

## CHAPTER XII

### COUNTY PLANNING AND ZONING: AN OVERVIEW

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Section 17-1-3, *Mississippi Code of 1972, Amended*, reads as follow:

Section 17-1-3. General Powers. For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing authority of any municipality, and, with respect to the unincorporated part of any county, the governing authority of any county, in its discretion, are empohight, number of stories and size of building and other structures, the percentage of lot that may be occupied, the size of the yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes, but no permits shall be required with reference to land used for agricultural purposes, including forestry activities as defined in Section 95-3-29(2) (c), or for the erection, maintenance, repair or extension . . .

I do not know why lawmakers want to make planning and land use regulations seem so complicated. They do not have to be.

Planning is a subject that is very familiar to everyone. We do financial planning, vacation planning, family planning, etc. What it all amounts to is preparing now for what will happen in the future. That is exactly what county planning is. We take steps now to guide our growth and development so that we will not create unfavorable situations as far as the health and safety of people, traffic congestion, unnecessary expenses for local government, etc. in the years ahead.

The first step in planning – whether it is urban planning or family planning – is to decide with what you want to end up. What size family or county do you want; what economic situation are you capable of creating and do you want to create; what facilities does your family or county want; what services are desired? You must determine what your *goals and objectives* are before you start.

The next step in the planning process is the preparation of *base studies* to determine with what you have to start. Here again the same questions apply to families, businesses or counties. What are my present assets; what is my present population; what are my present facilities?

The third step is to *develop a comprehensive plan*; take into consideration all information you know about your family, business, or county and apply it to your goals and objectives. Based on what you currently have, how can you best achieve what you want to have ten (10), fifteen (15), or twenty (20) years from now? In the case of county planning, we must develop and coordinate land use plans, transportation plans, economic plans and community facilities plans.

The fourth step is to *re-evaluate* our original goals and objectives and see if the plan fits. Can we achieve these goals with this plan? If so, then comes the fifth step, the *most important step – implementation of the plan*.

In urban planning we make use of zoning ordinances, subdivision regulations, building codes, and capital improvements plans. With a zoning ordinance we can work toward meeting our land

development goals by regulating the use of land. With subdivision regulations we give procedures for development of land so that the benefits that are received by the property are paid for by the owner, not the county, and the design of subdivisions conforms with the adjoining property. With building codes we assure that all construction in the county meets established national standards. With a capital improvements plan we program our major community improvements so that priority items come first and funding for the improvements is secured in an orderly fashion.

The next few pages will attempt to explain: (1) the planning process; (2) present the legal basis of planning in Mississippi; (3) help you understand the regulations and programs necessary to implement your county plan; and (4) suggest ways to administer your plan and ordinances.

## SECTION ONE: THE PLANNING PROCESS

If one were planning a fishing trip, he would take these logical steps:

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| Step 1: Goals and Objectives  | We have to figure out what we want to catch – 50 bream, a 40 pound catfish, or one of those big mackerel.                |
| Step 2: Base Studies          | What kind of fishing gear, bait, and boats are on hand. Also, check your fishing license and study the weather forecast. |
| Step 3: Citizen Participation | We better check with the wife and kids to make sure they don't already have plans.                                       |
| Step 4: Develop the Plan      | Decide where we are going to fish, how much bait and additional gear we need, and which boat we are going to use.        |
| Step 5: Implement the Plan    | Pick me up Joe; I'll bring the cooler.   |

The planning process for counties is just as simple:

### Step 1: Goals and Objectives

Before your county begins to develop a comprehensive plan to guide future growth and development, it is necessary to reach a community consensus about what kind of county you want. Do you want new residential growth or do you want to keep the little county just like it is? Do you want to attract industrial growth or do you want to become a tourist and leisure resort? Do you want big new "super" stores or do you want to emphasize small locally owned retail growth? What do you expect in terms of parks, schools, and emergency services?

There are several ways to develop consensus on future goals. The public hearing process is one way; just "open up the floor" and give everyone a chance to be heard. The public hearing itself can take several different formats. It could be a formal presentation given on behalf of the board of supervisors followed by public comments, or it could be a three or four hour informal time when the public could drop by individually to express opinions to board members or other county officials.

In addition to giving the general public an opportunity for participation, it is a good idea to solicit input from community business and political leaders through private interviews. You are

more apt to get frank and meaningful answers from such officials in a private setting where comments are not attributable to specific individuals.

