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Zoning Administration Tools of the Trade

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ZONING ADMINISTRATION TOOLS OF THE TRADE

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& Krafthefer, P.C.**

**Chicago, Illinois
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ABOUT ANCEL GLINK AND THE AUTHORS

Ancel Glink

Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C. was founded more than 75 years ago. As one of the preeminent local government law firms in Illinois, our firm of more than 35 lawyers has a tradition of excellence and innovation. Ancel Glink has adhered to the principle of providing the quality of work normally associated with the largest firms within a small firm environment. Our goal is to offer our clients effective and comprehensive representation at a reasonable cost. Our legal services and strategies match our clients' needs and resources. Although a substantial portion of our practice is in the Chicago Metropolitan Area (Cook County and the "collar" Counties), we provide services statewide, often serving as special counsel in assisting local attorneys with complex matters. If you have any questions about this handbook, and the techniques described, please call one of the authors at: (312) 782-7606: Stewart H. Diamond, Ext. 109, Derke J. Price, 156 . You may also wish to visit our web site at:

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American Planning Association (including the Economic Development Division, City Planning and Management Division, and New Urbanism Division); he serves as Chairman of the Plan Commission of the City of Naperville; the American Bar Association (including the ABA Forum on the Construction Industry--Owner's division); the American Institute of Architects; AIA-Northeast Illinois; the Construction Specifications Institute; the Kane County Bar Association; and the Illinois Association of School Business Officials.

ZONING ADMINISTRATION TOOLS OF THE TRADE

THE ANCEL GLINK CONSTRUCTION KIT: A GUIDE TO PLANNING AND ZONING

This pamphlet should serve as your construction kit as you wend your way through the myriad of complex and dynamic land use issues facing planning and zoning officials. The document contains “real world” examples, as well as “practice tips,” to assist you in your day-to-day work. Ultimately, we hope a review of the powers of municipalities contained in this pamphlet will encourage communities to review and, where desired, to update their responsible regulation of land development. More information is available on the Ancel Glink website at www.ancelglink.com.

INTRODUCTION: BUILDING YOUR PLANNING AND ZONING STRUCTURE

The creation and implementation of effective land use regulations and controls requires—like any good construction project—the right design and responsible persons to implement that design. Traditionally, municipalities have had broad statutory jurisdiction to develop and implement comprehensive plans, zoning ordinances and other land use regulations. These regulations allow the implementation of the philosophy desired in each municipality’s growth patterns, such as locations for residential, commercial and industrial uses, as well as the day to day enforcement of regulations designed to protect the health, safety and welfare of the community. Illinois is a diverse state. Thus, there is no one-size-fits-all model for land use regulation and control. Small towns in the rural parts of the state may want to preserve their history, while encouraging economic viability of central business districts. Suburban communities may seek to promote “smart growth” by encouraging planned development with adequate traffic, landscape and density regulations. Urban municipalities may have the need for commercial and industrial development to create much-needed property tax revenues.

But, what are the limitations to these land use controls? What powers do municipal officials have to design a comprehensive system of land use regulation? What are the proper municipal authorities to build this system?

SITE WORK: HOME RULE VS. NON-HOME RULE POWERS

The first inquiry concerns the setting in which the system will be built. Without question, “home rule” and “non-home rule” Illinois municipalities have differing authority with regard to the types of land use regulations they can build. The law is well settled that non-home-rule municipalities powers are limited. Generally speaking, a non-home-rule municipality has only those powers granted to it by law, as well as certain powers enumerated in Article VII, Section 7,

of the Illinois Constitution. The commentary to Section 7 notes that the section maintains the concept of Dillon's Rule with respect to non-home-rule units of local government. Dillon's Rule provides that municipalities possess only those powers expressly granted, powers incident to those expressly granted, and powers indispensable to the accomplishment of the declared objects and purposes of the municipal corporation. *1 J. Dillon, Municipal Corporations sec. 237*. On the other hand, home rule municipalities can exercise additional powers, provided they can be said to be included within the "government and affairs," are constitutional, and have not been preempted by state statute or federal law.

THE BLUE PRINTS: KNOWING HOW THESE LAWS APPLY TO YOU

It is important that planning and zoning officials have a thorough knowledge of both their specific statutory functions and their role in the overall arena of local planning and zoning decisions. The officials can bring a different perspective to the review and, with a full grasp of their power, implementation of land use controls. For example, frequent and similar variance requests may lead the zoning board of appeals to conclude there are weaknesses in the zoning ordinance. Likewise, implementing a comprehensive plan and going through the process of updating that plan will provide continual opportunities for insight into the purposes of the zoning ordinance and the direction of growth within the municipality.

Municipal land use regulation is accomplished through several statutory provisions. These provisions include broad planning authority through plan commissions and planning departments. Their primary responsibilities include the creation, amendment and execution of a comprehensive plan for the development of land in the municipality. They also include the authority to zone property, to restrict the uses of land, and the authority to further the policies adopted in the comprehensive plan. The Municipal Code also provides municipalities with the authority to annex unincorporated land.

Despite the several tools provided by the General Assembly, municipalities often do not take full advantage of their land use regulation authority. As one expert noted,

“Interviews with local officials within Illinois indicate that there appears to be, in fact, a very tenuous connection between planning and zoning within the state. In addition to those communities that have no planning or zoning programs of any kind, a number of Illinois communities that have adopted zoning programs have not adopted any type of local land use plan. In many communities, adopted land use plans that were prepared years ago, have not been consistently updated or revised, and are, in fact, dead plans. Only a few local officials reported the existence of adequately funded and carefully prepared local land use plans that actually provide local officials with substantial and ongoing guidance in regulating land use and development.”

Edward H. Ziegler, Jr., “An Outsider Looks at Illinois Zoning and Planning”, Northern Illinois University Law Review, Volume 12, pg. 717 at pg. 724 (1992).

THE FOUNDATION: CONSTITUTIONAL UNDERPINNINGS

A system of land use controls and regulations requires a solid foundation. The foundation must be designed to meet the following five specifications.

SPECIFICATION ONE: FIFTH AMENDMENT TAKINGS

Inherent in the planning for, and regulation of, land uses are principles found in the United States Constitution. The first of these is the “takings” clause. The Fifth Amendment to the United States Constitution provides that private property shall not be taken for public use without just compensation. This restriction has been made applicable to the states through the Fourteenth Amendment. However, not all forms of land appropriation run afoul of the takings clause. The United States Supreme Court has recognized that a land use regulation does not effect a taking if it “substantially advances legitimate state interests’ and does not deny an owner economically viable use of his land.”

SPECIFICATION TWO: THE DUE PROCESS CLAUSE

The second constitutional principle is the “due process” clause of the Fifth Amendment which applies to the states, again, through the Fourteenth Amendment. Due process comes in two forms: procedural and substantive. Procedural due process requires that the procedural process that a petitioner goes through when requesting zoning relief from a municipality (i.e., a hearing before a plan commission or zoning board of appeals) is fair and equitable and is not arbitrary and capricious. Substantive due process, on the other hand, requires that the actual laws – the zoning and subdivision codes and the individual ordinances applicable to particular properties categorize the land in the proper way into districts.

