

“ZONING 201” OUTLINE DEVELOPMENT REVIEW AND APPROVAL

General Notes:

- o Municipalities may annex contiguous property:
 - Courts have held that “contiguous” generally means 300 feet of adjacent property line:
 - o “point-to-point” is not valid for contiguity;
 - o Annexing a narrow strip or down a public right-of-way is not valid
 - Public utility and railroad rights-of-way do not present a barrier to contiguity, but are not annexed when the private property on the other side is annexed;
 - Toll highways are not a barrier to contiguity;
 - Forest preserves do not present a barrier to contiguity, provided:
 - o the private property to be annexed is not bounded on three sides by another municipality or by forest preserve property or both, and;
 - o the municipality seeking annexation is the closest municipality to the property to be annexed;
 - o The forest preserve is not considered annexed without consent of the forest preserve district;
- o The new boundary of the municipality extends across road rights-of-way and the roads are considered annexed (township must be notified of the pending annexation).
NOTE: The municipality gets maintenance/snow plowing responsibilities when it annexes land adjacent to a township road. The same is not true for County and State roads

Annexation Agreement:

- o Is a contract between municipality and property owner(s), where property owner petitions to be annexed, and municipality agrees to annex;
- o Is not required for annexation;
- o Can be entered into prior to property becoming contiguous and thus “annexable”, but this generally requires a term during which the agreement is valid (20 years is typical);
- o Can include zoning to be granted by municipality upon annexation, but not required to include zoning:
 - If zoning is not part of the annexation agreement, the most restrictive zoning is automatically applied to the property upon annexation (generally, the lowest-density zoning, either Agriculture or low-density residential);
 - If zoning is part of annexation agreement, a public hearing must be held by Plan Commission prior to the zoning of the property, and city council/village board must pass a separate ordinance to grant the zoning;
- NOTE:** If an annexation agreement contains any element that normally requires a public hearing (zoning, preliminary plat approval, creation of special service area, variations from the zoning ordinance etc.), the hearing must be held before the terms of the annexation agreement are valid and may be acted upon by the developer;
- o Can include any other elements agreed to between the two parties, such as impact fees, special service areas, school or park land donations, cash contributions to offset other costs,

etc. if a development is proposed (see Impact Fees, below);

NOTE: For non-home rule communities, it is essential to include any impact fees or other developer exactions as part of the annexation agreement (see Impact Fees, below). The authority of non-home rule communities to apply impact fees is limited;

- o Municipality is required to hold a public hearing on annexation agreements. Hearing is conducted by the village board/city council.

Annexation:

- o May be initiated by a petition signed by majority of property owners, filed with municipal clerk, expressing desire to be annexed and describing property
- o Municipality must pass ordinance annexing property, including accurate map of annexed territory, by simple majority vote;
- o Copy of ordinance and map must be recorded with County Clerk;
- o Municipality cannot be forced to annex adjoining property;
- o Municipality cannot force a property to annex unless:
 - Property is less than 60 acres in area; and
 - Property is surrounded on four sides by municipality;
- o Annexing property does not obligate municipality to extend public utilities to the newly annexed property, but police protection must be provided

General Procedure for Annexation:

Simple Annexation (no zoning or development):

- a. Property owner(s)/developer informally contacts village/city about proposed annexation;
- b. City/village confirms that subject property is contiguous (see above) and that annexation will be consistent with recommendation of comprehensive plan;
- c. Property owner(s) submits **petition for annexation** and **annexation plat** to city/village clerk;
- d. City council/village board passes an ordinance annexing the property. Most restrictive zoning district is applied automatically, and municipal zoning map is amended to reflect the change. No public hearing is required;
- e. Annexation ordinance and plat of annexation filed and recorded with County.
NOTE: Once zoning is applied, property owner has right to use property for any permitted use in the zoning district.

Annexation with zoning and development:

- a. Property owner(s)/developer submits **concept plan** to village/city;
- b. City/village confirms that subject property is contiguous (see above);
- c. Concept plan is reviewed by Plan Commission or village board/city council or both. No public hearing required. Feedback should include review by village/city staff and consultants (planner, engineer, attorney, building official). **City/village should evaluate proposal against the recommendations of the municipal comprehensive plan:**
 - o If development proposal is substantially in agreement with comprehensive plan recommendations, goals and objectives, proceed;