Many times meaningful dialogue can be generated by focus groups assembled at civic clubs or in a retreat setting. Ideas get tossed around that way and can be debated and refined.

Regardless of what format is used during the goals and objectives phase, the result must be the development of some consensus on what you want the county to be like.

### Step 2: Base Studies

Once you have determined what you want the county to be, the next step is to analyze what the county is like now. You need to inventory the existing land use characteristics, transportation systems, housing characteristics, community facilities and services, economic and social indicators and consider the current population and potential population growth.

An existing land use map depicting the utilization of land by residential, commercial, industrial, public, and semi-public uses will need to be prepared. This gives a starting point for where you want to guide and encourage future development.

A road map must be developed showing existing road conditions, traffic counts, major drainage features, or other potential constraints to road construction. Airports must be documented showing existing runway orientation, length, and condition. Railroad locations and access must be identified. The location and capacity of ports must be inventoried. The availability of any public transit, the schedules used, and primary users must be determined.

An analysis of the housing stock must be accomplished. You will need to know how many houses exist in the county, whether they are owner or renter occupied, how many are sub-standard, and how many are vacant.

An inventory of existing community facilities must be done to reveal the location and capacity of various emergency services, schools, medical facilities, parks and recreation areas, libraries, and other public buildings and properties.

Economic and social indicators must be accumulated on employment trends, major employers, retail sales history, agricultural production, welfare recipients, prevailing wage rates, and educational attainment.

An analysis of the existing population by age, sex, and ethnic background will be needed. Population trends for the past thirty years must be reviewed and projections must be made for the next thirty years.

### Step 3: Citizen Participation

Citizen participation is not really a defined step in the planning process but is an activity which must be incorporated into the process from start to finish. Several of the best techniques to obtain citizen participation were discussed previously under the section on goals and objectives. These included public hearings, focus groups, retreats, and private interviews. The important thing to remember here is that you cannot have too much public participation. You must keep the public informed and make them feel like part of the process.

#### Step 4: Develop the Plan

This is the fun part. You have invited virtually everyone in the county to participate in building a consensus on what you want your county to be like five (5), ten (10), or twenty (20) years from now. You have inventoried and documented all your current assets and conditions. Now you develop a future land use plan, a transportation plan, a community facilities plan, and strategies for attracting industry or tourism.

The future land use plan will require a map showing the general distribution and extent of land intended for residential, commercial, industrial, and other uses. Policies will be established concerning residential densities and the desire to encourage or discourage new residential growth. Commercial priorities developed during the goals and objectives phase will be addressed. Strategies to carry out the industrial or tourism preferences will be created, and locations for these types of development will be identified.

The transportation plan will address all forms of movement – roads, airports, rail, water ports, and public transit. A map is prepared showing the road system and setting out the functional classification and capacities of each road. The coordination of the land use plan and transportation plan is critical because they are so dependent upon each other. All transportation modes should be included on the map, and in-depth proposals of future improvements should be addressed.

A community facilities plan is prepared containing a schedule of improvements or creation of facilities as they are required by the land use and transportation plans and population projections. Specific facilities are included in a capital improvements plan covering the first five (5) years, along with budget projections and possible funding sources. Long-range community facilities needs are included in the plan with more generalized locations and cost estimates.

#### Step 5: Implement the Plan

The comprehensive plan is just that – a plan. To make it effective, the board of supervisors has to adopt ordinances and regulations to carry out the plan. Although the types and intent of the local laws enacted can vary greatly, most counties, as a minimum, adopt zoning ordinances and subdivision regulations; and many also adopt building codes. The zoning ordinance uses a map to divide the county into areas for residential, commercial, industrial, and agricultural uses. It establishes regulations on development related to use of property, location of structures, and population density.

The subdivision regulations establish minimum standards for development in the county. The regulations establish procedures for creating parcels of under a minimum size, design standards for street, blocks and lots, and minimum required improvements.

Many municipalities in Mississippi and a few counties have adopted building codes, usually the Standard Codes of the Southern Building Code Congress. This series of codes include building, plumbing, mechanical, housing, swimming pool, and several others. The National Electrical Code is the predominant code in that field.<sup>666</sup>

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<sup>666</sup>Section three (3) of this report will deal in more detail with zoning ordinances, subdivision regulations, and building codes.