SPECIFICATION THREE: THE FIRST AMENDMENT

Illinois courts have held that the regulations must not run afoul of the First Amendment protection of freedom of expression. With regard to signage, for example, any regulation of commercial expression will not violate the First Amendment if the municipality has a substantial interest in regulating signage; the regulation directly advances that interest; and the regulation is not more extensive than necessary to serve that interest. As an example of an ordinance that went to far, courts have held that traffic safety and visual aesthetics were not the sort of compelling state interests required to justify the restriction of expression based in a sign ordinance which distinguished between corporate and official flags from all other flags.

EXAMPLE: Adult Uses. County zoning ordinance that permitted location of adult uses as of right only in industrial zones did not deny adult bookstore operators reasonable opportunity to open and operate adult businesses, even though they claimed that industrial zones were ill-suited to the operation of retail or commercial businesses and, therefore, ordinance did not violate First Amendment; ordinance established

approximately 78 industrially zoned areas in which adult uses could locate as matter of right and county was not required to provide land "tailor-made" to conform to operators' requirements. Cook County v. Renaissance Arcade and Bookstore.

SPECIFICATION FOUR: THE STATE'S RELIGIOUS FREEDOM RESTORATION ACT AND THE FEDERAL RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000

The Illinois Religious Freedom Restoration Act, enacted in 1998 declares that the free exercise of religion is an inherent, fundamental, and inalienable right secured by Article I, Section 3 of the Constitution of the State of Illinois. As a result, laws "neutral" toward religion, as well as laws intended to interfere with the exercise of religion, may burden the exercise of religion. According to the Act, Government should not substantially burden the exercise of religion without compelling justification.

The purposes of the Act are (i) to restore the compelling interest test as set forth in the federal cases of Wisconsin v. Yoder, and Sherbert v. Verner, (ii) to guarantee that a test of compelling governmental interest will be imposed on all State and local (including home rule unit) laws, ordinances, policies, procedures, practices, and governmental actions in all cases in which the free exercise of religion is substantially burdened, and (iii) to provide a claim or defense to persons whose exercise of religion is substantially burdened by government. Government may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person (i) is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of furthering that compelling governmental interest.

The federal Religious Land Use and Institutionalized Persons Act of 2000 makes a plaintiff's burden less difficult in that activities that are not essential to the primary objectives of the religious institution may now have RFRA-type protection.

PRACTICE TIP: A municipality may have an increasingly difficult time preventing religious institutions from locating in commercial districts. To do so, a community must now prove that there is a compelling, rather than simply a rational, reason to bar religious institutions from commercial areas and that a complete bar is the least restrictive way of dealing with a problem caused by the location of a religious institution in such an area. Interestingly enough, municipalities have begun to win cases by passing the test.

SPECIFICATION FIVE: DUE PROCESS IN PUBLIC HEARINGS

All meetings of plan commissions and zoning boards of appeal are open to the public. In addition, the most common applications that plan commissions and zoning boards of appeal have before them – requests for variations, special uses, planned developments, and map & text amendments – all require that the plan commission or zoning board of appeal hold a public hearing on the application prior to making a recommendation to the corporate authorities.

Depending on the local zoning ordinance, public hearings require notice by publication and possibly notice by mail. The public hearing itself is a legal, fact finding proceeding. These proceedings have traditionally been held in a somewhat informal manner, subject only to requirements of Illinois statutory and case law, and ensuring appropriate process to protect the rights of zoning applicants, their supporters and opponents. However, the 2002 Illinois Supreme Court's decision in Klaeren v. Village of Lisle, now legislatively overruled, instituted greater requirements for formality related to zoning applications seeking special (or conditional) use permits and added significant procedural requirements to public hearings concerning special use permits. Klaeren turned the hearing process before these generally recommendatory bodies into almost a formal court hearing.

In response to the Illinois Supreme Court's decision in Klaeren, Public Act 94-1027 was signed into law on July 14, 2006 and became effective immediately. Public Act 94-1027f removed some of the pressure from the public hearing process that Klaeren created by allowing parties more flexibility in subsequent appeals. However, Public Act 94-1027 still protects the applicants and public hearing participants procedural rights. Therefore, while the formality of Klaeren is no longer necessary, it is still important to provide procedures to conduct public hearings.

Toward that end, it is still advisable that the Chairman explain the order of events for all zoning applications. The typical order is as follows: (i) the applicant presents his or her applications, (ii) the board or commission asks questions of the applicant, (iii) members of the public who are in favor of the application address the applicant and board or commission, (iv) members of the public who are not in favor of the application address the applicant and board or commission, (v) the public hearing is closed, (vi) the board or commission discusses the application amongst themselves (in the open), and (vii) the board or commission acts on the application. Also, prior to the applicant's presentation, the Chairman should set forth some ground rules. For example, the Chairman may state that Illinois law allows audience members to audio or video tape the public hearing, so long as they do not interfere with the process, that no one may speak at the public hearing until formally recognized by the Chairman, that audience members should not repeat prior audience members or be overly verbose with their comments, and sometimes that audience members will get a certain amount of time to speak (e.g., a limit of three to ten minutes, depending upon the number of people who wish to speak).

FRAMING CARPENTERS: PLAN COMMISSIONS AND PLANNING DEPARTMENTS

The Illinois Municipal Code authorizes municipalities to create plan commissions and/or planning departments. Plan commissions and planning department have substantially the same function, which is to create and oversee the implementation of a comprehensive plan to guide the development of land in the municipality. They are, however, quite different in that plan commissions are comprised of lay municipal residents, while planning departments are generally comprised of professionals with knowledge and expertise in the field of city/urban/community/regional planning. Municipal planning departments, where they exist, and plan commissions should work in harmony to implement and administer the plans, ordinances, and other relevant laws of a municipality.

A plan commission is appointed by the mayor or village president, subject to confirmation by the corporate authorities, and is composed of members who reside within the municipality or reside within one and one-half miles of the corporate limit of the municipality in unincorporated territory. The plan commission consists of a chairman and the number of members chosen to serve for such terms as the corporate authorities provide by ordinance. A planning department is created, organized and staffed in such manner as the municipality provides by ordinance.

MORE CARPENTERS: ZONING BOARDS OF APPEAL

A municipality can create a Board of Zoning Appeals by ordinance. The Board members are appointed by the mayor or village president subject to confirmation by the corporate authorities. The statute provides that the Board shall have 7-members Board of Appeals with terms as follows: one for one year, one for two years, one for three years, one for four years, one for five years, one for six years and one for seven years, the successor to each to serve a term of five years. In addition, a chairman is named at the time of the appointments by the mayor or president.

