



Social and Economic Education for Development

The Legislative Basis for Planning and Zoning in Kentucky by Lori Garkovich

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Introduction

The Kentucky Revised Statutes, Chapter 100 (KRS 100) is the state law which permits cities and counties to initiate planning for their community. KRS 100 is a true planning and zoning enabling legislation since it requires a comprehensive plan before a jurisdiction may regulate the land within its territory by imposing zoning regulations.

KRS 100 sets forth the regulations, guidelines, and duties of the local planning commission and describes the available tools for managing and guiding the use of land within the community. This publication highlights key aspects of KRS 100.

The Planning Commission

A planning commission is a legally authorized group functioning for the local planning unit. A planning unit may be a city or county acting independently; cities and their county acting jointly; or, groups of counties and their cities acting as a regional planning unit.

Planning commissioners are advisors who assist the local government in the decision-making process as to how the community will develop. The members of the planning commission are appointed by the chief elected official of the local government and approved by the local legislative body. Commissioners work without pay, although some local governments provide their members with reasonable compensation for expenses.

The primary responsibility of the planning commission is to objectively oversee and guide the development of land within the community. The key challenge for the planning commission in accomplishing this objective is to balance the public interest in how land is used with

private property rights. This is why a planning commission of local citizens is established, because planning is too important and, potentially too divisive to be left to professionals. The planning commission members must represent the values and aspirations of the community they serve if they are to guide the community toward a common vision of what the community can be.

The Planning Commission reviews development proposals and makes recommendations to the local government. It is the local governing body that makes the final decision to approve or reject development proposals or to change ordinances or the land use plan itself.

The Comprehensive Plan

To effectively use the regulatory authority embodied in KRS 100 to create the community envisioned by citizens, the first task of a planning commission is to develop a comprehensive plan. Working with citizens and community leaders, the commission establishes the goals and objectives for the community's future physical, social, and economic development. These goals and objectives are the foundation of the Comprehensive Plan because they guide all the decisions with respect to growth and development in the community.

The goals and objectives represent the peoples' vision of what they want their community to be; one that builds on its distinctive character and natural and cultural assets. This vision must incorporate a sense of change and development as well as the protection of the community's resources and its character.

Besides the goals and objectives, the comprehensive plan must also include an analysis of population and economic trends, a

record of existing land uses in the community, and an analysis of the current situation with respect to community facilities and transportation routes. Three other elements must also be included. First, a land use plan showing *the most appropriate, economic, desirable and feasible pattern* of land use, including both public and private land. Second, a transportation plan showing improvements to highways and streets, railroads, airways, waterways, and mass transit. Third, a community facilities plan identifying current and proposed locations of public and "semi-public" buildings and services (e.g., parks, schools, libraries, churches, hospitals, welfare and medical facilities, utilities, police, fire, jails, and other public or administrative facilities).

Both the planning commission and the governing legislative body must adopt the goals and objectives of the comprehensive plan. But only the planning commission adopts the remaining aspects of the comprehensive plan. The comprehensive plan must be updated every five years.

The Land Use Plan

A key component of the comprehensive plan is the future land use element. Most commonly, this is presented as a map which displays, with different colors, specific types of land use to be permitted in designated areas of the community. For example, one color may represent single family detached housing, another multiple family dwellings, and others office, retail, or industrial uses as well as agricultural, open space, and conservation areas.

Future land use maps provide potential purchasers of land with information as to the future use of properties in the area they are considering. They also make it easy to determine whether a proposed land use or zone change request fits into the comprehensive plan. However, map-based land use plans can become inflexible if they lead a community and local decision-makers to presume that there is only one appropriate land use for a particular piece of property.

An alternative approach is to adopt "performance" or "guideline" future land use standards. This approach establishes a number

of guidelines to determine whether a piece of property is suitable for a particular type of development. For example, the guidelines for a multi-family development may include the availability of public water and sewers, streets of a certain width, sidewalks, provision of public open space, or degree of slope or soil suitability. Points may then be awarded for each performance guideline the proposed development meets, and at a given threshold, the proposed development is approved.

