

**ROLE OF PUBLIC
OFFICIALS**

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ROLE OF PUBLIC OFFICIALS

Planning Commission, Board of Adjustment, Council, Board of Supervisors, Economic Development Commission, and Design Review Board

City and town councils and county boards of supervisors exert great influence over the planning and zoning process. They are the legislative body for the jurisdiction and, as such, make the final decisions on many planning and planning-related issues. However, other public bodies, including the planning and zoning commissions, boards of adjustment, design review boards, economic development commissions, historic preservation boards, and many other appointed committees also have a tremendous impact on the quality of their respective towns, cities, or counties. These entities are charged with interpreting information and making specific decisions or recommendations that can greatly affect the planning process.

A successful board or commission will have dedicated members who work well together, as well as with local officials, other public bodies, and the general public. While much of the information of this chapter is written with planning commission and board of adjustment members in mind, the advice on communication, effective teams, and proper codes of conduct are applicable to other public bodies as well.

5.1 ROLE OF PLANNING COMMISSION

The job of the planning and zoning commissioner is comprehensive. Commissioners participate in the planning process for the immediate needs and future growth of the community. The duties range from being an advisor on long range planning projects to evaluating the impacts of a site plan for development to begin in less than a year. Some of the qualities that an effective commissioner should possess include:

- ✓ Civic-mindedness
- ✓ An interest in bettering one's community
- ✓ An interest in planning and development
- ✓ An open mind and objectivity
- ✓ A team player
- ✓ The ability to express oneself clearly and concisely in public
- ✓ Enough "free" time to prepare for meetings
- ✓ Have few potential conflicts of interest

As a commission, key skills for the group to possess include the ability to:

▶ **Identify the fundamental issues and any underlying motives:**

It's vital to know beforehand what it is you have to decide. Your planning staff should give you guidance on what the main issues are on any matter and the options before you in making a decision.

▶ **Condense and analyze written and oral information, and recommend actions or policies based on findings of fact:**

Recommendations should rely on adopted plans and policies that represent community values, rather than personal opinions.

▶ **Examine issues with regard to their long-term impact on the community:**

Despite an apparent short-term need, a good analysis should balance such requests against longer-term desires, needs, and impacts.

5.1.1 Legal Authority

Municipal Commissions ■ A.R.S. § 9-461.02 provides the authority for a municipality to create a planning and zoning commission that must have at least five members. A local ordinance determines the organization, number of members, terms, and method of approval or removal for its commission.

County Commissions ■ The authority for counties to create a planning and zoning commission is provided in A.R.S. § 11-803. The number of supervisorial districts in the county determines the required number of commission members. The State Statutes require that terms shall be for four years, except for new commissions, on which terms may be staggered to allow for more continuity as the group is established.

5.1.2 Responsibilities

Within the broad charge of assisting local elected officials in the decision-making process, the exact functions of the commission will vary from one community or county to another. The planning commission's role depends in part on the planning staff, budget, the experience and activities of elected officials; the community's planning policy; and the level of activity with which the commission is comfortable. The commission may:

▶ **Assist in the preparation of the general plan.**

In small communities with little or no staff, the commission may be responsible for

developing the plan. In all cases, however, commissions will advise and involve elected officials and the public in the development of community planning goals, policies, and programs.

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- ▶ **Assist in the preparation of development tools** such as the zoning code, subdivision ordinance, sign code, landscape ordinance, design guidelines, and other regulations the community may have to govern such as density, aesthetics, and the treatment of environmentally sensitive areas.
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- ▶ **Review development proposals, recommend changes to ordinances, and recommend changes to planning policies**
Development proposals may involve an amendment to the general plan, rezoning, or the approval of a subdivision plan. Decisions on these proposals require that commissioners have a working knowledge of the local development requirements and ordinances. Once a jurisdiction has established standards for local development, they should not be changed without substantial cause.

All development applicants should be treated equally. Exceptions set a precedent for others and open the commission to possible charges of favoritism. Official policy should be adhered to and regulations uniformly enforced.

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- ▶ **Hold public hearings and meetings**
The commission should, as part of its rules and procedures, adopt a set format and procedure for conducting its meetings. Chapter 4 discusses meeting procedures in more detail.
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- ▶ **Assist in the preparation of a capital improvements program (CIP) for the community** - A CIP establishes priorities for new public facilities such as streets, parks, water, sewer, and other services to be

provided by the jurisdiction. The CIP enables the city or county to plan and budget for future needs.

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- ▶ **Make recommendations** on possible community boundary changes through annexation or changes in the planning area.
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- ▶ **Provide liaison with other governmental units** such as adjoining municipalities, county or state agencies, other planning commissions, and school boards.
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5.1.3 Working with Other Public Officials and Private Organizations

In order to make its job easier, the commission should have a good working relationship with the planning staff, the council, board of supervisors, the management staff, and the other departments and agencies or boards involved in planning.

Commission/Staff Relationship ■ If the jurisdiction has a planning staff, the relationship between the commission and the staff should be clearly defined. Most often the planning director is hired by the county or municipal manager (chief administrator) with the approval of the council or board. The council or board also sets local policy and maintains budgetary control for the jurisdiction. The manager or administrator is responsible for policy implementation, programs, and budget management. The commission should not get involved in the administrative details of policy implementation or day-to-day management. This is the function of the staff. If desired, commissions could request update briefings on town business as an agenda item at regular meetings.