All meetings of a ZBA are held at the call of the chairman and at such other times as the board authorizes, and minutes must be kept showing each vote. The duties of the Board of Appeals include: (i) to hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of the zoning ordinance; (ii) conduct the public hearing upon requests for a variation from the zoning ordinance; (iii) to decide whether to grant a variation from the zoning ordinance, but only if so authorized by the corporate authorities (in most municipalities the ZBA serves in an advisory role, and all decisions on variances are made by ordinance by the corporate authorities); and (iv) to hear and decide all matters referred to it or upon which it is required to pass under the zoning ordinance.

The concurring votes of four members are required to reverse any order, requirement, decision, or determination made by an administrative official charged with the enforcement of the zoning ordinance, or to decide in favor of the applicant any matter upon which it is required to pass

under the zoning ordinance, or to effect any variation in the ordinance, or in most communities to recommend any variation or modification in the ordinance to the corporate authority

GENERAL PLANNING POWERS

The general powers of plan commissions and planning departments are: (i) to prepare and recommend to the corporate authorities a comprehensive plan for the present and future development of the municipality, (ii) to recommend changes to the comprehensive plan, (iii) to recommend specific improvements in pursuance of the comprehensive plan, (iv) to facilitate the realization of the comprehensive plan by aiding municipal officials charged with directing projects for improvement, and (v) to exercise other powers germane to the powers granted by statute or ordinance (i.e., the review of special permit applications or zoning ordinance map and/or text amendments).

THE COMPREHENSIVE PLAN

The comprehensive plan is the foundation of land use regulation in the United States. In a well-planned and well-managed community, the comprehensive plan, though advisory in nature, provides the context for most local decisions regarding the physical future of the community for which the comprehensive plan is drafted. Like many states, Illinois municipalities are not mandated by state statute to prepare comprehensive plans. Illinois municipalities derive their non-obligatory authority to create comprehensive plans from Section 11-12-5 of the Illinois Municipal Code. 65 ILCS 5/11-12-5.

At a minimum, a good comprehensive plan should address at least the following elements regarding the physical future of the community:

- future land use;
- transportation and circulation (major routes -- not every street);
- public sewer and water service;
- school sites;
- major public facilities, such as convention centers, fairgrounds, stadiums, airports and landfills; and
- expansion areas for institutions, such as universities, hospitals and community colleges.

In addition, a good comprehensive plan will provide a context in which the following other activities can take place: (i) identifying locations for new industry based on the community's economic development goals, (ii) showing likely locations for controversial facilities, such as adult uses, homeless shelters, and other social service facilities, and (iii) generally providing the physical context for meeting all of the communities future needs.

Also, when a municipality has a comprehensive plan in place and makes a land use decision for or against any proposal based, in part, on the comprehensive plan, the justification for that

decision has more weight behind it in, for example, a court contest than if no comprehensive plan existed. For example, it is much more difficult for a petitioner to claim that a land use decision denying the petitioner's rezoning was not rationally related to the welfare of the community when the comprehensive plan identifies his land as residential and the petitioner wanted a rezoning to industrial in order to build a food processing plant.

There is no set standard or formula (either legally or professionally) for the process in which a comprehensive plan is to be created. Typically, once the municipality decides that it wants to create a comprehensive plan (either at the direction of the corporate authorities or at the suggestion of the plan commission or planning staff), the first task that is embarked upon is letting the public know of the municipality's intention to create the comprehensive plan through press releases, fliers, etc. Next, the municipality usually sets up workshops where members of the community are invited to participate in a dialogue with planning staff and local officials on the various components to the comprehensive plan (i.e., land use, economic development, transportation, etc). Prior to these workshops, the planning staff will have gathered the necessary data on the various components of the comprehensive plan needed to make the workshops meaningful. For example, prior to the workshop on economic development, the planning staff might have compiled Illinois Department of Revenue retail sales tax figures for the prior five years, determined how many business licenses have been issued and identified major employers who have either located to or relocated from the community during that same period. In addition to the workshops, the municipality may send surveys to all businesses and households in the community asking for their views on the various components to the comprehensive plan.

After the workshops have been conducted and the surveys have been received, the next step is for the planning staff to draft the comprehensive plan. Once the comprehensive plan is written, there is typically a period of public comment and review where the public may read and comment on the comprehensive plan. After the review period, the comprehensive plan must first be presented at a public hearing before the plan commission for its recommendation. After the plan commission, the comprehensive plan must next go before the corporate authorities for its approval. Lastly, after a comprehensive plan has been put in effect by the corporate authorities, any subsequent amendments to it must always go before the plan commission for its recommendation.

PRACTICE TIP: Essentially, all comprehensive plans have the following three basic elements: (i) they are comprehensive *geographically*, meaning that the physical area contemplated by the comprehensive plan is at least all the territory within the current boundaries of the local government and its extraterritorial planning area; (ii) they are comprehensive *substantively*, meaning that the comprehensive plan deals at least with all the physical systems involved in the future of the community; and (iii) they are comprehensive *temporally*, meaning that the reference point in the future for the comprehensive plan is not too far away (usually 20 to 25 years). Furthermore, a typical comprehensive plan will show future locations of public facilities, major circulation routes, and a variety of uses of private

lands (e.g., residential, commercial, industrial, institutional, open space, etc).

INTERIOR FINISHES: ZONING

Zoning ordinances are one method of implementing the broad policies which are set forth in the comprehensive plan. Generally, zoning ordinances organize the municipality into different zones in which particular uses and structures are permitted. Zoning ordinances consist of two distinct components – the text and the map. The text of the ordinance enumerates the various zones and describes the uses which are permitted in each zone. The map shows the location of the various zones. Although it is possible to have zoning without a comprehensive plan, it is not recommended because when a zoning ordinance is challenged, the courts which interpret the validity of a zoning ordinance will look to see if the municipality has a comprehensive plan and if the zoning for a particular parcel is in harmony with the comprehensive plan.

GENERAL ZONING POWERS

The purpose for which zoning authority is granted is so that:

- ☞ adequate light, pure air, and safety from fire and other dangers may be secured;
- ☞ taxable value of land and buildings throughout the municipality may be conserved;
- ☞ congestion in the public streets may be lessened or avoided;
- ☞ hazards to persons and damage to property resulting from the accumulation or runoff of storm or flood waters may be lessened or avoided;
- ☞ that public health, safety, comfort, morals, and welfare may otherwise be promoted; and
- ☞ to insure and facilitate the preservation of sites, areas and structures of historical, architectural and aesthetic importance.

Zoning powers include the right to: regulate and limit the height and bulk of buildings to be erected; establish, regulate and limit, the building or set-back lines on or along any street, traffic-way, drive, parkway or storm or floodwater runoff channel or basin; regulate and limit the intensity of the use of lot areas, to regulate and determine the area of open spaces, within and surrounding such buildings; classify, regulate and restrict the location of trades and industries and the location of buildings designed for specified industrial, business, residential and other uses; divide the entire municipality into districts of such number, shape, area, and of such different classes (according to use of land and buildings, height and bulk of buildings, intensity of the use of lot area, area of open spaces, or other classification) as may be deemed best suited to carry out the purposes of a zoning ordinance.