Zoning Ordinances

Zoning ordinances are one tool for ensuring that growth and development in the community is in accordance with the goals and objectives of the comprehensive plan. These ordinances are prepared by the planning commission and adopted by the local legislative bodies. Zoning ordinances are based on a scheme in which the land in the planning unit is divided into zones separating residential, commercial, industrial, and agricultural uses. The size of structures and setbacks can then be regulated. Special activities and locations can be regulated, such as exclusive use districts, historic districts, conservation districts, planned neighborhoods; flood plains.

Zoning ordinances and other growth management regulations are adopted to *promote public health, safety, morals, and the general welfare of the planning unit, to facilitate orderly and harmonious development and the visual or historical character of the unit, and to regulate the density of population and the intensity of land use in order to provide for adequate light and air. In addition, land use and zoning regulations may be employed to provide for vehicle parking and loading space, as well as to facilitate fire and police protection, and to prevent the overcrowding of land, blight, danger, and congestion in the circulation of people and commodities, and the loss of life, health, or property from fire, flood, or other dangers. Land use and zoning regulations may also be employed to protect airports, highways, and other transportation facilities, public facilities, schools, public grounds, historical districts, central business districts, prime agricultural land and other natural resources, and other specific areas of the planning unit which need special protection by the planning unit.*

Court decisions in Kentucky provide a presumption of validity and constitutionality for zoning regulations, map amendments, and other aspects of the comprehensive land use plan and its ordinances, so long as they bear a substantial relationship to the public health, safety, and general welfare. Schloemer v. City of Louisville (1944) held that even if reasonable minds differ whether the zoning restriction has substantial relationship to the public health, morals, safety, or general welfare, the zoning ordinance is still valid.

Growth Management Regulations

The zoning approach, designating specific districts for certain ranges of land use, is not the only option for local communities. It is possible to establish a "development guidance system" which creates a single zone for the unincorporated areas of the county; makes most land uses, except agriculture, conditional; and then, evaluates each proposal on a case-by-case basis. A point system is typically adopted to evaluate soil quality and the availability of public services as the basis for evaluating land use changes.

With this approach, the planning commission assumes the powers and duties of a board of adjustment and so has the regulatory authority to manage conditional uses.

Subdivision Regulations

In addition to zoning ordinances, KRS 100 offers another planning tool, subdivision regulations. Subdivision regulations outline the process for the submission and approval of all divisions of land within the planning unit in order to insure the orderly development of quality subdivisions.

A subdivision may be the large residential development that often comes to mind. But legally a subdivision is *the division of a parcel of land into three or more lots or parcels...for the purpose, whether immediate or future, of sale, lease, or building development, or if a new street is involved, any division of a parcel of land; provided that a division of land for agricultural use and not involving a new street*

shall not be deemed a subdivision. A subdivision of land, then, can occur for residential, commercial, or industrial development purposes.

Subdivision regulations typically include standards for physical improvement, such as street widths, pavement, curbs, sewer and water lines, street lights, storm water retention basins, or neighborhood parks. Since these improvements will be dedicated to the local government upon completion of the subdivision development, standards are needed to prevent unnecessary maintenance and reconstruction costs upon transfer.

In 1986, following the desire of some rural counties to adopt subdivision regulations but not zoning ordinances, the legislature amended KRS 100 to allow adoption of subdivision regulations without the other portions of a planning program. In these cases, all powers are delegated to the fiscal court rather than a planning commission.

Overlay Districts

An overlay district is a geographic area governed by restrictions beyond those imposed in the regulations applicable to the underlying zone. These districts are areas where there is a special public interest to be protected, such as the existing distinctive character of a neighborhood, uniform building design, or natural features worth protecting. In 1990, the Kentucky legislature enacted enabling legislation permitting overlay districts in areas having special architectural, natural or cultural significance, and areas near a river or other body of water or along an established commercial corridor having a special character.

Overlay district regulations supplement zoning requirements and are to be governed by a department or agency of the city (e.g., architectural review board) or, a city-established nonprofit corporation (e.g., historic preservation board). In overlay districts, a permit from the governing office must be obtained prior to any major structural changes, ordinary repairs, changes to signage or existing trees and major vegetation.

Board of Adjustment

The Board of Adjustment acts as a check and balance system for the planning commission and the public. The board hears and decides zoning appeals, conditional use permits, non-conforming uses, variances, and appeals of decisions made by the zoning enforcement officer. In this role, the board has the right to issue subpoenas to compel witnesses to testify; to administer an oath; to employ planners; and, to receive and spend funds.