The planning staff is usually responsible for processing zoning and subdivision applications, negotiating with applicants, overseeing community development projects, advertising

public hearings, conducting research studies, preparing staff reports, making meeting arrangements, taking commission minutes, keeping records, and handling all other general administrative duties. The planning staff is there to assist by answering commissioners' questions or researching needed additional information. Staff usually has extensive knowledge of planning and zoning issues and diverse professional experience. Open communication regarding roles and expectations will ensure that each commission and staff find the right balance for working together efficiently.

Commission/Community Relationship ■ An important function of the commission is to provide a forum for citizens to voice their opinions and concerns about matters that the commission is considering. Citizen participation plays a vital role in projects like development of a downtown or general plan. The appointment of a committee comprised of community leaders as part of a particular effort (such as a general plan update) often helps to disseminate information, provide community input and feedback, and gain support for the project.

Commission/Elected Officials Relationship ■ It is important to remember that the commission is an **advisory** body only. Its duty is to study, review proposals, prepare plans and **advise** the council or board on planning and development matters. By making policy and project recommendations, the commission provides information and advice to the elected body, citizens, and agencies that play a role in the community's development. By soliciting the cooperation and input of the public and organizations interested in projects under review, the commission may gain credibility and support from the elected officials. It also helps to provide the elected officials with more than a yes or no vote tally for the item in question. The staff can provide the legislative body a summary of the discussions and decisions of the commission. This summary will highlight the findings of fact for approval or denial by the commission. To be

most effective, a commission should have periodic meetings with the governing body to set goals, establish or clarify policies, and discuss major development issues.

Commission/Municipal or County Attorney

Relationship ■ The basic rule on legal matters is: when in doubt about how to proceed legally, get an opinion from the city or county attorney. The jurisdiction's attorney is there to protect and advise the commission. When a controversial issue is being considered which may lead to litigation, counsel should be present and ready to offer advice. The attorney and planning staff should be a resource to the commission on state planning and zoning legislation, new ordinances adopted in other jurisdictions, and court decisions that have a bearing on the operations and scope of the commission's duties and responsibilities.

Commission/Consultant Relationship ■

Sometimes a municipality or a county may have a planning consultant to supplement the staff, provide additional technical skills, or to analyze issues and recommend how to deal with them. If the community does not have a professional planning staff, the commission may work closely with the consultant.

Before preparing a request for qualification (RFQ) or a request for proposals (RFP) to solicit responses from different consulting firms, the community must determine exactly what services they want provided, how much they want to spend, and what the final project or service should be. The RFP should provide sufficient information about the project that the consultant can prepare a scope of work, schedule, and tentative budget. The commission may solicit assistance in RFP or RFQ preparation from the Arizona Department of Commerce. A database of professional consultants throughout the state is also available on the Arizona Department of Commerce website at www.azcommerce.com. For more information on hiring a consultant, please refer to Chapter 6.3.3.

5.1.4 Becoming an Effective Commission

Many commissions are overwhelmed by the work facing them. The following are recommendations to increase the group's effectiveness:

Role ■ Understand the limits of a commissioner's role and do not get involved with the roles of others. Staff works with the applicant and prepares a staff report for the commission. A zoning administrator or hearing officer is responsible for the enforcement of the zoning ordinance. The board of adjustment hears appeals from these administrative actions.

Improve your Planning Knowledge ■ There are many courses, conferences, and special workshops offering basic training for commissions. The Arizona Department of Commerce hosts an annual training conference for planning and zoning commissioners, board of adjustment members, elected officials and staff, and conducts local training workshops with individual boards and commissions; the Arizona Planning Association hosts an annual conference; and, there are many books, videos, and web sites available on planning and zoning issues.

Look Beyond the Meetings ■ Attend meetings of other planning commissions to observe techniques for holding effective and productive meetings. Invite staff from adjacent municipalities, counties, the regional planning agency, the League of Arizona Cities and Towns, the Arizona Bar Association, Arizona Attorney General's Office, Arizona Department of Commerce, and other state and federal offices to update the commission on new programs, projects, legislation, regulatory devices, and recent court decisions affecting planning.

Take Stock ■ Get out in the community for field trips before and after a project has been

completed. Evaluate the success of the project vis-à-vis the commission's recommendations and expectations.

Annual Retreat ■ Hold an annual meeting to reflect on the commission's performance and take inventory of the community's progress and development. Revise goals, set objectives, and prepare a work program for the upcoming year. An honest evaluation should elicit suggestions for changes and improvements.

Worksessions ■ Informal worksessions prior to a hearing are a good way to review a comprehensive or controversial project. Worksessions also allow ample time for staff or the applicant to provide additional information to address questions or concerns raised by the commission.

14 *Ways to Build a Better Commission*

- 1] Develop and adopt bylaws and procedures, and stick to them.
- 2] Develop reliable information, data and maps, and make them available to the public.
- 3] Prepare and maintain a general plan; refer to it and make decisions consistent with plan policies and further its implementation.
- 4] Annually re-examine the progress of the commission. Make recommendations for improvements.
- 5] Prepare an annual work plan with strategies.
- 6] Participate in preparing the annual budget or capital improvement program. Use the general plan to help identify priorities.

