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The Job of the Planning Commissioner

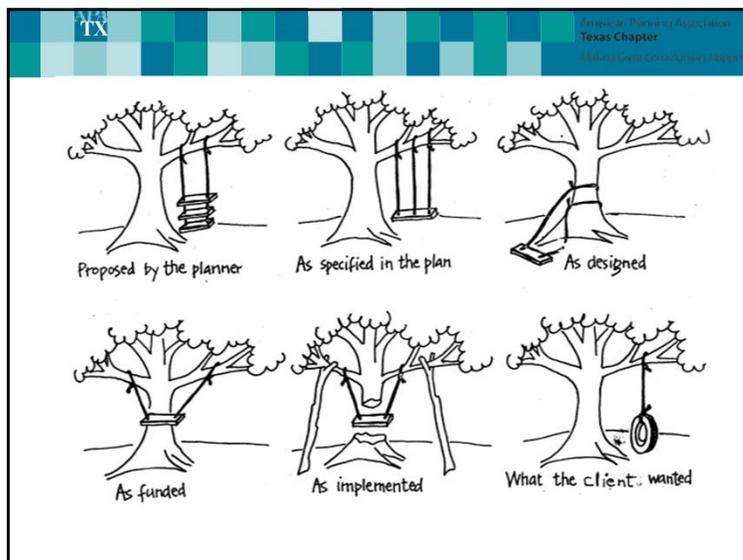
What you need to know about the role and responsibilities of the Commissioner

2016 Central Texas Elected & Appointed Officials Planning Workshop

Sponsored By
Texas Chapter of American Planning Association

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Based on *A Guide to Urban Planning in Texas Communities* of the Texas Chapter of American Planning Association.



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Before We Begin...

Please place cell phones and pagers on silent mode ...

Fasten your seat belts, put your trays up, and your seats in their full upright position ...

Feel free to ask questions

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So You've Been Appointed to the Planning & Zoning Commission...

Now What?



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Planning Commission

In Texas, a *Planning Commission* is:

- a group of citizens appointed by the legislative body that performs both required and discretionary functions in land use matters.*
- May also include zoning matters and be called ***Planning and Zoning Commission***.



(*Texas Local Government Code 211.007)

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Understanding the Job of P&Z Commissioner

Become familiar with your responsibilities/expectations both on and off the Commission

Orientation -- begin to grasp:

- Legal issues (incl. Open Meetings Act)
- Basic elements of planning
- Comprehensive Planning
- Zoning Ordinance
- Subdivision Regulations
- Enabling statutes in state law for planning/zoning

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Why have Training Sessions?

Introduction to New Members

Refresher course for existing members

Insurance benefits

State-mandated training

- (once within 90 days of appointment)
- Open Meetings Act
 - http://www.oag.state.tx.us/opinopen/og_training.shtml
- Open Records Act
 - **May not be required, staff responsibility**

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Types and Jurisdiction of Cities

Home Rule vs. General Law

- Dillon's Rule

Corporate limits
Extraterritorial Jurisdiction (ETJ)

Population	ETJ
< 5,000	1/2 mile
5,000 – 24,999	1 mile
25,000 – 49,999	2 miles
50,000 – 99,999	3 ½ miles
100,000 or more	5 miles

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General Powers of Cities

Administrative oversight

- Financial and personnel

Police power (to protect the general welfare)

- Police, fire, code enforcement, etc.
- Construct & manage public facilities
- Streets, utilities, drainage, buildings, parks

Planning & development

- Land use, infrastructure, building standards

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Source of Authority of Cities

U.S. Constitution

- Federal laws

Texas Constitution

- Local Government Code
- Other Texas statutes

City Charter

- City Ordinances

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Types of Planning & Development Regulation

Types of Planning (vision)

- Comprehensive Planning
- Strategic Planning
- Special Area Planning

Types of Development Regulation (tools)

- **Proactive approaches**
 - Capital Improvements
 - Public-Private partnerships
- **Reactive approaches**
 - Zoning
 - Subdivision Approval
 - Other regulations

Conformity between plans and development regulations

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Why and How Do We Regulate Development?