Different portions of the zoning ordinance are administered by different people and/or entities. For example, the zoning ordinance may be administered by staff (e.g., what use category a particular use falls into), by the plan commission (e.g., the review of a special permit

application), or by the zoning board of appeals (the ZBA) (e.g., the review of a variation request).

PRACTICE TIP: Since a ZBA or plan commission has some discretion in carrying out its functions, it is important to understand not only the letter of the law but also the spirit of the law. That is, in hearing a specific case, these bodies must look not only at the language of the zoning ordinance, but also at the objectives the regulations are to achieve. In the absence of continuing communication with the governing body, a ZBA or a plan commission may be forced to make decisions in the abstract, devoid of the rationale which prompted any municipal legislative decision concerning any given section of the zoning ordinance. Unless the ordinance contains intent or purpose sections, it may be difficult to always thoroughly understand each and every portion of the ordinance and the objective that it is intended to achieve. The comprehensive plan should be a valuable tool in determining the intent of many zoning provisions.

THE ZONING MAP

The municipality must publish a map each year showing the current zoning uses, divisions, restrictions, regulations and classifications of the municipality. The map is to be published no later than March 31st of each year. The corporate authorities may establish a charge for copies of the map to defray the cost of publication.

PRACTICE TIP: The zoning map should be updated as often as necessary to reflect map amendments and other changes (such as overlay districts). The Map should be clearly readable by the public, with a corresponding legend defining colors, striping or other methods for differentiating between districts.

SPECIALTY ROOMS: SPECIAL USES AND PLANNED UNIT DEVELOPMENTS

Zoning ordinances generally classify the uses allowable on real property as either permitted uses or special uses. Permitted uses are uses which require no action on the part of the municipality in order for the land owner to establish the use – these permitted uses are said to be allowed “as of right.” Special uses, by contrast, require the landowner to further prove to the municipality that the use is appropriate for the particular location (and may be the subject of conditions of approval). for permission to establish the particular use. Both permitted uses and special uses are expressly enumerated in the zoning ordinance. The zoning ordinance must also include the standards by which an application for a special use will be judged, (e.g., giving distance for a drive thru; creative buffering for more intense uses). If the standards are vague and permit the municipality too much discretion, an ordinance denying a requested special use may be overturned by a reviewing court, and the proposed use permitted. The corporate authorities may provide for special uses, which include but are not limited to: public or quasi-public uses affected

with the public interest; uses which may have a unique, special or unusual impact upon the use or enjoyment of neighboring property; and planned developments.

The zoning ordinance must establish standards for when a special use will be granted, and an applicant must meet these standards. The ultimate decision maker must make findings of fact which will be attached to the ordinance approving the special use, and which often refers to any exhibits containing plans and specifications for the proposed use. The municipality may grant a special use subject to conditions which are reasonably necessary to meet the standards set forth in the ordinance.

PRACTICE TIP: Normally, if the commission or committee does not recommend the proposed special use, it may only be approved by a majority of all aldermen, commissioners or trustees of the municipality then holding office. However, the municipality may establish by ordinance a requirement that any proposed special use, not receiving the approval of the commission or committee which held the public hearing, requires a two-thirds majority of all aldermen, commissioners or trustees of the municipality then holding office. Under either procedure, the mayor or president does not vote.

PRACTICE TIP: Staff and the members of the body holding the required public hearing on a special use should always ask an applicant for a special use to address the standards enumerated in the zoning ordinance pertaining to special uses. It is the burden of the applicant to prove to that body and to the legislative body that he or she should be granted the requested special use.

Planned unit developments (PUDs) are a subset of special uses. Because the intent of PUDs is to provide a comprehensive development plan for the parcel which usually varies substantially from the traditional zoning and subdivision control ordinances, it ordinarily has a unique set of criteria set forth in the local ordinance to determine whether or not the proposed PUD should be approved.

PUDs are akin to mini-zoning ordinances written specifically for a particular parcel of land. If a parcel of land has a PUD on it, the zoning map will often show the zoning district followed by the letters PUD, for example R-1 PUD. In that case, the zoning rules which govern that particular parcel of land are contained and enumerated in the ordinance which approved that specific PUD. For instance, the regulations in that ordinance might provide that on that PUD one hundred twenty five attached single family homes are allowed, as well as a mini-mart. Ordinarily, this density may not be allowed under the zoning ordinance and mini-marts may not be permitted by themselves in the zoning district. However, the effect of the PUD ordinance is that the rules of the underlying zoning ordinance are set aside just for that particular parcel of land and that the a special set of rules, contained in the ordinance approving the PUD, are the rules governing the parcel.

Local municipalities have great latitude in where and under what circumstances PUDs can be allowed. That is, the zoning ordinance may provide for PUDs only in residential districts, only in industrial districts, or they may be given a district which is restricted solely to PUDs. A PUD may provide for both residential and commercial development of the same parcel. Because PUDs are special uses, any proposed PUD which fails to receive the approval of the commission or committee designated by the corporate authorities to hold public hearings cannot be approved by the corporate authorities except upon a majority favorable vote of the aldermen, commissioners or trustees of the municipality then holding office. The corporate authorities may also increase this requirement by ordinance to a two-thirds vote. In either case, the mayor or president does not vote.

PRACTICE TIP: Planned Unit Developments allowing major deviations from the underlying zoning district are often only permitted on larger parcels of land, such as 10 or 20 acres, which can be planned to accommodate multiple uses or special buildings, such as zero lot line townhomes.

CHANGE ORDERS (A): VARIATIONS

Variations should be granted only when there are practical difficulties or particular hardships in the way of carrying out the strict letter of the zoning ordinance. In considering the practical difficulties or particular hardship, the Board of Appeals may also wish to consider evidence that, the property cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zone, the plight of the owner is due to unique circumstances, and the variation, if granted, will not alter the essential character of the locality. Depending on the zoning ordinance, the zoning board of appeals or the board of trustees/city council makes the final determination whether to grant a variation or not.

PRACTICE TIP: Some communities believe that findings regarding unique circumstances and reasonable return are mandatory in each case. Actually, although the community should consider such factors when pertinent, the statute only requires that practical difficulties or a particular hardship be shown.

CHANGE ORDERS (B): MAP AND TEXT AMENDMENTS

Amendments to the text of the zoning ordinance, or to the official map, may be made from time to time by ordinance, after a public hearing before a commission or committee. After proper notice being published for a map or text amendment, if a written protest is filed, then an amendment to the ordinance or map may not be approved with less than a favorable vote of 2/3 of the aldermen or trustees holding office. A written protest must be signed and acknowledged by the owners of 20% of the frontage proposed to be altered, or by the owners of 20% of the frontage immediately adjoining or across the alley therefrom, or by the owners of 20% of the frontage directly opposite the frontage proposed to be altered. The written protest must be filed with the municipal clerk. The written protest must be served by the protestors on the applicant

for the proposed amendment and his attorney, by certified mail, at the addresses shown in the application.