- 7] Meet periodically with elected officials to exchange ideas and assess mutual objectives.
- 8] Consider a public forum every year or so to ask residents how things are going and what they want done.
- 9] Work with staff to fine-tune the format, content, and timing of staff reports.
- 10] Attend seminars and read publications on planning techniques and land use law that is pertinent to the community.
- 11] Visit other commissions' meetings to learn what techniques are used to maintain a fair and friendly process.
- 12] Appoint a commission representative to attend regular legislative meetings as a liaison.
- 13] Lobby for good planning.
- 14] Take time to orient new commissioners to the job.

5.2 ROLE OF BOARD OF ADJUSTMENT

Since it is impossible to draft a zoning ordinance that will cover every conceivable combination of circumstances, boards of adjustment were created to provide a means to deal with unanticipated hardships as they arise. A board of adjustment is a quasi-judicial, not a policy-making body. The board must interpret the meaning and spirit of the zoning ordinance as enacted by the governing body. **It does not have the authority to make law or change zoning law.** Only the city council or board of supervisors has this power and cannot delegate it to the board of adjustment or to any other body or official. When the board feels that changes should be made in the zoning ordinance

or policies, it should recommend these changes to the planning commission or to the elected body.

5.2.1 Legal Authority

Municipal Boards of Adjustment ■ A.R.S. § 9-462.06 requires each city or town to establish a board of adjustment and grants it the authority to:

- ▶ Hear and decide appeals in which it is alleged there is an error in an order, requirement, or decision made by the zoning administrator in the enforcement of an adopted zoning ordinance.
- ▶ Hear and decide appeals for variances from the terms of the zoning ordinance. Variances may only be granted if, because of special circumstances applicable to the property such as its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district. Any variance granted is subject to conditions to ensure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.
- ▶ Reverse or affirm, wholly or partly, or modify the order, requirement, or decision of the zoning administrator appealed from, and make such order, requirement, decision or determination as necessary.

The statute also says that a board of adjustment may not:

- ▶ Make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance provided that this restriction shall

not affect the authority to grant variances pursuant to this article.

- ▶ Grant a variance if the special circumstance applicable to the property is self-imposed by the property owner.

A municipality may wish to require staggered terms to ensure continuity of experience. The ordinance may establish the city or town council as the board of adjustment, but this can create difficulties in process since the board's quasi-judicial role is different from the council's legislative role. State Statutes also grant authority to create a hearing officer to hear and decide adjustment applications, but there must be a right of appeal from the decision of the hearing officer to the board of adjustment.

County Boards of Adjustment ■ Each county may have a single board of adjustment or one board for each supervisorial district in the county. For consistency in interpretation and policies, it is preferable that there be only one board.

County boards of adjustment are granted powers in A.R.S. § 11-807 to:

- ▶ Interpret the zoning ordinance when the meaning of any word, phrase or section is in doubt, when there is dispute between the appellant and enforcing officers, or when the location of a district boundary is in doubt.
- ▶ Allow a variance from the terms of the ordinance when, owing to peculiar conditions, a strict interpretation would cause an unnecessary hardship, if in granting such variance the general intent and purpose of the zoning ordinance will be preserved.

Although criteria for variances are vague in the statutes, case law indicates that the criteria for counties to grant variances are substantially the same as in municipalities.

5.2.2 Responsibilities

A board of adjustment has only those powers that are delegated to it by state law, but these powers may be detailed in individual zoning ordinances. The board's responsibilities typically include the following:

- ▶ **Review Actions of the Administrative Officer** ■ Even with the most careful drafting of a zoning ordinance, unforeseen complications can arise. Zoning ordinances are often long and complex, and even with an experienced and well-trained enforcement officer or zoning administrator, disagreement regarding interpretations could occur. To reduce error and ensure consistency, the zoning official (staff person responsible for enforcement of the zoning code) should be more familiar with the zoning ordinance than anyone else. He or she should base interpretations on the community's planning and development policies, the general or comprehensive plan, and current applicable case law.

If the applicant thinks the administrative official is wrong, he or she can file an appeal to the board of adjustment that has the power to hear and decide appeals. When reviewing the actions of an administrative official and interpreting the ordinance, the board should 1) determine the facts of the case, and 2) apply what it conceives to be the meaning of the ordinance to these facts.

Reverse, Affirm, or Modify a Decision ■ The board has authority to reverse, affirm, or modify the decision of the zoning administrator.

Grant Variances ■ Variances are described in detail in the next chapter subsection.

5.2.2.1 Variances

Zoning law should apply uniformly to everyone. However, the application of general regulations to all building and land use situations may not fit because of unique or other special circumstances. By granting variances, or exceptions from the terms of the ordinance, the board of adjustment can provide flexibility so that a property owner will not be unfairly deprived of the use of their property. In this way, the provision of a variance insulates the zoning ordinance from constitutional attack by relieving a particular landowner from unique hardship because his or her parcel is different from others in size, shape, topography, or location.

A variance is appropriate only to bring the applicant to parity with other owners in the zone and not to give applicants an advantage over their neighbors. For example, a lot may be so shallow relative to other lots in the neighborhood, such that there is insufficient space to build a house and provide the required front and rear yard setbacks. In this case, the board of adjustment may grant a variance allowing the property owner to develop the lot with a rear yard having a lesser depth than that required by the zoning ordinance.