Why? Goals

- Implement comprehensive plan
- Reduce land use conflicts
- Assure adequate public facilities
- Promote quality of life/community image

How

- Ordinances
 - Zoning, Subdivision, Unified Development Codes
- Developer Agreements

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Legal Basis and Authority for Development Regulations

Most authority provided by general police powers (protect health, safety and welfare) plus specific statutory authority.

Zoning authority provided in Chapter 211, Texas Local Government Code

Subdivision authority provided in Chapter 212, LGC

Comprehensive planning authority in Chapter 213, LGC

Differences between home rule cities and general law cities (Dillon's Rule)

Authority within city limits versus authority within extraterritorial jurisdiction

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Limits on Authority to regulate Development

Legislative (zoning) versus Ministerial (platting) acts

Arbitrary and capricious decisions

Ultra vires – regulating beyond your authority

Takings – results from overregulation that denies all use of property

Procedural due process (error in notice, denial of hearing, Open Meetings Act violations, conflict of interest)

Vested Rights – Chapter 245 LGC – rules are vested at time of initial application for project

Manufactured Housing

Religious Institutions (RLUIPA of 2000)

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Types of Decisions

Advisory Recommendations

Legislative Acts

- Zoning, Planning

Ministerial Acts

- Subdivision approval

Quasi-judicial Acts

- ZBA variances



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Responsibilities and Activities of the Planning Commission

- Develop and update the comprehensive plan
- Implement land use patterns
- Monitor current zoning ordinance
- Make recommendations on zoning changes
- Approve (or recommend approval of) subdivisions
- Make recommendations for annexation
- Interface with public on community values through public meetings, focus groups, and neighborhood organizations

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Responsibilities and Activities of the Planning Commission continued

- Recommend a Capital Improvements Program
- Coordinate with economic development activities
- Encourage and monitor the “visual image” through urban design
- Adopt an annual work program and prepare an annual report
- Use base data on population, land use, utilities, and topography in decision making

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Typical Applications Reviewed by P&Z

- Comprehensive Plan amendments
 - Land use plan
 - Thoroughfare plan
- Zoning Changes
 - Map amendments
 - Text changes
 - Specific Use Permits
- Subdivision Plats
- Site Plan Approvals



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Roles in Development Regulation

City Council
Planning and Zoning Commission
Zoning Board of Adjustment

Staff

- Administrative
- Planning issues
- Engineering issues
- Other staff (police, fire, etc.)
- Other entities (TxDOT, franchised utilities)



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graph TD
    Citizens --> Mayor[Mayor & City Council  
Elected by the Citizens]
    Mayor --> PZ[P&Z Commission  
Appointed by the City Council]
    Mayor --> Boards[Other Boards/Commissions  
Appointed by the City Council]
    CityCouncil[City Council] --> CityManager[City Manager  
Hired by the City Council]
    CityManager --> CityStaff[City Departments/Staff  
Hired by City Manager or Designee]
  
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Conducting a P&Z Meeting

Role of the Chair
 Rules of procedure

- Robert's Rules of Order
- Rosenberg's Rules of Order?
- Chair should inform audience of rules

Texas Open Meetings Act



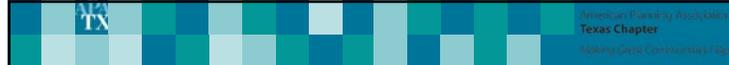
Normal Conduct of Hearing

- Applicant allowed to present case
- P&Z and staff may ask questions
 - Don't be argumentative
 - Be mindful of evidence rather than opinion
 - Don't indicate leanings until after hearing
- Staff then makes their presentation