PRACTICE TIP: A map amendment is another way to say “rezoning.” A rezoning, of course, is changing the zoning classification on a parcel of land from one classification to another.

PRACTICE TIP: When an applicant proposes a use that appears to be a good fit, but is not allowed (either as a permitted use or as a special use), and a map amendment is not practical, a text amendment (to make the proposed use either a permitted use or a special use) may be the solution.

LANDSCAPING: ENFORCEMENT OF THE ZONING ORDINANCE

Once the zoning ordinance is approved, it should be enforced. Zoning ordinances are enforced by the officers set forth in the zoning ordinance. The person primarily entrusted with the day-to-day administration and enforcement of the zoning ordinance is the zoning administrator. A citizen may appeal the decision of the zoning administrator to the ZBA.

Time. Appeals must be taken within 45 days of the action complained of.

Method. The appellant must file a notice of appeal with the officer from whom the appeal is taken, and with the Board of Appeals, which states the grounds of the appeal.

Officer’s Duty. The officer from whom the appeal is taken shall transmit all papers constituting the record to the Board of Appeals forthwith.

Stay. The appeal stays all proceedings in furtherance of the action appealed from, unless the officer certifies to the Board of Appeals, that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property.

Hearing. The Board of Appeals shall fix a reasonable time for the hearing, and shall decide the appeal within a reasonable time. The board shall give due notice of the hearing to the parties.

Decision. In making its decision, the board has the same authority as the officer making the original decision, and so may reverse or affirm, in whole or in part.

A final decision by the Board of Appeals is reviewable in the Circuit Court under the Administrative Review Law.

Violations of a zoning ordinance are treated like any other ordinance violation. A municipality may request that the Circuit Court enter a fine or a temporary restraining order, temporary injunction, or permanent injunction, to prevent violation of the zoning ordinance.

THE OCCUPANCY PERMIT: THE LASALLE NATIONAL BANK CASE AND STANDARDS FOR ENFORCEMENT

In determining the validity of a zoning ordinance, the following factors are generally considered by the courts:

- ☞ the existing uses and zoning of nearby property;
- ☞ the extent to which property values are diminished;
- ☞ the extent to which the destruction of property value of the plaintiff promotes the health, safety, morals or general welfare of the public;
- ☞ the relative gain to the public as opposed to the hardship imposed upon the individual property owner;
- ☞ the suitability of the subject property for the zoned purposes;
- ☞ the length of time the property has been vacant as zoned considered in the context of land development in the area;
- ☞ the care with which a community has undertaken to plan its land-use development;
- ☞ community need for the use proposed by the plaintiff. La Salle National Bank v. County of Cook, 12 Ill.2d 40, 145 N.E.2d 65 (1957); and Sinclair Pipe Line Co. v. Village of Richton Park, 19 Ill.2d 370, 167 N.E.2d 406 (1960).

While no single factor is controlling, and each case must be decided on its own facts, of paramount importance is the existing use of surrounding property and whether the use is uniform and established. La Grange State Bank v. County of Cook, 53 Ill.App.3d 79, 368 N.E.2d 601, 11 Ill.Dec. 50 (1st Dist. 1993).

Illinois courts examine and attempt to balance these factors in order to determine whether the zoning in question is fair to the owner of the subject property, owners of surrounding properties, and the public. Harvard State Bank v. County of McHenry, 251 Ill.App.3d 84, 620 N.E.2d 1360, 190 Ill.Dec. 99 (2nd Dist. 1993).

EXAMPLE: Applicant for zoning change with special use for asphalt plant failed to prove case by clear and convincing evidence. Highest and best use evidence put on by applicant for rezoning change to allow operation of asphalt plant did not obviate need to demonstrate diminution in value of land from denial of placement of asphalt plant, where it appeared that there existed gain to public from denial of zoning change; expert testified that asphalt plant was not compatible with single-family residential use, which was eventual use contemplated by planners. New Lenox State Bank v. County of Will, 205 Ill.App.3d 457, 563 N.E.2d 505, 150 Ill.Dec. 618 (3rd Dist. 1990).

ADDING MORE BUILDING MATERIALS TO WORK WITH: ANNEXATION

Division 1 of Article 7 of the Illinois Municipal Code (65 ILCS 5/7-1-1, et seq.) provides for several means of annexing property to a municipality. The following outline is intended as a guide for municipal staff and officials. Certain notice and other procedures required by statute are conditions to all annexations; other procedures are specific to particular methods of annexing property or to unique kinds of property being annexed. Understanding which steps to take in each instance is critical, since failure to comply with a statutory requirement could result in a legal challenge and a court decision invalidating the annexation. This brief outline covers the most commonly used methods for annexing land to a municipality. In certain special circumstances, other methods and rules apply.

TYPES OF ANNEXATION

VOLUNTARY NON-COURT-CONTROLLED ANNEXATION BY ORDINANCE OF TERRITORY CONTIGUOUS TO MUNICIPALITY: SECTION 7-1-8

The owners of record of all land within a certain territory which is contiguous to a municipality¹ but has no electors may file a written petition with the municipality requesting annexation. Following consideration of the petition, the corporate authorities then holding office may, by ordinance passed by a majority vote, annex the territory.

The owners of record of all land within a certain territory and at least 51% of electors residing therein may file a written petition with the municipal clerk requesting annexation. Following consideration of the petition, the corporate authorities then holding office may, by ordinance passed by a majority vote, annex the territory.

In each of the above annexations, the annexation process is not complete until a copy of the ordinance annexing the territory and a map of the annexed territory is recorded with the County Recorder and filed with the County Clerk following action by the municipality.

¹ Contiguous, according to its dictionary definition, means "to touch" or "sharing a boundary or edge." Illinois courts have interpreted the contiguity requirement, for annexation purposes, to mean that the territory must have a "substantial common boundary" or a "common border of reasonable length or width" with the annexing municipality, and thus a "reasonably substantial physical touching" rule has evolved. For single lots, the contiguous width or length of the entire lot is usually a sufficient distance. For large tracts of land, a common border of at least 300 feet has been held to be sufficient.

ANNEXATION REQUIRING COURT ACTION: SECTION 7-1-2

By the Owners:

Annexation may be accomplished by court action when not all of the owners consent to the annexation. In such an instance, a majority of the owners of record of land in the territory and a majority of the electors, if any, residing in the territory may sign a petition and file it with the circuit court clerk of the county in which the territory is located. No petitioner may withdraw from the petition except by consent of a majority of petitioners or where the court finds the signature was obtained by fraud.