In evaluating whether a variance is warranted, board members should consider

four key criteria:

- 1 A variance may be warranted if the property in question is associated with *special circumstances that are inherent to the lot* – such as its size, shape, topography, location, or surroundings – that deprive the property of privileges enjoyed by other property of the same classification in the same zoning district.
- 2 A variance may be granted if its authorization is necessary to ensure the *preservation of privileges and rights enjoyed*

by other property of the same classification in the same zoning district, without constituting a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located.

- 3 The special circumstances applicable to the property may not be *self-imposed* or created by the owner or applicant in order to receive a variance.
- 4 The granting of a variance should not *be materially detrimental* to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general.

Limitations on Granting Variances ■ The variance is often viewed as a device permitting the flexible exercise of discretion to approve projects felt to be desirable even if they don't meet the strict letter of the zoning law. The benefits, attractiveness, or social desirability of a project are irrelevant, however, to the variance issue. *The special circumstances and hardships justifying a variance must apply to the property, not to the applicant.* The needs of the applicants or the economic hardship to them do not legally justify a variance. Sometimes, board members have to make difficult decisions when a personal hardship comprises the applicant's argument for a variance, and the criteria for the variance don't fit. However, it is the quasi-judicial responsibility of the board to ensure that the law is applied to all owners in a zoning classification equally, and that special conditions are not granted to one owner based on personal – rather than property – considerations.

Variances should be granted sparingly. If a board finds itself granting variances frequently or hearing many similar cases, it may be an indication that the zoning ordinance needs to be

reviewed or the board should reevaluate its policies.

Hypothetical Case

Examples or case studies are often helpful in illustrating the intent of the law. Here is a hypothetical case regarding an application for variance:

Joan Benefactor, who consistently makes large charitable contributions to your town, wants to build her dream home on a lot she recently purchased in the most exclusive residential neighborhood in your community. This neighborhood was almost entirely built-out in the 1940's and 50's except for a few remaining vacant lots. A new zoning ordinance was adopted for your town in the early 1970's that changed the setback requirements and height limit applicable to Joan Benefactor's neighborhood. Approximately 60% of the existing older homes do not conform to the new setback and height restrictions.

Joan Benefactor wants a variance so that she can build in conformance with the old setback requirements as 60% of her neighbors did. Joan Benefactor also wants a height variance so that she can have additional sleeping quarters for the many orphans she cares for. The following issues arise at the board of adjustment hearing:

Assuming Joan's lot and her neighbor's lots are similar, can the setback variance be granted?



Will the fact that Joan is performing a tremendous public service justify the height variance?

The answer to both of those questions is no. As required by statute and case law the unique circumstances required for a variance must apply to the lot itself. If Joan Benefactor's lot is similar to her neighbor's lots and hers qualifies for variance, then so would her neighbor's. If everyone were entitled to build in a fashion similar to what their neighbors had built under previous zoning, rezonings would be completely ineffective.

The purpose of such rezonings is to gradually bring neighborhoods into compliance with new criteria. In this case, Joan Benefactor's house and all other building on the remaining vacant lots must comply with current criteria to gradually be brought into compliance as they redevelop.

As to the public service that Joan is doing, there is no unique circumstance applicable to the lot that justifies the height variance. Case law specifically rejects the "social benefit" argument as support for the grant of a variance. A variance is designed to bring substantial parity to an applicant, not to grant special privileges to applicants, even if they make significant contributions to the community.

5.2.3 Findings and Decision-Making

Findings are a statement by the board of the evidence and reasoning it used to arrive at a decision. Given the board's quasi-judicial status, it is particularly important to consider the basis and documentation of findings. One of the most common reasons the courts overrule board decisions is that the board has failed to prepare findings.

Findings are necessary to:

- ✓ Facilitate judicial review
- ✓ Ensure careful deliberation and accurate decisions
- ✓ Assist the parties in preparing for review

No particular form is required for findings. They can be discussed at length or adopted upon the motion of a member of the board. They can be drafted by a member, by staff, or by one of the parties. Findings should contain the following:

- ▶ **Identity of the parties, property, and relief requested.** This will ensure that everyone has reached a decision on the same subject.
- ▶ **List the witnesses, documents, and exhibits relied upon.** Use only evidence that was introduced at the hearing. Personal knowledge may be used if others commonly share that knowledge in the community. Knowledge that is not widely shared may be used if it is announced at the public meeting and the parties are given an opportunity to rebut it (see also the discussion on ex parte contacts in Section 5.3.5).
- ▶ **Identify the standards established by ordinance for the action requested by the applicant.**
- ▶ **Explain, fact by fact, why the evidence does or does not establish that the standard has been met.** Try not to leave out any facts. Even if the court disagrees with the judgment, it is likely to uphold the decision if it feels that the evidence was thoroughly examined and evaluated based on established criteria such as an existing ordinance.
- ▶ **If the relief is granted, describe it clearly with any attached conditions.** This is valuable for the parties and staff. If the proceedings are recorded (such as with minutes), the findings don't have to be written down; that can be done later. Written findings can be prepared after a decision is made and adopted at the next meeting.