Conduct of Hearing continued

- Public Invited to speak
 - Allow everyone an opportunity to speak
 - May establish time limits if necessary
 - Establish relationship of speaker to applicant (neighbor etc.)
 - Determine what evidence is being presented and what weight to give it
 - Board may ask questions for clarification, but should not cross-examine public speakers
 - Applicant and staff not compelled to be cross-examined by public (address comments to Chair).
- Applicant given opportunity for rebuttal
- Once hearing is closed, applicant and public must be quiet



Conduct of Hearing

P&Z's motions should cite findings and reason for decision

- Failure to make findings may render decision void
- Needed to create record for review
- Example motions

Quorum, Majority, Super-majority

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Robert's Rules of Order

American Parliamentary Law

- Gen. Henry M. Robert, 1876
- Robert's Rules, Newly revised, 10th Ed. (RONR)

Provides orderly process for meeting

Role of the Chair

- Opens and closes meeting
- Keeps order during meeting
- Introduces each agenda item
- Recognizes speakers and accepts motions
- Rules on matters of procedure
 - May consult with staff on parliamentary procedure
 - Appeals to ruling of Chair

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Motions

Main Motions

- Approval or denial of item before Board
- State any conditions to be imposed
- Rationale for making motion, findings
 - E.g. conforms to Comprehensive Plan, and
 - Adjacent property is protected.
- Second required before discussion
- Discussion on motion plus any subsidiary motions
- Vote
 - Vote on subsidiary motions first

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Sample Motion

"I move to approve the subdivision because it meets the requirements of the Subdivision Ordinance and conforms to the Comprehensive Plan."

Motion must have a second before any other discussion is held with two exceptions:

- Point of Information
- Point of Order

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Debate

Must be recognized by Chair

Does your city have a specific debate procedure?

- Some have established specific rules
 - Total time allowed for debate
 - Order of debate
 - Typically motion maker goes first
 - Each other member has opportunity to speak before getting second chance
 - Motion maker has final rebuttal before vote
 - Motions to extend or limit debate (2/3rds required)

Who may speak from floor during public hearing?

- Anyone may speak, but time may be limited
- Better to give someone opportunity to speak rather than deny it
- No one is entitled to speak after hearing is closed

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Amendments

Friendly amendments?

- Not allowed under RONR
- Chair may ask if there is “any objection” to amendment, and the approve by consent, otherwise must vote

Motion to Amend (or to amend the amendment)

- Amends main motion
- Requires second before debate
- Example, “I move that we amend the motion to require that the new structure be screened with a six-foot fence.”

Motion to Substitute

- Replaces main motion
- Requires second before debate
- Example, “I move the we deny the variance request,” after a motion to approve has been placed on the floor.

Motion to Amend or Motion to Substitute acted on first

- Question is whether to amend or substitute
- If approved, revised Main Motion is acted upon

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Other Motions

Point of Order and Point of Information

- Member raises “point of order”
- Upon being recognized by Chair, member states question or objection
- Chair rules whether point is sustained or denied
- Any member may appeal, with majority vote by Council

Motion to Continue (Postpone) vs. Motion to Table

- Motion to Continue is appropriate for consideration of item at a future meeting
- Motion to Table is rarely appropriate
 - Mainly for considering an item later in same meeting

Motion to Commit (refer to committee or staff)

Calling the Question (“move the previous question”)

- Not automatic, must be recognized by Chair
- Must have second, not debated, but must receive 2/3rd vote to close debate

Motion to Adjourn is not required if you’ve reached the end of the agenda

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Other Motions, cont.

Motion to Reconsider

- Must be made by member on prevailing side during same meeting
 - First vote is whether to reconsider
 - Second vote is on main motion again
 - Only reconsider vote once

Motion to Rescind

- Requires 2/3rds vote to change results of a vote held earlier in meeting
- Reconsideration on a later agenda up to Council policy

Motion to Suspend Rules

- 2/3rds vote required under RONR

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Public Hearings

Except for Public Hearings required by State Law, no one has right to speak during meeting

Public Hearings

- Generally allow everyone to speak
- Impose and enforce time limits
- Avoid discussion, except questions from Board for clarification
- Typical Order of Presentation
 - Applicant
 - Staff
 - Audience
 - Applicant Rebuttal
- Once Hearing is Closed, no one speaks except Board and staff

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www.apa.org

Issues in Hearings

What happens if applicant doesn't show up?