By the Municipality:

Annexation may also be accomplished by an ordinance submitted to and petition filed with the circuit court clerk by the municipality. (No tract of land exceeding ten acres may be included in the ordinance process for annexing property without consent of the property owner unless the tract is subdivided into lots or blocks or is bounded on at least three sides by lands subdivided into lots or blocks.)

PROCEDURES FOR ANNEXATION BY COURT PETITION OR ORDINANCE:

Notice of the proposed action by annexation petition or ordinance shall be published at least once in one or more newspapers published in the annexing municipality or, if there is none, in one or more newspapers with a general circulation within the annexing municipality, not more than 30 nor less than 15 days before the date fixed for the court hearing.

A copy of the Notice must be filed with the municipal clerk who shall send by registered mail an additional copy to the highway commissioner of each road district within the territory proposed for annexation.

The Notice shall state that a petition for annexation, or ordinance, has been filed with the court and shall give the substance of the petition, including a description of the territory, the name of the annexing municipality, and the date fixed for the court hearing.

Additional mail notice is required as provided in Section 7-1-1.

A \$10.00 filing and service fee shall be paid to the circuit court clerk.

Sections 7-1-3 through 7-1-5 govern the court hearing and appeal process and provide for persons to file objections.

Upon the receipt by the clerk of the annexing municipality of a certified copy of the order from the court validating the petition, the corporate authorities shall consider the question of annexation. If the annexation is approved by a majority vote of the corporate authorities then

holding office, and a referendum is not ordered by the corporate authorities or requested by petition, the annexation is deemed effective after the expiration of 30 days and a written notice shall be sent of such annexation by registered mail to the highway commissioner of each road district within which the annexed territory is located.

"OPTIONAL" METHOD UNDER SECTION 7-1-11

For territory that is not less than one square mile; contains at least 500 inhabitants; is not part of a municipality; and is contiguous to a municipality having less than 100,000 inhabitants, parties affected may apply to the circuit court for an order authorizing submission of the question to the electorate. Such an application must be signed by at least 100 electors and more than 50% of the property owners. Other requirements governing this method are specified in Section 7-1-11.

(FORCED) ANNEXATION OF SURROUNDED OR NEARLY SURROUNDED TERRITORY UNDER 60 ACRES: SECTION 7-1-13

Territory containing 60 acres or less may be annexed by force (i.e., without consent of property owner(s)) if it is wholly bounded by:

- ☞ one or more municipalities;
- ☞ one or more municipalities and a creek in a county with a population of 400,000 or more, or one or more municipalities and a river or lake in any county;
- ☞ one or more municipalities and the Illinois State boundary;
- ☞ one or more municipalities and property owned by the State except State highway right-of-way;
- ☞ several other listed configurations.

Method of Annexation: Such annexation may be effectuated by ordinance.

Notice and other Requirements:

- ☞ Notice of the contemplated annexation must be published once in a newspaper of general circulation within the territory to be annexed not less than ten days before the annexation ordinance is passed.
- ☞ If the territory lies wholly or partially within a township other than the municipal township, at least ten days' prior written notice of the time and place of the passage of the ordinance must be sent to the township supervisor of the township having jurisdiction.
- ☞ No notice (other than by publication) to the owners of the property which is subject to forced annexation is required by statute.

GENERAL PROCEDURES APPLICABLE TO ANNEXATIONS

ANNEXATION OF CONTIGUOUS TERRITORY: GENERAL PROCEDURES APPLICABLE: SECTION 7-1-1

The following procedures are set forth at the beginning of Division 1 in §7-1-1 and apply to all annexations. These procedures should always be consulted, regardless of the type of annexation undertaken by the municipality, and then generally followed, with the caveat that different or additional notice and other procedural requirements may also be specified for particular types of annexations. In those instances, the requirements set forth for the specific annexations should be considered additional to the ones described in §7-1-1 unless they are identical to or conflict with §7-1-1 requirements. In case of a conflict, the procedures stated for specific types of annexations should prevail.

General Notice and Filing Requirements for Annexations

The entities listed below must be notified in writing, by certified or registered mail, of the proposed annexation at least ten days prior to the action taken, whether that action is by the corporate authorities or by means of a court annexation proceeding. (This requirement has been interpreted by case law to mean that such notice must be mailed to the individual board members at their respective home addresses. In addition, the Illinois Supreme Court has held that the notice must state the date on which the action by the corporate authorities is contemplated.)

- ☞ the Trustees of a Fire Protection District if the annexing municipality provides fire protection;
- ☞ the Trustees of a Public Library District where a municipal public library is provided; the reason for the required notice to the Fire Protection District and Library District is that the annexation of the territory, where the municipality provides these services, will result in the automatic disconnection of the area from the district. There is a procedure under which the disconnection can be contested and for fire protection district a compromise approach;
- ☞ the Township Commissioner of Highways and the Board of Town Trustees if land to be annexed includes any highway under township jurisdiction. Failure to provide such notice shall result in the municipality having to reimburse the township for "any loss or liability caused by the failure to give notice."

An affidavit of service of notice must be completed and then filed with the court clerk if annexation proceedings are pending in court, or with the county recorder if court proceedings are not involved.

Report of annexation, disconnection and annexation, or disconnection: Any such action must be reported by certified or registered mail to the appropriate election authorities and the post office

branches serving the territory within 30 days of the action taken. (Failure to notify these particular authorities following the actions taken will not invalidate the annexation.)

Any annexation to be accomplished by court order requires notification by the corporate authorities or petitioners to all taxpayers of property (except petitioners) within the territory. The notice shall be served by certified or registered mail at least 20 days before the court hearing or other action.

"ELECTORS", for purposes of all annexations, shall be those persons registered to vote.

"ELECTION AUTHORITIES" means the county clerk where the clerk acts as the clerk of elections or the clerk of the election commission having jurisdiction.

ACTION CONTESTING ANNEXATION: SECTION 7-1-46

Challenges to the validity of an annexation, for whatever reason, including jurisdiction, must be made no later than one year from the date the annexation becomes final, except that the limitation does not apply to annexations of property that was not contiguous at the time of annexation and is not contiguous at the time of the court action.

ANNEXATION AGREEMENTS: 65 ILCS 5/11-15.1-1

An annexation agreement is not a prerequisite to an annexation, but is a voluntary agreement between the municipality and the owner of the property specifying terms and conditions which both parties expect to apply to the territory and the owner (or successor) upon the annexation. Such agreements, which are governed by statute, may be executed for property that is not yet contiguous to the municipality but which is expected to become contiguous at some future date. These agreements are sometimes called "pre-annexation" agreements, although that term and the term "annexation agreement" are often used interchangeably.

Because of the broad language in Section 11-15.1-2, annexation agreements can include a wide range of conditions and covenants affecting either or both of the parties, including provisions governing impact and recapture fees; utilities; development; financing incentives; and the applicability of various ordinances.