- o If development proposal is not in agreement with comprehensive plan, city should direct developer to revise plan or advise that annexation will not be approved;
- d. Property owner/developer submits **draft annexation agreement**. City/village reviews agreement and negotiates changes:
 - o Negotiation should include affected school district, fire protection district, park district, etc. Impact fees, land and cash contributions, needed public infrastructure upgrades, etc. should be included in the agreement if municipality is not home-rule community (see Impact Fees, below);
- e. Property owner(s) submits:
 - o **Petition for annexation**
 - o **Annexation plat**
 - o **Final annexation agreement**
 - o **Application for zoning**
 - o **Application for Preliminary Plat/Plan approval**
- f. Plan Commission conducts public hearing on zoning and preliminary plat/plan. Forwards recommendation to the city council/village board;
- g. City council/village board conducts public hearing on annexation agreement. Notification of public hearing should be published in newspaper of general circulation in municipality, and direct mailing to all owners of property contiguous to property to be annexed
- h. City council/village board passes a resolution authorizing the annexation agreement;
- i. City council/village board passes an ordinance annexing the property, with plat of annexation attached;
- j. City council/village board passes an ordinance zoning the property and approving preliminary plat/plan;
- k. Annexation ordinance and plat of annexation, as well as preliminary plat/plan, filed and recorded with County.

IMPACT FEES

“Impact fee” commonly used to refer to all types of subdivision exactions. However, there are generally three different types of contributions being talked about:

1. “School and park land/cash regulations” arise from Illinois State law, which grants municipalities the right to require subdivisions to include dedication of parks, playgrounds, school sites and other public grounds. It is common practice for municipalities to accept cash from the subdivider in lieu of land if the school or park site would be too small or not consistent with the district’s plans. The municipality collects the money and turns it over to the districts.
2. “Impact fees” are other fees applied to new subdivisions which are intended to offset the impacts on public services and infrastructure (capital facilities) that are **specifically and uniquely attributable** to that subdivision. These can include fees to recoup a proportionate share of capital costs required to accommodate the new subdivision, such as improvements to or expansion of the water and sanitary sewer systems, roads, library and fire protection services, etc. Impact fees are often negotiated as part of annexation agreements, as opposed to school and park land/cash regulations, which are usually contained in the municipal subdivision regulations; and

3. Water and sanitary sewer connection fees. These fees are permitted by State law, and apply to the connection to existing water mains and sanitary sewer lines, and the fees can be used for the expansion or construction of new water and sanitary sewer works.

Land/Cash:

- o This typically applies only to school and park land. Typically, a formula is used to generate an expected population that will result from the proposed development. This population figure is then applied to a table of minimum acreage required for a new grade school, middle school, high school, and public park;
- o If the affected government (school or park district) believes the site is needed and adequate in size, the land is donated;
- o If the land is too small or is not needed, cash can be given in lieu of land. The value of the hypothetical land should be based on the value of an improved acre of land in the district. This value should be based on a recent appraisal;
- o A recent court case (Thompson v. Newark) held that, for non-home rule communities, “impact fees” could be used for the acquisition of land for school only. However, in 2003, the municipal law was changed to allow that the money may be used for land or site improvements, including school buildings and other infrastructure. This change still only deals with new school buildings necessitated by the proposed subdivision.

Impact Fees:

- o Impact fees cover other developer exactions outside of land for schools and parks;
- o Because of the requirement that impact fees are “specifically and uniquely attributable” to the subdivision, impact fees must be evaluated on a project-by-project basis. This requires an evaluation of the likely costs of such things as:
 - Providing water lines and sanitary sewer;
 - Handling stormwater runoff;
 - The adequacy of roads and intersections to handle the additional traffic;
 - Providing emergency services, including police, fire protection and ambulance;
 - Providing public transportation;
 - Adequate cultural and institutional (government) facilities.
- o Care must be taken in the calculation of impact fees to assure that the fee is adequate only to cover the identified cost: the fee cannot generate additional revenue beyond that cost. Further, the fee cannot be used to address existing deficiencies or problems with the infrastructure or service; it can only apply to the impact created by the proposed development;
- o To avoid the appearance of impact fees being used for anything other than the funding of the necessary improvements to the infrastructure or service, the fees must be placed in specific funds earmarked for those improvements, rather than in a general fund. Impact fee funds cannot be used to provide general benefits to the community as a whole, as this is considered an invalid tax;
- o **In non-home rule communities, it is essential** to negotiate impact fees as part of annexation agreements. Recent case law has held that non-home rule communities cannot require development exactions beyond land for the purpose of constructing schools;

Other:

- o Subdivision exactions do not offset all of the financial costs and impacts associated with new subdivisions. Rather, the fees and contributions help reduce the costs of development, especially in the first years before new property taxes are collected and new residents begin patronizing local businesses and institutions;
- o Developers and subdividers are prepared to pay exactions. What they seek, however, is a clear understanding of how the amount of the fee is arrived at and to what purpose it will be placed, and a fair process for setting the fees;
- o It is more fair to collect the school, park, library and fire protection contributions at the time a building permit is sought for each individual lot, rather than collecting the money up-front at the final plat of subdivision stage. In this way, the fee is passed on to the new residents who generate the additional demands on these services at the time the new residents arrive, rather than months and sometimes years in advance
- o Other impact fees for capital improvements to roads and utilities are best collected at the final plat stage, since those impacts are a consequence of the subdivision as a whole.

