/ - Perhaps the definitive source on planning activities, resources, and organizations.
2. Top Cases in Land Use Law http://www.planning.org/25anniversary/cases.htm
3. Cyburbia http://www.cyburbia.org/ - "Internet resources for the built environment" - contains thousands of links to planning topics and is an excellent search tool
4. Trust for Public Land http://www.tpl.org/
5. Sprawl Watch Clearinghouse http://www.sprawlwatch.org/
6. Planning Commissioners Journal Planners Web http://www.plannersweb.com/
7. Tarlton Law Library (University of Texas) Land Use Law http://tarlton.law.utexas.edu/vlibrary/subject/landuse/
8. Urban Land Institute http://www.uli.org/
9. ND Century Code http://www.state.nd.us/lr/information/statutes/cent-code.html
10. North Dakota Department of Health – Environmental Health Section http://www.health.state.nd.us/ehs/ This section of the Department deals with a wide variety of health and land use related issues including permitting for concentrated animal feeding operations and solid waste.

11. North Dakota Public Service Commission http://www.psc.state.nd.us/ The Public Service Commission is involved in permitting energy facilities in North Dakota.
12. The Brookings Institutehttp://www.brook.edu This organization analyzes and critiques public policy issues related to economic and government studies.
13. Built Environment Center http://fcn.state.fl.us/fdi/bec/bec-home.htm The center is an electronic workplace and a forum for information and services regarding urban and community development, buildings and facilities, infrastructure and open space in the built environment.
14. Center for Policy Alternatives http://www.cfpa.org This nonprofit public policy and leadership development center works to find community-based solutions that strengthen families and communities.
15. Center for Urban and Regional Affairs http://www.cura.umn.edu This U of M group produces research on critical issues for Minnesota and the region.
16. Federal Reserve Bank of Minneapolis http://woodrow.mpls.frb.fed.us The Minneapolis branch of the Federal Reserve Bank conducts and publishes community information for the area.
17. Hubert H. Humphrey Institute of Public Affairs http://www.hhh.umn.edu This University of Minnesota institute researches public policy issues.
18. Municode http://www.municode.com Site contains codes of ordinances for municipalities.
19. Planners Network Online http://www.plannersnetwork.org This site provides information for physical, social, economic and environmental planning in urban and rural areas.
20. Planning Minnesota Online http://www.mnapa.com This site, hosted by the Minnesota chapter of the American Planning Association, contains information on local activities and events, links to other resources and a bulletin board for planning questions.
21. http://www.lib.umich.edu/govdocs/stats.html This University of Michigan site contains resources about many topics, include agriculture, demographics, economics, energy, environment, health, housing, tourism and transportation.
22. University of Minnesota Extension Service http://www.extension.umn.edu This educational outreach arm of the University of Minnesota has offices in every county of the state and delivers educational programs about topics that include water quality, sustainable agriculture, natural resource management and tourism development.
23. About Planning http://www.aboutplanning.org/ This website has a large set of web links, and also acts as a forum or clearinghouse on planning related topics.
24. Planetizen http://www.planetizen.com/ This website has a wide variety of planning related information and tracks many current planning issues.
25. APA-Western Central Chapter Website http://www.wccapa.org/ New website aimed to serve western planning needs.
26. Western Planning Association http://www.westernplanner.org Website of a long standing western planning network.

Endnotes

[1] North Dakota Federal Aid Coordinator Office, State Planning Division. 1982. Community Planning Handbook.
[2] So, Frank S. and Getzels, Judith. (eds) 1988. "Historical Development of American City Planning" The Practice of Local Government Planning. p26. International City/County Management Association (ICMA)
[3] http://www.state.nd.us/lr/information/statutes/cent-code.html October 10, 2005.
[4] American Planning Association. 1998. Planning Made Easy. p9.
[5] §11-09.1-03, NDCC and §40-05.1-04,NDCC.
[6] Schimmelpfenning, Jerel. ca. 1988. Major Land Use Laws in North Dakota. In this unpublished paper, Schimmelpfenning notes "in Chapter 40-48 are references to the subdivision authority of a city, the concept of a master plan, the concept of a major street plan, a major traffic street plan and a street map. How all of these concepts and authorities weave together in the regulatory framework for the city is less than clear. No litigation has given the North Dakota court an opportunity to explain this."
[7] Schimmelpfenning, Jerel. ca. 1988. Major Land Use Laws in North Dakota. In this unpublished paper, Schimmelpfenning notes "North Dakota statutes are not clear on this point, however. Section 40-48-19 appears to contemplate that only the planning commission has the authority to approve or disapprove plats." "Section 40-48-21, NDCC provides a procedure for approval by the planning commission and the time limits within which its review must occur. No mention is made of any recommendation to the governing body. However, §40-48-22, NDCC, states:

> "before the approval of a plat, the planning commission and the governing body shall take into consideration the prospective character of the development of the area included in the plat and of the surrounding territory." (Emphasis added.)