## SECTION TWO: THE LEGAL BASIS

The general legislative authority that enables counties to adopt comprehensive plans for development is found in Title 17, Chapter I of The *Mississippi Code of 1972*, as amended. It contains a good definition and outline for a county plan. Section 17-1-1 states:

- (c) “Comprehensive plan,” a statement of public policy for the physical development of the entire municipality or county adopted by resolution of the governing body, consisting of the following elements at a minimum:
  - (i) Goals and objectives for the long-range (twenty (20) to twenty-five (25) years) development of the county or municipality. Required goals and objectives shall address, at a minimum, residential, commercial and industrial development; parks, open space and recreation; street or road improvements; public schools and community facilities.
  - (ii) A land use plan which designates in map or policy form the proposed general distribution and extent of the uses of land for residences, commerce, industry, recreation and open space, public/quasi-public facilities and lands. Background information shall be provided concerning the specific meaning of land use categories depicted in the plan in terms of the following: residential densities; intensity of commercial uses; industrial and public/quasi-public uses; and any other information needed to adequately define the meaning of such land use codes. Projections of population and economic growth for the area encompassed by the plan may be the basis for quantitative recommendations for each land use category.
  - (iii) A transportation plan depicting in map form the proposed functional classifications for all existing and proposed streets, roads and highways for the area encompassed by the land use plan and for the same time period as that covered by the land use plan. Functional classifications shall consist of arterial, collector and local streets, roads and highways, and these classifications shall be defined on the plan as to minimum right-of-way and surface width requirements; these requirements shall be based upon traffic projections. All other forms of transportation pertinent to the local jurisdiction shall be addressed as appropriate. The transportation plan shall be a basis for a capital improvements program.
  - (iv) A community facilities plan as a basis for a capital improvements program including, but not limited to, the following: housing; schools; parks and recreation; public buildings and facilities; and utilities and drainage.

The statute sets out the general powers of local government to promote the health, safety, morals, and general welfare of the community. The law restricts counties from requiring permits for land used for agricultural purposes or for farm buildings.

Counties are authorized to develop and implement comprehensive plans independently. Counties may also join with municipalities in order to attain uniformity and consistency in the plans and implementing regulations.

Counties are allowed to adopt zoning ordinances and to appoint planning commissions or such other advisory committees as it sees fit. The ordinance may delegate certain power and decision making responsibility to the planning commission. However, any party aggrieved with the decision of the planning commission or other advisory committee shall be entitled to a public hearing before the board of supervisors.

If someone violates the zoning ordinance, the board of supervisors may institute any appropriate action or proceeding to prevent the unlawful action. If it is a relatively minor violation which does not pose an immediate threat to the neighborhood in which it is occurring, the most effective action is an affidavit in justice court or a hearing before the justice court judge. In more complicated matters or zoning violations which threaten the health or safety of the area, an action in Chancery Court with perhaps a temporary injunction might be required.

The enabling legislation for subdivision regulations gives the board of supervisors authority to order that no plat of a subdivision be recorded until it has been approved by the board of supervisors, and the board of supervisors shall have power to require the installation of utilities and laying out of streets in subdivisions or to accept performance bonds in lieu thereof. The statute also prescribes procedures for vacating or altering recorded plats after affected parties are notified and have agreed to the actions.

### SECTION THREE: ZONING ORDINANCE, SUBDIVISION REGULATIONS, AND BUILDING CODES

Once a county has adopted a comprehensive plan for future development, it should be used as a guide in decision-making by the board of supervisors. It should influence the thought process of practically every meeting as the board sets policy and carries out actions to improve the county. There will be dozens of board of supervisors' orders and local regulations which will reflect the intent of the comprehensive plan. There are, however, three types of ordinances which have the specific purpose of implementing the comprehensive plan. They are the: (1) zoning ordinance; (2) subdivision regulations; and (3) building codes.

#### Zoning Ordinance

The zoning ordinance contains two elements – a text which sets forth the various zoning classifications and allowable uses within those classifications and a map which delineates how every parcel of land in the county is zoned.

The zoning ordinance text can be as detailed or as simple as a community wants to make it. The original zoning ordinance adopted by DeSoto County over forty (40) years ago was about fifteen (15) pages long and had four (4) zones: agricultural, residential, commercial, and industrial. The current ordinance is eighty (80) pages and contains fifteen (15) different zoning classifications. Both of those ordinances follow the same format, however.

The ordinance starts out with a general statement of title and purpose. Then there is a list of definitions which are necessary to insure that everyone knows what the various terms and procedures mean.