- Burden of proof is on applicant

Continuation of hearings

- Should be continued to a date certain
- Inaction causes due process problems

Minutes

Appeal of decisions

Public Comment Periods

Covered by Rules of Procedure?

- 3 minute time limit typical

Not covered by RONR

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Responsibilities of Board Member

Be prepared

- Read and study packet
- Visit site, if possible
 - Avoid receiving information from public outside of public hearing
- Ask questions of staff

Be fair

Be honest

Be ethical

Be objective

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Traits for Successful Planning Commissioners

Visionary

- Has a feel for the assets and problem and potentials of the city
- Can see the big picture without missing the details

No conflicts of interest

Impartial and objective

- Works toward the common good
- Places community interest first

Comes to meetings prepared

Appreciates dialogue and enjoys collaboration

Practical, yet creative

Consistent

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Final Thoughts – Importance of Public Participation

Planning is a political process.

Opportunity for consensus building.

Common techniques:

- Surveys
- Public meetings
- Citizens advisory committees
- Charrette



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Potential Liability (How Can You Be Sued?)

Procedural errors

- Was decision unbiased?
- Was there adequate notice of hearing?
- Was there opportunity to introduce evidence?
- Was decision based on record of reasons and findings of fact?
- § 1983 Civil Rights Act (KKK clause)

Substantive due process

- Fifth and 14th Amendment takings

Ex parte contact

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Potential Liability, cont.

Open Meetings Act

- Notice of meetings
- Deliberation of quorum
- Executive sessions

Open Records issues

No plan or bad plan (arbitrary and capricious decisions)

Ultra vires (no authority)

Equal protection attacks

First Amendment (speech, religion)

§ 1983 Civil Rights Act

Fair Housing Act

Gifts to Public Servants

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Potential Liability, cont.

Conflict of Interest

- Chapter 171 of Local Government Code
 - Substantial interest test
 - 10% of stock, equity (\$15,000), or income
 - \$2,500 interest in real property
 - Relationship test
 - First degree of consanguinity or affinity
 - Affidavit and recusal
 - Smell test

TEXAS NEPOTISM 1992

Consanguinity Kinship Chart
Affinity Kinship Chart (Marriage)

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Balancing Demands

Developer's Wants

- Highest and Best Use
- Maximize short term gain
- Market Demands
- Past Experience
- Profitable Development
- Low cost-high return

City's Wants

- Quality Development
- Long-term Benefits
- Compatible Land Uses
- Adequate Infrastructure
- Fiscal impacts

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Other sources of information

Training and Resources for Planning Commissioners:

- City orientation and training for new Commissioners
- APA Texas Chapter
 - Regional Workshops for Planning Officials
 - Annual Short Course for Planning Commissioners
 - State Planning Conference
 - www.txplanning.org
- American Planning Association – publications and conferences
 - *Planning Magazine*
 - National Planning Conference
 - *The Commissioner* quarterly newsletter
 - www.planning.org
 - CD-ROM training packages
 - www.planningbooks.com
- Planning Commissioner's Journal
- Texas Municipal League
- Planning staff

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Questions?

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The image contains four hand-drawn diagrams illustrating different perspectives on swing design:

- ARCHITECT:** Shows a simple swing set with a single seat and a signpost nearby.
- CIVIL ENGINEER:** Shows a complex, industrial-looking swing set with a sign that says "DON'T STAND" and a warning sign that says "WARNING: NO BOUNCING OPERATIONS".
- SOCIAL PLANNER:** Shows a swing set with multiple seats and a sign that says "WHAT CLIENTS REALLY WANTED".
- WHAT CLIENTS REALLY WANTED:** Shows a simple swing set with a single seat and a sign that says "WHAT CLIENTS REALLY WANTED".

Figure 1-2 Variations on the design of a swing