Term: Under Section 11-15.1-1, the term of such agreements is limited to 20 years, except that, as may otherwise be provided in the annexation agreement, zoning established for the annexed territory shall remain in effect (unless "modified in accordance with law") and does not revert to any earlier or other zoning following the termination of the annexation agreement.

Public Hearing: annexation agreements may be approved only after a properly noticed public hearing is conducted by the corporate authorities. Such notice shall be by newspaper publication not less than 15 nor more than 30 days prior to the scheduled hearing date. (§11-15.1-3.) If the annexation agreement contains provisions affecting the zoning of the property, then whatever

public hearing before a plan commission or zoning board which is required to grant that zoning must be held after the appropriate public notice is given and before the annexation agreement can be approved by the corporate authorities.

Vote: An annexation agreement is executed by the mayor or president and attested by the municipal clerk but only after 2/3 of the corporate authorities have approved a resolution or ordinance directing its execution. (Section 11-15.1-3.) The mayor is allowed to vote on that resolution or ordinance.

MOVING IN: 19 PRACTICAL TIPS ON ZONING AND PLANNING ADMINISTRATION

1. Read the Basic State Law. Amazingly enough, almost all of the statutory provisions regarding zoning and planning are contained within a single 16-page section of the Illinois Compiled Statutes. While the language uses some technical terms and its interpretation is highly dependent upon the holdings of a series of Appellate Court cases, all officials who deal with zoning and planning in a municipality should review chapter 65, Division 12 through 15.1, of the Illinois Compiled Statutes. These divisions deal with planning, zoning, setback lines, maps and plats and annexation agreements. It would be a good idea for officials to review these provisions in an orientation session with their local governmental attorney. A review of these sections of the statutes will not only strengthen officials' knowledge of the basic provisions of Illinois zoning and planning law, but will also uncover some lesser known provisions. Examples of these provisions are:
 - a. The fact that Section 11-13-5 requires that applicants for variances which are eventually granted by a legislative body need only show that there are practical difficulties or particular hardships regarding the application of the statutes.
 - b. Section 11-13-15, which allows any property owner within 1,200 feet of a parcel of land to bring a lawsuit contending that the provisions of a Zoning Ordinance have been violated. This section should be cited to angry citizens groups who believe that the municipality is not properly interpreting its own zoning ordinance.
 - C. Section 11-12-13 allows corporate authorities of 2 or more municipalities to establish a joint plan commission.
2. Review the Zoning Ordinance. Planning and zoning officials and their staffs should review the provisions of their ordinances at least once every two years. In spite of everyone's best efforts, language sometimes gets inserted into ordinances which is difficult to understand and costly to administer. Because it is not very difficult to amend a zoning ordinance, municipalities should not seek to defend provisions which do not work. Instead, clearer and more effective language should be developed and adopted.

3. Review Zoning Administration. Communities should also look at how provisions of the Zoning Ordinance have been interpreted. For example, if a municipality consistently approves requests for a particular type of variance, such as the construction of a second floor above the footprint of a first floor, even if there is some minor setback violation involved, the ordinance can be amended to permit such applications to be approved by Staff without the need for a variance.
4. Do Your Paperwork. Applicants who appear before you spend a great of time and sometimes a great deal of money in preparing materials for you to review. Read all of this material before a public hearing and be open to discussions with citizens who have views on these subjects. Local zoning officials are not subject to the restrictions that apply to a judge hearing a case. They are not limited to considering only those items which are presented before them at the hearing itself. Elected and appointed officials dealing with zoning issues are allowed to speak to individuals, including the applicant, to ask questions and receive comments.
5. Communicate With Other Officials. Plan commissions and zoning board of appeals are recommendatory bodies, except in the rare case where a municipality gives to the Zoning Board of Appeals the power to fully decide requests for variances. These bodies should not feel that their work has been in vain if and when the corporate authorities reverse their decisions. When reversals consistently take place, however, it may be a good idea to hold a joint meeting so that any conflicting views can be more fully discussed without considering them in the context of an individual application. Ultimately, it is the Village Board or City Council which establishes the policy of the governmental body. Members of recommendatory bodies may ultimately conclude that they need to consider matters that come before them with an awareness of these policy considerations. Plan Commissions and Zoning Board of Appeals, when they consider applications for variances and special uses must also understand that negative recommendations from these bodies require the Corporate Authorities to override those decisions by an extra majority vote.
6. Use of Staff. Do not be afraid to make prior reasonable requests from the Staff. In many governmental bodies, there are officials who are assigned to evaluate applications for zoning requests. Often, Staff will write a written recommendation. As in the case of a City Council or Village Board overriding its recommendatory body, those bodies themselves may not always agree with Staff recommendations. Where there appears to be a desire to override the recommendation of Staff, responsible officials will often discuss these matters in advance with the Staff and determine whether additional inquiries or research requests to the Staff may affect the official's initial conclusion. Do not embarrass the Staff, and avoid raising last-minute questions which cannot be answered in the time frame available. In the same way that it would be helpful for the Corporate Authorities to let recommendatory bodies know why their views are being overruled or modified, those bodies should provide the same feedback when they do not agree with Staff suggestions.

7. Technical Help. Do not be afraid to ask for technical help. Questions which come before recommendatory bodies and the Corporate Authorities are often extremely complicated. Assistance is often needed from experts on drainage, traffic, landscaping, engineering, lighting, legal and other issues. The work of these experts should be focused and limited to the issues before the body making the decision. Often, a governmental body cannot comfortably approve a project without getting third-party advice on important matters which often affect other areas of the community. In most instances, the developers are prepared to pay for the reasonable cost of the use of such experts.
8. Courtesy and Fairness. Be courteous and fair. Persons in decision making positions for governments need to always remember how important the applications they consider are to individuals and companies. On the other hand, make certain that you do not give false hopes to applicants whose requests are likely to be denied. Too often, individuals are invited to re-draw their plans, although any reasonable analysis or preliminary vote would indicate that the project as a whole will not receive adequate support. It is not only important to be courteous and fair, but also honest.
9. Who Owns the Land? Always remember that you do not actually own the land and that you are not an investor in the project. Although there are substantial powers which can and should be exercised by governmental bodies, the micro-managing of a project is not within the power granted by State law to officials dealing with zoning and planning matters. The owner of the property or other investors are taking the risk inherent in capitalism. Governments cannot and should not protect property owners against every mistake and there is little reason to believe that if governmental officials have the last word on projects they will always be successful.
10. Aesthetics. Understand that your authority to make decisions on aesthetic grounds are limited under Illinois law. Aesthetics can be a factor which officials can consider in determining whether to approve a project. Some regulations regarding aesthetics, such as an anti-monotony provision, which prevents all houses in a subdivision from looking alike, will be upheld by the courts. On the other hand, absent some extremely compelling reason, such as an overall and universally-imposed design criteria, as in a landmark district, efforts to dictate the exact color shading of a building are likely to be found to exceed the powers of government.
11. Annexations. Understand your increased power in a situation where land is being annexed to the community. Under Illinois law, the Corporate Authorities of governments have the absolute power to determine whether land will or will not be annexed to the municipality. Land being annexed to the municipality is often accomplished under the provisions of an annexation agreement, which establishes the way in which the land will be developed for up to 20 years. Once provisions are included in an annexation agreement, future developers and future municipal boards are bound by those provisions

unless the agreement is amended through mutual agreement and after at least one public hearing.