Findings are important in helping the public understand why the board reached the decision it did. Even if members of the public disagree with a board decision, they may not become as upset or angry if they understand the reasoning that led to a decision.

5.2.4 Appeal Procedures

Appeals to the board of adjustment may be requested by any person aggrieved or by any officer, board, or department of the municipality or county affected by a decision of the zoning administrator. An individual who wants to appeal to the board of adjustment must file a notice of appeal with the zoning administrator and with the board specifying the grounds of the appeal, within a reasonable time of the initial decision. The process through which the board of adjustment reviews and decides appeals includes the following steps:

- ▶ **Action of Administrative Officer.** Although interpretations, and appeals for variances may be made directly to the board of adjustment, most appeals are made to the board after the administrative official has taken some official action as provided for in the zoning ordinance. An appeal may result from the official's refusal to grant a permit, or upon a citation of a zoning violation.
- ▶ **Transfer of Materials to Board.** After the notice of appeal is received, the administrative officer transmits the complete record of the action that is being appealed to the board of adjustment.
- ▶ **Stay of Proceedings.** An appeal stays all proceedings in the matter appealed unless the zoning administrator certifies to the board that, in his or her opinion by the facts stated in the certificate, a stay would cause imminent peril to life or property. Proceedings shall then be stayed, unless a

restraining order is granted by the board or by a court of record on application and notice to the zoning administrator.

- ▮ **Public Hearing.** The board of adjustment must hold a public hearing on all appeals, within a reasonable time. Many Arizona communities specify that the hearing must be held within 30 days after the appeal is filed. Notice of the hearing must be provided by both publication in a newspaper of general circulation in accordance with A.R.S. § 9-462.04 and posted in conspicuous places close to the property affected (see discussion of Open Meeting Law in Chapter 4). The statutes should be consulted to ensure that the community's public notice procedures comply with statutory requirements.
- ▮ **Decision.** The board may decide to grant, modify, or deny any appeal. The board may also defer action on any appeal when it decides that additional evidence is needed or that alternative solutions need further study.

Appeal to the Courts ■ Although the board of adjustment is a quasi-judicial body specifically established to handle appeals in connection with the zoning ordinance, it is not a court of last resort. Within 30 days after the board has made a decision and has filed this decision, a person aggrieved by the decision or a municipal officer may file a complaint for special action in the Superior Court for review of the board's decision. (Note: cities with populations over 100,000 first send appeals to the city council and then, if appealed again, to the Superior Court) Filing the complaint does not stay proceedings on the decision appealed. The Court may, however, grant a stay upon application and on final hearing may affirm or reverse, in whole or in part, or modify the decision reviewed.

In appeals to Superior Court from municipal boards of adjustment, the Court reviews the

record of proceedings before the board to determine if there was a manifest error. In other words, the decision-making process is reviewed for errors rather than the merits of the decision itself. An appeal from a county board of adjustment is a trial de novo in Superior Court. "De novo" means "anew" or "once more", and means that the judge will hear the case arguments again and decide the matter independently of the board's decision.

Appeal to the Legislative Body ■ In 1988, the Arizona Legislature amended A.R.S. § 9-462-06 providing for appeals from a decision by the municipal board of adjustment to the city council. The legislation only affects municipalities with populations over 100,000 and states that:

...a person aggrieved by a decision of the board or a taxpayer, officer or department of the municipality affected by a decision of the board may file, at any time within fifteen days after the board has rendered its decision, an appeal with the clerk of the legislative body. The legislative body shall hear the appeal in accordance with procedures adopted by the legislative body and may affirm or reverse, in whole or in part, or modify the board's decision.

CAUTION

It should be emphasized that this text does not represent a substitution for the counsel, guidance or opinion of the city or county attorney, who should be consulted for an interpretation of the law as applied to any given set of facts.

5.3 RULES AND PROCEDURES

The process and protocols used by commissions and boards may be based on statutory requirements, local ordinances, or good practice. This section addresses several key areas of rules and procedures and applies to both commissions and boards of adjustment. Overall, it is suggested that boards and commissions develop and adopt a set of bylaws to guide the conduct of the group, so long as it does not create conflict with existing statutes or ordinances.

5.3.1 Meetings and Records

Arizona's Open Meeting Law sets the parameters for noticing, conducting, and recording public meetings. Please refer to Chapter 4 for more detailed information. Boards and commissions are required to keep minutes of the proceedings that record the vote of each member, records of its examinations, and other official actions. These minutes and records are public and must be available on a timely basis. Accuracy and sufficient detail are important since these records will constitute the major evidence in any litigation, a particular consideration for board of adjustment decisions that may be appealed to Superior Court.

5.3.2 Due Process

When reviewing planning and zoning cases, the courts focus on "due process", or the protection of an individual's rights and property. In legal disputes, procedural due process is often an area of controversy. Legal requirements for due process include:

- ▶ **Adequate Notice:** Published notice of all meetings that meet the requirements of the Arizona Statutes, including frequency and location of notice. Staff is responsible for this activity.