This seems to contemplate some type of two-step approval process. Section 40-48-23 also contemplates approval by the planning commission and governing body....."
[8] Meshenberg, Michael J. 1976. The Language of Zoning: a glossary of words and phrases. American Society of Planning Officials. p38.
[9] North Dakota Century Code 40-48-01, 11-33.2-01
[10] adapted from Burrows, Tracy (ed.) 1989. A Survey of Zoning Definitions. American Planning Association. p12.
[11] The exception to this statement is that Counties are mandated to establish solid waste zoning in accordance with NDCC 11-33-01.
[12] Attorney General's opinions were issued on October 18, 1994 and June 1, 2001 regarding the relationship of comprehensive plans to zoning regulations for townships and counties, respectively. The commentary in both letters indicates that zoning regulations should be consistent with and based on a comprehensive plan of the jurisdiction.
[13] See NDCC 11-33-03, 40-47-03, 58-03-12.
[14] The following discussion on the historical development of master and comprehensive planning terms and concepts was prepared by Larry M. Weil.
[15] See NDCC 11-33-03, 40-47-03, 58-03-12.
[16] Branch, Melville, ...Comprehensive Planning book.
[17] See NDCC 11-33-06. This section of the NDCC further establishes that the local residents and state, federal, and other agencies should be consulted.
[18] Note that "planning commission" and "zoning commission" are used interchangeably in the Handbook unless the context indicates a specific reference to one or the other is intended.
[19] p 5. Planning made Easy. Toner, William et.al. Planners Press, American Planning Association, Chicago and Washington, DC.
[20] "real property" is distinguished from personal property, and generally refers to "the face of the earth [and] everything of a permanent nature over or under it." Legal Information Institute of Cornell University (http://straylight.law.cornell.edu/topics/real_property.html) August 8, 2005.
[21] See NDCC 11-33-01, 40-47-01, 58-03-11. The exact phrasing in each chapter is slightly different, but the essence of all three is that townships, cities, and counties may (within certain parameters) establish regulations which control the construction and use of structures and buildings, and the use of land.
[22] See NDCC 11-33-02 and 58-03-11.
[23] Ibid.

[24] Ex parte communications are communications between a decision maker and parties involved in an application for a decision which do not happen on the record. They should be avoided so as to preserve the integrity of the decision process.
[25] see NDCC 11-10-27, 40-11-09.1 and 58-01-04.
[26] p 91. Smith, Herbert H. 1983. The Citizen's Guide to Zoning. Planners Press, American Planning Association, Washington D.C.
[27] NDCC 11-33-11.
[28] NDCC 40-47-01.
[29] Author unknown.
[30] p 144.Smith, Herbert H. 1983. The Citizen's Guide to Zoning. Planners Press, American Planning Association, Washington D.C.
[31] p 200. So, Frank S. and Getzels, Judith. 1988. "Land Subdivision Regulations" The Practice of Local Government Planning. ICMA Training Institute, International City/County Management Association
[32] See NDCC 11-33.2-03.
[33] Ibid.
[34] See NDCC 11-33.2-02, 04, & 12. It is recommended that this be reviewed with an attorney.
[35] The guidelines pertaining to the extent of extraterritorial authority have been changing. Please review the NDCC and consult an attorney on the current practices.
[36] Bowyer, Robert A. 1993. Capital Improvement Programs: Linking Budgeting and Planning APA
[37] Chandler, Michael. "Capital Improvement Programs-Part 1". Planning Commissioners Journal. No 16 p11. Winter 1996-1997.
[38] Chandler, Michael. "Capital Improvement Programs-Part 2". Planning Commissioners Journal. No 15 p11. Spring 1997.
[39] Kovacic, Gary A. Esq. and McMaster, Mary L. Esq. "Drafting Land Use Findings" Planning Commissioners Journal. Date unknown
[40] ibid.