A variance is a grant of relief from a "dimensional" requirement of a zoning regulation, in particular: height, width, location of structure or sizes of yards or open spaces. A variance cannot permit a use that is not authorized by the regulation nor, can a variance allow a density greater than that which is otherwise allowable in the zone.

A conditional use is a use which is essential to or would promote the public health, safety or welfare in one or more zones, but which would impair the integrity and character of the zone in which it is located, or in adjoining zones, unless restrictions on location, size, extent of character of performance are imposed in addition to those imposed in the zoning regulation. A conditional use may be a kennel or golf course in an agricultural zone or a church in a residential zone.

A nonconforming use is an activity or a building, sign, structure...which lawfully existed before the adoption or amendment of the zoning regulation, but which does not conform to all of the regulations contained in the zoning regulation which pertain to the zone in which it is located. The concept of a nonconforming use insures that the lawful use of a building or premises existing at the time of the adoption of any zoning ordinance affecting it may be continued, even though the current use does not conform to the new regulation. However, the legal right to continue a nonconforming use does not confer the right to enlarge or extend the *nonconforming use beyond the scope and area of its operation at the time the regulations which makes its use nonconforming was adopted, nor shall...a change from one nonconforming use to another*

[be permitted] unless the new nonconforming use is in the same or a more restrictive classification.

The board also acts as a review and appeals body when:

- It is alleged that there is error in any order, requirement, or decision made by an administrative official in the enforcement of zoning regulations; or,
- It is claimed that one is injuriously affected or aggrieved by an official action, order, requirement, interpretation, grant, refusal, or decision of any zoning enforcement official.

Professional Staff

The members of the planning commission are lay persons and cannot be expected to know all the legal and technical aspects of planning, nor is it logical to assume that commission members would have the time to enforce zoning ordinances. Thus, state law gives the planning commission the authority to hire a professional staff. Typically, such a staff includes an attorney, a professional planner, an engineer, and an enforcement officer. These individuals work full- or part-time for the planning commission or may be contracted from another agency. For example, the commission may contract with the area development district office for the services of a professional planner. At a minimum, an enforcement officer is essential to serve as "the eyes and ears" for the planning commission on a daily basis.

Other Boards

Other citizen boards may be appointed to assist in the planning and growth management process. Communities around Kentucky have architectural review boards, historic preservation commissions, or comprehensive plan update committees. These boards act in an advisory capacity to the planning commission within their areas of expertise.

Planning Commission Activities

Once the comprehensive plan, zoning ordinances, and subdivision regulations are

written, the work of the Planning Commission is just beginning. Reviewing policy, ordinance changes, and development proposals consumes the majority of the commission's time. It is critical that commission members be well acquainted with all local ordinances to assure that recommendations granting or denying a proposed change have both a solid legal basis and findings of fact to support the recommendation.

The commission must assess the legal and social consequences of any ordinance or map change. When reviewing a development proposal, it is essential to first determine whether it is consistent with the goals and objectives of the comprehensive plan and then, to consider the potential impact on the community.

The planning commission must review all proposals fairly and equally as it prepares its recommendation to grant or deny the development proposal or evaluates requests to amend the land use map or a zoning ordinance. Remember, the commission only recommends an action to the local governing body, it is not authorized to approve or disapprove changes or development proposals.

The planning commission also reviews and approves all plans for the development of all subdivisions. The commission is the final

authority on subdivision plats. There is no further review by elected officials on subdivision proposals.

Conclusion

These represent the key components of the comprehensive planning and zoning process authorized by KRS 100. Within each of these components, and related sections, there are a host of mandated procedures that must be followed to insure equity and fairness in the process. Several organizations in the Commonwealth (e.g., KACo, the Legislative Research Commission, University of Kentucky Office of Continuing Legal Education) provide informational seminars and materials for local officials, commission members, and professional staff.

References

Murphy, Richard V. And Glenn A Price, Jr. Kentucky Land Use and Zoning Law. Second Edition. University of Kentucky, College of Law, Office of Continuing Legal Education, 1991.

Legislative Research Commission. Planning and Zoning: KRS Chapter 100. Informational Bulletin No. 156 (Revised). September, 1988.