- ▶ **Advance Disclosure/Full Disclosure:** Convenient public access to all pertinent information such as exhibits, studies, and staff reports, well in advance of the meeting date.
- ▶ **Opportunity to be Heard:** Opportunity for favorable or opposing public comment before the commission, board, or council makes a decision.
- ▶ **Findings of Fact:** Staff reports, exhibits, and proceedings from public meetings should be documented in official minutes. Decisions and actions should be based on relevant, factual information and refer to policies, ordinances, and plans as appropriate. The action a commission or board takes should be based on specific reasons relating to the zoning ordinance or general plan and should be detailed in the record. (This is not a legal requirement in Arizona, although it is required in other states.)
- ▶ **Avoid the Appearance of Impropriety:** According to the State's Conflict of Interest Law A.R.S. § 38-501(A):

any public official or employee who has, or whose relative has, a substantial interest in any decision or a public agency must make this interest known on public records, and must refrain from discussing or influencing the decision in any way.

It is illegal to fail to declare a substantial conflict of interest, or to participate in any way in decision-making if there is a conflict. See Section 5.3.4 for additional discussion on conflicts of interest.

5.3.3 Code of Conduct

In addition to rules and procedures for operation, a code of conduct may be agreed upon and incorporated as part of the official bylaws. Guidelines for appropriate conduct might include the following:

-Avoid public charges of conflict of interest by dealing with them upfront. Seek advice from the jurisdiction's attorney when there is uncertainty.
-Gifts of cash, liquor, company products, or anything of value should be declined or returned to the sender. Public officials should not accept trips or entertainment paid for by applicants.
-Don't string people along. Make decisions promptly. If a proposal needs modification before approval, the commission has an obligation to be specific about what it wants, to avoid unnecessary delays and expenses to the applicant. If the basis for making a decision on a case is lacking because, for example, the applicant is unprepared, the project is premature, the proposal requires passage of an ordinance first, or there are conflicts with the general or comprehensive plan, deny the application rather than stringing the applicant along.

When should a commissioner or board member resign? Individual motives differ for serving in an unpaid job involving long hours, hard work, and lots of pressure. Effective public officials are honest, objective, and conscientious. They are not swayed, manipulated, or pressured into backing down from their convictions. A commissioner or board member should resign when he or she feels ineffective or ceases to work for the best, long-term interests of the community. Some communities also set limits on how many terms can be served.

5.3.4 Conflicts of Interest

There are specific legal definitions of conflict of interest, which typically relate to a public official having a direct or indirect financial interest in the outcome of a decision that he or she influences. The best advice for a commissioner or board member who is considering whether a conflict exists is to discuss the matter with the jurisdiction's attorney. If it is determined that a conflict of interest does exist for a particular case, the commissioner or board member must disclose the conflict and should not participate in the discussion or vote for the case. It is recommended that the individual with a conflict actually leave the room, so that there is no question that he or she is not influencing the discussion through body language or his or her presence generally. To ensure that due process occurs – that individuals receive the fair hearing from impartial public officials that they are entitled to – conflicts of interest must be handled in an appropriate manner.

If the attorney advises that a legal conflict does not exist in a particular case, it may be that the commissioner or board member still feels uncomfortable. Certainly, the public may perceive a conflict exists even if, legally, it does not. In these situations, it is suggested that the commissioner or board member disclose his or her concern to the group before discussion of the item. Public officials may still opt to recuse themselves from the discussion of an item based on the perception of a conflict or personal ambiguity over the correct course of action. Another option is to ask the group to make the determination as to whether the individual should be excused from the discussion of the item.

Some boards and commissions have established a process for dealing with potential conflicts of interest in their bylaws. This makes it easier for an individual to know what to do if there is a potential conflict. To do this, the group may want to have a worksession with staff and the jurisdiction's attorney to discuss the legal aspects

of conflict of interest and the best process to establish. It may be easier to discuss these issues in the abstract and in advance of a specific incident.

5.3.5 Ex Parte Contacts

Ex parte contacts are defined as those made “from or on one side only” and are made without notice to, or knowledge of, others involved in the matter under discussion. An example of an ex parte contact for a commissioner is a communication from an applicant to a public official one-on-one without a public forum. This could include telephone calls, informal meetings, lunches, or even a casual encounter on a street corner. Such contacts may be a source of pertinent information not otherwise available, but the key concerns are 1) that these communications might influence one individual’s decision-making before deliberations begin, and 2) that the entire group would not be making their decision based on the same information. Since a board of adjustment is a quasi-judicial body, members should be especially careful of ex parte contacts, to avoid being influenced outside the public forum and without the benefit of hearing all sides of an issue.

The law on the subject indicates that boards and commissions are not prohibited from ex parte contacts but such communication must be disclosed for the record at the hearing to enable interested parties to hear and rebut the substance of the communications. If not made part of the records, an ex parte contact may provide the grounds for voiding a board of adjustment decision. The following guidelines should be considered in dealing with ex parte contacts:

... If someone contacts a board member or commissioner to discuss a matter currently or soon to come before the board, refrain from stating your position and invite the person to present testimony before the entire group.

... Written information on a pending action should be sent to staff for review and possible inclusion in the board packets. If approached by someone who wants to discuss a case, suggest the person write a letter stating his or her position or send additional materials to staff so that it can be distributed to the entire group.

... If someone persists in offering information but is unwilling to testify before the group, tell the person the information will be put on the record. If the person is unwilling to have the information placed on the record, then refuse to have further contact with him or her on the subject.