12. Impact Fees and Over Sizing. Governmental bodies have some authority, especially in annexation agreements, to require developers to pay impact fees to lessen the impact of development on costs which would otherwise be borne by the rest of the community. In addition, communities can require developers to reasonably oversize certain facilities, such as utility lines and water detention areas which can be more inexpensively constructed by a single developer, because of economies of scale, than if incrementally added to as other development takes place. However, there are substantial limitations on the ability of a governmental body to impose what can be considered excessive impact fees or over sizing. Communities which put too much of a burden on individual developers may find themselves effectively killing the project, pushing it into economic ruin, or causing litigation. As in all negotiations, each party should understand the lawful powers and pressures which can be brought to the table. Where developers are asked to install oversized facilities, they can be offered a process involving a recapture from future developers through the provisions of 65 ILCS 5/9-5.1.
13. Traffic Considerations. In creating zoning districts and authorizing commercial, industrial or multi-family residential development, communities often fail to consider the traffic flow and parking implications. While communities may be interested in improving economic development, it is important that this goal not be achieved through causing portions of the community to become hopeless bottlenecks. The community must coordinate its efforts in this regard with the County and the State in an effort to make certain that plans are made for area-wide traffic flow long in advance of development. The art of traffic engineering has reached high levels of sophistication and communities should require developers to provide professional traffic analysis data and, in some cases, to fund second opinions procured through experts hired by the municipality.
14. Comprehensive Plans. Use your Comprehensive Plan to resist temporary shifts in market values. Developmental pressures and fads are cyclical. Sometimes, a developer or land owner will tell a community that, based upon current trends, an area shown as industrial on the comprehensive plan can only be developed with multi-family residential. If the community has designated that area as an industrial zone on its comprehensive plan, strong efforts should be made to resist the development “de jour.” In many cases, the passage of a few years, and a change in the economic climate, may make the land easily and successfully developable under the current zoning shown in the Comprehensive Plan.
15. Ordinance Documentation. The developers of property often present elaborate reports and beautiful pictures to Plan Commission/Zoning Board of Appeals and to the Corporate Authorities when seeking a variance, special use or planned unit development. In many instances, the application is approved only because the community has strong reason to believe that the Developer will perform in exactly the ways shown. It is extremely

important that any ordinances granting the special permissions requested have attached to them the documents which reflect the specific promises made by the owner or developer. Luckily, Illinois law allows conditions to be imposed in ordinances granting variances and special uses, including planned unit developments. A requirement that the Developer adhere to the plans is also a provision found in almost all annexation agreements.

In every case, it must be recognized that plans submitted in advance of final engineering may need to be slightly modified and many ordinances and annexation agreements have provisions which allows staff to approve minor design changes. Nonetheless, there is nothing more embarrassing for a municipality to have approved, for example, a special use for a gasoline service station and car wash than to discover that the ordinance does not compel the owner to build substantially the attractively designed building which was presented at public hearings and public meetings.

16. Annexation Agreements. Remember that the provisions of an annexation agreement can last up to 20 years. In drafting annexation agreements, municipalities need to consider ways in which the plans can be modified over an extended period of time. Sometimes, annexation agreements have a provision which allows certain portions of the agreement to be amended through normal applications for changes in planned unit developments or special uses without utilizing the full process of amending the annexation agreement. In order for annexation agreements to be amended, the Corporate Authorities must hold a separate public hearing and the agreement must receive the concurrence of at least two-thirds of the Corporate Authorities including the Mayor. Simple amendments to a planned unit development may require only a public hearing before the Plan Commission or Zoning Board of Appeals, and a simple majority vote at the level of the Corporate Authorities. The community may wish to make a distinction between those changes which require amendments to the annexation agreement and those which do not require this more substantial process.
17. Think of Litigation. As a governmental body considers a controversial application, all officials should have some sense of how their actions and remarks may affect future litigation. If, for example, the Plan Commission or the Corporate Authorities, at a public hearing, does not follow the provisions of the Open Meetings Act, the zoning which is eventually granted may be invalid or in jeopardy. Statements by officials, who have an obligation to fairly consider the facts, that “under no circumstances would I approve this project” are not likely to convince a trial court judge, who ultimately considers the matter, that the community gave the developer a fair hearing. Where litigation is truly threatened, the officials involved can discuss some of these matters with their attorney in closed session.
18. Insurance. All public officials who involve themselves in the zoning and planning process should have an understanding of how the community has provided insurance coverage to protect them against potential lawsuits. Lawsuits in matters involving zoning and planning are a serious threat and sometimes elected officials are named individually.

The conventional or pool insurance coverage available in your municipality should clearly cover you under those circumstances, unless your allegedly invalid act arises purely out of a personal dispute which you may have with the developer. If you act within the scope of your appointment, the coverage provided to you by the municipality should be as broad as is possible to defend and protect you. Often, such cases are ultimately dismissed or settled and the main burden on an elected official is the payment of defense costs. These costs can be substantial and you should understand the level of coverage which has been provided for you. It has become especially important in recent years, after a series of cases, in which officials have been sued where the allegation is that the votes which they cast were matters purely associated with personal vindictiveness. Unfortunately, one aspect of those cases, a claim for punitive damages, in a case brought under Federal law, is likely to not be covered either by insurance or by the governmental body itself. Illinois law severely restricts the payment, from governmental funds, of such punitive damages.

19. Moving On. Officials who serve on advisory boards and commissions, such as plan commissions and zoning boards of appeals, may wish to consider this as a first step in a career of public service. Because the issues that such officials review are often central to the future of their communities, it is with some frequency that such officials eventually run for elected office in their municipalities. This “movement up” should be encouraged. Even where officials do not wish to take on a higher office, efforts need to be made on boards and commissions for the mentoring of new members. It is also important that there be some continuity on these advisory boards and commissions.

LIMITED WARRANTY: OUR CONCLUSIONS

This material is not a comprehensive review of all of the land use tools which are available to municipal governments. It is only intended to familiarize the reader with some of the basic tools provided by the legislature to regulate land use. Many communities face increased development and the demand for utility expansions. Older suburban and urban centers are considering the conversion of under used areas and the tear down of established housing stock. Rural communities face uncontrolled growth and the loss of agricultural land. Illinois law provides the appropriate “tools of the trade” for each of these communities, assisted by legal and planning experts, to meet these challenges. You may also wish to review other pamphlets prepared by Ancel Glink attorneys. Pamphlets are available on other zoning issues and economic development. A number of Ancel Glink pamphlets can be downloaded at: www.ancelglink.com.

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