Public Hearings:

1. Chairman: announce time and open public hearing
2. Introduce self as Chairman of Plan Commission/ZBA
3. Introduce petition (read from Notice of Public Hearing)
4. Explain purpose of public hearing: To gather all testimony, exhibits and facts related to the petition and afford all interested persons an opportunity to be heard
5. Explain that this is the only opportunity to be heard on the petition (if the matter is to be forwarded to the city council/village board, will NOT be another opportunity to ask questions or make statements)
6. Explain public hearing process:
 - a. Petitioner makes presentation (ask them to address the criteria from the Zoning Ord.);
 - b. First Plan Commission/ZBA members, then audience, given opportunity to ask questions of the petitioner;
 - c. Audience members given opportunity to make statements in favor, opposed, or ask questions;
 - d. Staff makes any statements or asks any questions;
 - e. Petitioner gets last word;
 - f. All persons speaking must be sworn in (a tape recording is being made of proceedings) identify themselves and give their address;
 - g. Plan Commission/ZBA will gather all input and prepare a written Report and Recommendation:
 - 1). If a Variation, ZBA makes decision
 - 2). If a Special Use, Zone Change or Text Amendment, Report is forwarded to city council/village board at its next regularly-scheduled meeting;
 - 3). Petitioner encouraged to attend those meetings, not to make presentation, but to be able to answer any questions council/board members may have

7. Acknowledge for the record all materials received:
 - a. Notice of public hearing, and publication date and newspaper;
 - b. Petitioner's application with attachments;
 - c. Staff Report (ask if the petitioner has received a copy);
 - d. Any other correspondence received, and ask staff if there is any other correspondence to enter;
8. Ask all people who will speak, or think they MIGHT speak or ask a question, to be sworn in:

“Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth and nothing but the truth?”
9. Ask petitioner to make presentation. Allow petitioner as much time as needed to make complete presentation. Ask Plan Commission/ZBA members and audience to hold questions until presentation is concluded:
10. Questions of petitioner:
 - a. Plan Commission/ZBA members first -- Remember, questions only;
 - b. Audience members next:
 1. Have each person asking question identify themselves and give their address;
 2. Limit them to questions only. If they start to go into statements for or against, cut them off and point out that an opportunity for statements pro or con will be given later;
 3. Questions should be directed to Chairman, who then redirects them to appropriate person to answer;
 4. Do not allow questions to degenerate into exchanges between audience and petitioner, or audience with each other;
11. After all questions to petitioner are done, invite statements from audience:
 - a. Each speaker should identify self and give address;
 - b. After each person speaks, ask if there are any questions of the speaker from the petitioner, from other audience members, or from Plan Commission/ZBA members;
 - c. Take statements from audience in following order:
 1. Statements from all persons in favor of petition;
 2. Statements from all persons opposed to petition;
 3. Statements from persons neither in favor nor opposed;
12. Ask final time if there are any statements from or questions of anyone who has spoken.
13. Invite petitioner to make final statement.
14. Announce that public input portion is closed, and open floor to deliberation by Plan Commission/ZBA members:
 - a. Members should avoid asking further questions, as any response given must be

- subject to cross-examination by any member of audience;
 - b. Discussion should focus on merits of the case and the specific criteria related to granting the petition.
- 15. Call for motion to approve, approve with conditions, or deny the petition. Take vote and announce outcome.
- 16. Announce that decision will be put in the form of a written Findings of Fact, which will be a document open to public review. If recommendation is forwarded to city council/village board, announce expected meeting where issue will be taken up, and remind audience that there will not be the opportunity for further input but that they are invited to attend the meeting and hear the proceedings.
- 17. Thank everyone for their attendance and interest and close the hearing.

NOTE: A public hearing can be continued to another date and time, if the Commission/Board determines that such is appropriate. This does not require additional notice in the newspaper, but the date, time and location of the continued public hearing should be announced before the end of the first hearing.

Public Hearing “DOs and DON’Ts”

- o DO remember that, as Commission or Board, it is your hearing to run
- o DO lay out the procedure for the hearing at the start of the hearing, then stick to it
- o DO allow everybody to speak
- o DO require all people who speak to do so under oath
- o DO allow anyone and everyone who wishes to cross-examine anyone else who speaks an opportunity to do so. Do this after each person speaks
- o DO allow anyone and everyone who wishes to review an exhibit or piece of information that has been submitted an opportunity to do so
- o DON’T allow members of the audience and the petitioner to get into a back-and-forth exchange; all questions should be directed through the Chair
- o DON’T feel obligated to read letters into the public record; simply acknowledge that the letter has been received and that its contents will be read and factored into the decision

For public hearings on controversial and contentious issues:

- o DO advise audience that cheering and jeering is neither appropriate nor helpful to the proceedings;
- o DO allow equal time to opponents’ presentation as you do to the petitioner
- o DON’T set a time limit of two minutes or less for each person to speak; courts have held that this is not enough time. If there are a large number of people who wish to speak, allow each five minutes. If you set a time limit, DO stick to it
- o DON’T allow duplicative testimony; advise audience that, if the point they wish to make, or the question they wish to raise, has already been made, they need not repeat it. Similarly,

if they only want to say that they are in favor or opposed, they need only indicate as much without need to explain themselves

After the Public Hearing:

- o Findings of Fact:
 - 1. Is a report that summarizes all testimony and exhibits from the public hearing. Is not required to be a verbatim transcript;
 - 2. Should include:
 - a. Date, location, time of public hearing, and who is conducting it (ZBA);
 - b. Summary of petition (who is asking for what, where and why)
 - c. Reference to every speaker, whether applicant, expert witness, attorney or member of the public, by name and address, and summary of their questions/comments;
 - d. Summary of questions/comments from ZBA members;
 - e. Evaluation of criteria from zoning ordinance that applies to the type of request (criteria for granting variation, special use, zone change, etc.)
 - f. Record of decision/recommendation.
 - 3. In the case of administrative review by the courts of a zoning action, the findings of fact is the key document that will be reviewed.

- o Taking Additional Input:
 - 1. The public hearing is the place for input on a zoning action. The petitioner, members of the public and others should not be afforded an opportunity outside of the hearing for additional questions/comments/documents/exhibits;
 - 2. This is a matter of due process -- input at the public hearing is given under oath, with an opportunity for cross-examination by all parties. If additional input is received by the decision-makers outside of the hearing, it can be construed as depriving other interested parties of due process;
 - 3. If new data that was not considered at the public hearing surfaces before the city council/village board or ZBA makes a decision on the zoning petition, the public hearing can be re-opened;
 - 4. Decision-makers must evaluate whether or not new information submitted after the close of the public hearing warrants re-opening the hearing;
 - 5. Re-opening a public hearing does not require new public notice.

- o Referencing the Findings from the Hearing:
 - 1. The ordinance granting a zoning action should reference the Findings of Fact from the public hearing as the basis upon which the decision is made;
 - 2. The Findings of Fact should be referenced to and attached as an exhibit of the ordinance for the zoning action. This makes it clear that the decision is based upon the hearing;
 - 3. Attaching the Findings of Fact also helps reduce the length of the ordinance, since

the ordinance can simply state that the recommendation in the Findings of Fact are the conclusions of the city council/village board.

Subdivisions:

General:

1. Subdivisions relate to the division of land;
2. State “Plat Act” has provisions related to the division of land:
 - o These provisions generally apply to the division of large parcels of land;
 - o While the Plat Act may allow the division of land, it does not supercede city/village zoning regulations: the land may be divided, but it must meet city/village laws for use and bulk regulations;
3. The proposed division of land not covered by the State Plat Act requires compliance with the city/village subdivision regulations;
4. The city/village should set forth the regulations for subdivisions in a separate subdivision ordinance, or in a specific chapter dedicated to subdivisions in a unified development ordinance;
5. Subdivision regulations contain detailed requirements for public streets, sidewalks, utilities and stormwater drainage;
6. Subdivision of land presumes zoning is already in place, and that the proposed division of the subject property will comply with all the applicable standards (use and bulk regulations) of the zoning district;
7. City/village exercises subdivision review and approval authority within its own boundaries, as well as within its 1½-mile planning jurisdiction. This applies even if a proposed subdivision cannot annex to the city/village;

Preliminary Plat: Generally, subdivision review and approval is split into preliminary plat and final plat:

1. City/village usually delegates preliminary plat review to the Plan Commission;
2. Preliminary plat review may or may not be subject to a public hearing, at the discretion of the city/village. It is recommended that the preliminary plat be subject to a public hearing if the subdivision request is not concurrent with a zone change request;
3. Plan Commission can approve preliminary plat of subdivision, or forward a recommendation for action by the city council/village board;
4. Plan Commission has 90 days from date of receipt of all required parts of application to take action on the preliminary plat;

Final Plat: Generally, applicant has one year from the date of an approved preliminary plat of subdivision to file for approval of a final plat of subdivision;

1. Final plat is a technical review of the engineering details of the subdivision;
2. Final plat is typically reviewed by the Plan Commission, and does not involve a public hearing;
3. City/village has 60 days from receipt of all required documents associated with a final plat of subdivision to take action on the plat;
4. Approved final plat of subdivision is recorded;

5. City/village can require dedication of public streets, school sites, park sites and other public lands as part of subdivision;

Paul R. Miller, AICP
Director, DeKalb County Regional Planning Commission
July 8, 2004

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