The actual schedule of district regulations follows. This lists the various districts which will be contained in the ordinance, it establishes what uses will be allowed by right (permitted uses) and perhaps others which could be allowed in certain situations (conditional uses), it imposes restrictions on the location of structures on lots (setback requirements) , and establishes other limitations which the board of supervisors deem appropriate. The ordinance will contain sections dealing with procedures for amendments and conditional uses, signs, nonconforming uses (grandfather clause for uses existing at the time of ordinance adoption), request for variances from the requirements of the ordinance, off-street parking, and ordinance administration.

The administration of the zoning ordinance requires, as a minimum, a planning commission and staff to carry out the ordinance. It must provide an appeals board or board of adjustment for persons who feel aggrieved by the provisions of the ordinance or its application of them. The planning commission itself is made up of citizens appointed by the board of supervisors and usually ranges in size from five (5) to fifteen (15) people. Actions of the planning commission are usually recommendations to the board of supervisors who must approve the decisions of the planning commission.

### Subdivision Regulations

Subdivision regulations establish an orderly procedure for developing property in the county that will result in desired growth pattern and insure that costs associated with the development are borne by the development, not the general public.

Like the zoning regulations, the subdivision regulations begin with sections on the title and purpose and list definitions needed in the ordinance. All subdivision regulations must contain three critical sections to be effective – (a) the procedure for creating new parcels of land; (b) the design standards required for new development; and (c) the procedure for installing improvements.

- (a) The procedure for subdividing land needs to be as simple as possible, keeping in mind costs associated with complying with the ordinance. Ordinances can be written which require major developments to follow detailed procedures and provided surveys, soil conditions, erosion control plans, and drainage plans, yet still have a simplified procedure for the family that wants to give the newlyweds a lot upon which to build.
- (b) Design standards for multi-lot subdivisions are critical. The established standards must address the design requirements for laying out streets, blocks, easements, and parks and must contain minimum construction standards to insure quality control and minimize long term maintenance.
- (c) The ordinance must set out procedures for installing improvements that allow for the sale of lots and construction to begin prior to completion of improvements. This is usually done by allowing surety bonds to be posted guaranteeing construction within a certain time frame.

### Building Codes

Building codes require construction to meet minimum standards. The Southern Building Code Congress International publishes a series of codes called the *Standard Code* which are used by practically every jurisdiction in Mississippi with adopted building codes. They include

requirements for building construction, mechanical installation, plumbing, housing, swimming pools, and others. The predominant electric code used is the National Electric Code. The county must publish notice of its intent to adopt a building or related code and allow the opportunity for a petition to be filed requiring a referendum. If no petition is received, the board of supervisors may adopt the proposed code.

#### SECTION FOUR: ADMINISTRATION

The adoption of land use regulations and building codes will require someone to administer them on a daily basis. In small counties with only a few new buildings per month, the administrative staff could be an existing employee or a semi-retired architect, engineer, or contractor working on a part-time basis. In most counties, however, a staff will need to be hired to effectively administer the ordinances.

There will be significant clerical requirements to process building permit, zoning, and subdivision applications. It will be necessary to have someone available as an employee or consultant who has a basic understanding of land use regulations. The building code requires that a building official be designated who has a minimum of ten (10) years experience as an architect, engineer, building contractor, or building inspector. That individual must inspect all construction to insure compliance with the building code and issue certificates of occupancy before a building can be occupied.

The zoning ordinance and building codes require creation of a planning commission and board of adjustments or board of appeals. The zoning staff or building official processes applications for zoning changes, variances, subdivision approvals, or appeals from staff decisions and presents them to the appropriate commission or board for a decision. State law requires that persons aggrieved by decisions of the planning commission or appeals boards be afforded a hearing before the board of supervisors.

Many jurisdictions also require certain tradesmen such as electricians, plumbers or mechanical contractors to be licensed. Criteria must be established to determine required qualifications of contractors and a means of testing or measuring those qualifications is required. Sometimes a license commission is created to oversee this process and insure the testing is objective and fair.

#### CONCLUSION

As Mississippi enters a new century, continued growth and development of her counties will require that attention be given to the establishment of a comprehensive planning process. The need for orderly, planned growth and development will only increase in the years ahead. Adoption and implementation of a comprehensive planning process in our counties will work to protect private property and allow the counties to grow and develop in accordance with the wishes of the citizenry.