Don’t take private field trips or tours with applicants or their representatives. It is best to announce the time and place for such field trips at a public meeting where it can be recorded in the minutes and interested parties may attend. It is best if the entire board can make field trips, but at least three members should go as a subcommittee appointed by the chair. (Remember that noticing or other Open Meeting Law requirements will apply if a quorum of the group will be attending the site visit.) It is usually a good idea to take a field trip or visit a site; in fact, these types of site visits can be extremely help in evaluating a proposal.

How to handle ex parte contacts is another topic that a board or commission may opt to address in bylaws. Some communities prohibit ex parte contacts, and others lay out a suggested process for responding to them. However the group decides to approach the issue, written procedures will help new members become oriented and will clarify the situation for all members in the event of a problem. Again, it is suggested that any policy on ex parte contacts be drafted with the assistance and input of staff and the jurisdiction’s attorney.

5.4 ROLE OF THE COUNCIL OR BOARD OF SUPERVISORS ON PLANNING AND ZONING ISSUES

The elected body in the jurisdiction has the authority to make the final decisions on planning and zoning issues. The council or board of supervisors is responsible for adopting the general/comprehensive plan and ordinances, as well as approving plan amendments and development proposals. This body is also responsible for adopting the jurisdiction's capital improvements plan and budget, which are often key to how and whether planning efforts will be implemented. Councils and boards also appoint other public officials and oversee the activities of the boards and commissions to ensure that the public's interest is being served.

The planning commission is advisory to the council or board. The commission may also make recommendations on planning and land use policy or changes to existing ordinances. It is recommended that commissions meet with the elected body on an occasional basis, to promote philosophical consensus between the two groups and to keep the elected officials up-to-date on recent planning issues, with which commissioners are often more intimately familiar.

Boards of adjustment are different from commissions in that their function is more quasi-judicial than legislative or advisory. However, boards would also benefit from sessions with the elected officials and/or the commission to discuss the community's process and progress on planning issues. In addition, the board may submit recommendations to the commission to reevaluate ordinances or plans in response to recurring cases or other concerns raised in board hearings.

The city, town, or county manager is hired by the elected officials to manage the administrative

functions of the jurisdiction. The manager works with all the department heads (including planning or community development) and serves as the key liaison to the council or board. The manager often advises the elected and appointed officials and prepares the budget, and is generally charged with implementing the policies adopted by the council or board.

5.5 OTHER COMMISSIONS AND BOARDS

Jurisdictions may opt to convene other commission and boards to focus on key issues in a community. The elected body would be responsible for appointing members and determining the scope and mission of the new group. Members of planning commissions and boards of adjustment should have a clear understanding of the role of other groups whose actions may overlap with their normal functions (and vice versa), to allow for better communication and efficiency in working together. Economic development and design review are two of the most common issues to warrant a focused group, and are discussed briefly below.

5.5.1 Economic Development Commissions

Economic development commissions may be formed to bring together the various interest groups to support economic development efforts in the community. Ties to planning issues may include available land for development, sufficient zoning for industrial or commercial uses, and the provision of infrastructure in a timely and cost-efficient manner. Some communities opt to include an economic development element in their general plans to ensure that land use, infrastructure, and economic development goals are mutually supportive. The mission for an economic development commission may be

outlined differently in each community, but this group can provide valuable input to the general/comprehensive plan process or discussions of ordinance updates.

5.5.2 Design Review Boards

A design review board typically would be charged with providing direction and recommendations to ensure aesthetically pleasing or desirable projects. Adopted design guidelines are typically the key tool used by the board to determine “aesthetically pleasing or desirable”. These guidelines are developed in a participatory manner to facilitate the implementation of community plan goals and objectives (such as downtown or neighborhood revitalization, historic preservation, or landscaping improvements). The board provides a mechanism for ensuring that proposed projects comply with the established design standards and guidelines. Design review hearings occur in public forums that are subject to the Open Meeting Law, and would supplement the review of plans conducted by planning commissions.

5.6 WORKING EFFECTIVELY AS A GROUP

Commissioners and board members, especially new ones, need to know how to be effective group members. To work effectively, the group must be well organized and interact cooperatively. Organization and high morale contribute to group productivity, a sense of well-being, and the capacity to make well-informed, comprehensive decisions.

Three standards to measure a good work group are:

- ▶ **Effectiveness:** Does the commission function as a deliberative study committee providing informed advice to the elected

body? Does the board/commission debate excessively without properly evaluating the issues placed before it? Is the group “fact finding” for the decision at hand?

- ▶ **Continuity:** Are recommendations based on established policy, ordinances, and the general plan, or does the group “fly by the seat of its pants” on each new agenda item? An effective board/commission has direction, and each of its decisions is linked to fundamental principles.
- ▶ **Capacity for improvement:** As conditions change and new demands are made on the group, it must be able to adapt and respond to change. A particular challenge to commissions, for example, is the emergence of alternative lifestyles such as group homes, hospice centers, etc. A commissioner may find these lifestyles strange, but must consider them with care and sensitivity, and not let personal feelings interfere with fair and objective decision-making.

Long rambling meetings and the habitual continuance of agenda items diminish motivation and sense of purpose. A dysfunctional commission or board might have these symptoms:

- ▶ **Loss of spirit:** Due to a lack of direction, loss of support from elected officials, poor relations with staff, a hostile public, the group may become apathetic or disillusioned.
- ▶ **Poor attitudes:** Absenteeism, disorganization, and lack of leadership contribute to the disintegration of the group.
- ▶ **Structural disorganization:** Lack of cooperation within the group may be so disruptive that it becomes ineffective and often unable to reach agreement.

Leadership ■ The chair is responsible for providing leadership, being a liaison to the elected body, directing staff interaction, maintaining morale, and assuring the effective performance of the commission's duties. Sometimes the elected officials select the chair, and sometimes the job is rotated within the group. The commissioner selected as chair should have the following qualities:

- ▶ **Strength of Character:** ensure that meetings are fair and friendly, and are run by the rules in the face of opposition, competing viewpoints, and intense emotions.
- ▶ **Fairness:** allow members of the public an opportunity to be heard, even if they represent unpopular views.
- ▶ **Ability to concentrate on the issue:** review and summarize information, and identify the issue in order to keep the meeting on track.
- ▶ **Mediation skills:** have the patience and commitment needed to seek fair and reasonable compromises and find common ground before calling for a possibly decisive vote.

Decision-Making ■ Group decisions are often reached by polling the members under majority-rules voting procedures. The minority must be made to feel that they have been given fair treatment and that their views are respected. Some groups take the time to reach a consensus, feeling that compromise is important. A more reasonable (in some cases where consensus is difficult) approach is to vote by roll call, and allow each person to state the basis for his or her decision, whether that means citing the motion or staff report, or stating reasons for a minority view.

Common examples of poor decision-making include:

- ▶ **Scatterbrainstorming:** Every time someone offers an idea, someone else offers another before the first one is discussed. The result is confusion. This process reduces the initiative of participants and dilutes the effectiveness of the discussion.
- ▶ **Looking to authority:** Commissions or boards that make decisions based only on staff recommendations, or in response to the wishes of the governing body, avoid responsibility and serve no real purpose.
- ▶ **Railroading:** Group members who force decisions without the consent of the majority, by making a motion and pushing it through before discussing the issues, sabotage the credibility of the group.
- ▶ **Short-term outlook:** making decisions that benefit only the landowner or a few residents versus the community at large over the long-term.

5.6.1 Orientation for New Members

Relatively few of the people appointed to commissions or boards have a professional planning background, or the full range of technical skills necessary to review the development proposals and complex issues that come before them. Yet very few communities have developed orientation or education programs for new public officials. Although planning experience is absolutely not required for commissioners or board members, an open mind, interest in planning issues, and a willingness to learn and listen to a variety of opinions are. Still, the development application process, planning terminology, and other key knowledge areas may be confusing to new members. Staff or fellow members in a variety of ways could provide an orientation to community planning.

Consider...

- ▶ Conducting annual worksessions for all members to review processes or to discuss local planning issues
- ▶ Establishing orientation visits for new members with the planning staff to understand the purpose of the general/comprehensive plan and zoning code
- ▶ Requesting attendance at several hearings before appointment to the group
- ▶ Conducting a study session for new members with a planner to review the contents of a staff report and how to read a site plan
- ▶ Compiling a packet of information and guidance for the new member to review, including bylaws, this handbook, interesting articles from the Planning Commissioners' Journal (see www.plannersweb.com for subscription information), etc.
- ▶ Establishing a citizen's academy. These have been used successfully in several Arizona communities in educating people on municipal organization, state laws, and planning issues – these programs are often a source of well-prepared new public officials

Topics that should be covered in a new member orientation (or reviewed as a group) include discussion of staff recommendations and reports, how to request information from staff or ask questions, and the jurisdiction's development policies. It is important that the line of authority between staff, chief administrator or city/county manager, legislative body, and commission/board is clearly understood. The chair or vice-chair may brief new members on the rules and procedures. Matching new members with experienced members in a "buddy system" enables the new

appointee to learn, feel a part of the group, and gain confidence in their new role more quickly.

Some key questions that new (or veteran) members should consider include:



How do the commissioners/board members work together?

What role does the chair play?

Is it a formal or informal atmosphere?

Do the group members talk to each other, or mostly to staff?

How do they arrive at decisions?

How does the discussion lead to changes in the project or stipulations that are part of the motion?

Do they question staff, applicants, or other people testifying?

What happens when a hearing is closed?

How are motions made?

Finally, there are the "tools of the trade" for commissions and boards that should be distributed to each commissioner or member. Particularly with new members, staff should clarify the purpose and how to use each of the following "tools":

Tools...

- ▶ The general or comprehensive plan with all amendments, including a statement of community goals and issues relating to planning and development
- ▶ Copies of planning reports and related studies
- ▶ A legible, easy-to-use base map
- ▶ Copies of regulatory ordinances (zoning, subdivision, sign, design, etc.)
- ▶ The planning agency's work program for the year
- ▶ An executive summary of the annual budget or capital improvement program (CIP)
- ▶ The board/commission's bylaws and written procedures
- ▶ Copies of regional or state policies or programs to which they may be expected to refer on occasion
- ▶ Copies of any current agreements the planning agency has with other agencies or with consultants
- ▶ Copies of the rules, regulations, and forms that applicants must comply with in order to obtain permits
- ▶ A list of all the available planning resources
- ▶ A flow chart of how typical projects make their way through the different boards, commissions, and legislative body