

Planning & Zoning Fundamentals

Presenter

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 - **Focus area(s): Land use planning, GIS, housing, energy transition**
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Agenda

- Comprehensive planning
- Zoning ordinances
- Roles of decision makers
- Common zoning issues

The Comprehensive Plan

The Comprehensive Plan

- **A statement of *policy*...**
 - not a *regulation*
 - “developed” by the Planning Commission
 - guided by citizen input
 - adopted by the City Council or Board of Supervisors
- Guides physical development of the community
 - Usually written with a 10- to 20-year horizon
 - Consider review/update every 5 years to respond to changing conditions
- Serves as the basis for land use decision-making
 - Zoning and subdivision regulations and applications
 - Public Facilities
 - Infrastructure (roads, water and sewer)

Planning in Iowa

- Provided for in state law
 - Smart Planning Act (2010):
 - Chapter 18B, Iowa Code
- Comprehensive planning implied in Iowa Code (Chapters 335 and 414) since the 1920s but not explicitly authorized.

Iowa Code § 18B.2

A [city or county] ...may include the following information, if applicable, when developing or amending a comprehensive plan:

- **Public Participation**
- **Issues and Opportunities**
- **Land Use**
- **Housing**
- **Public Infrastructure and Utilities**
- **Transportation**
- **Economic Development**
- **Agricultural and Natural Resources**
- **Community Facilities**
- **Community Character**
- **Hazards**
- **Intergovernmental Collaboration**
- **Implementation**

Why develop a comprehensive plan?

- Protects/optimizes property values
 - Separates incompatible land uses (balances competing interests of private landowners)
- Provides continuity across time
 - Provides for predictability of future conditions, which encourages investments in property

Why develop a comprehensive plan?

- Protects public investments in roads, sewer, water, public facilities
 - Also helps avoid unnecessary investments
- Protects environmental resources

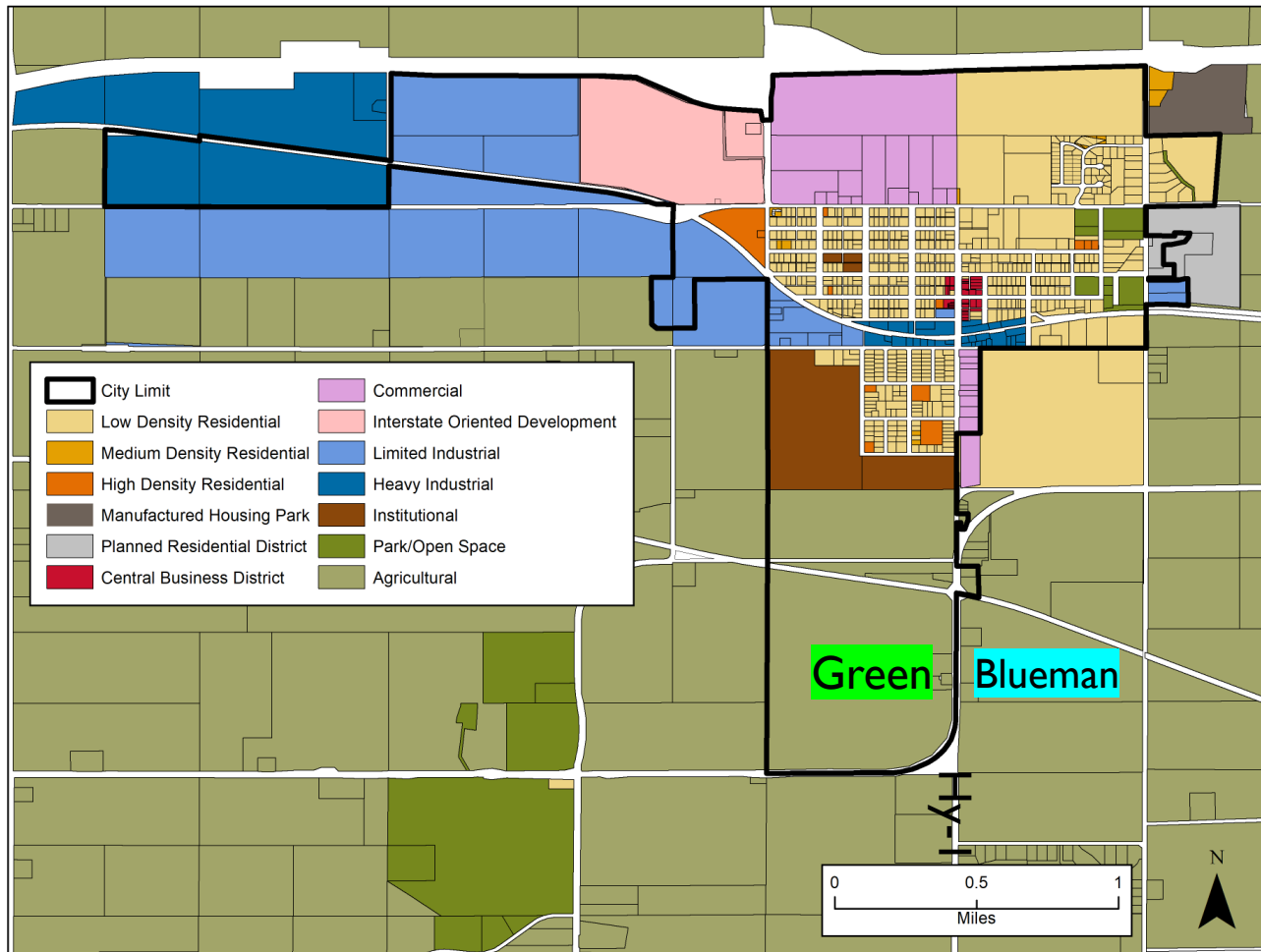
The comprehensive plan

- Can provide a basis for other plans
 - Urban Renewal plans (Chapter 403)
 - Urban Revitalization plans (Chapter 404)

Ask yourselves...

- Does your city have a comprehensive plan?
 - How old is it?
 - How has your community changed since then?
 - How often does it come off the shelf?
 - During zoning hearings?
 - During other policy discussions?
 - Other times?

Scenario 1: City of Hypothetical



Scenario 1

- Adam Green owns 40 acres on the south side of the city, west of Highway 1, within city limits.
- James Blueman owns 40 acres to the east of Highway 1, outside city limits.
- Both are primarily farmland, with a few scattered homes.
- Only property suitable for new residential development w/in city limits is on Green's property.
- Sewer and water lines abut both properties.
- *What factors might be important as the city considers the future of the southside?*

Scenario 1

- Consider the elements of Iowa Code § 18B.2 as you ponder the future of the south side of the city of Hypothetical.
- Public Participation
- Issues and Opportunities
- Land Use
- Housing
- Public Infrastructure and Utilities
- Transportation
- Economic Development
- Agricultural and Natural Resources
- Community Facilities
- Community Character
- Hazards
- Intergovernmental Collaboration
- Implementation

Zoning

Zoning in Iowa

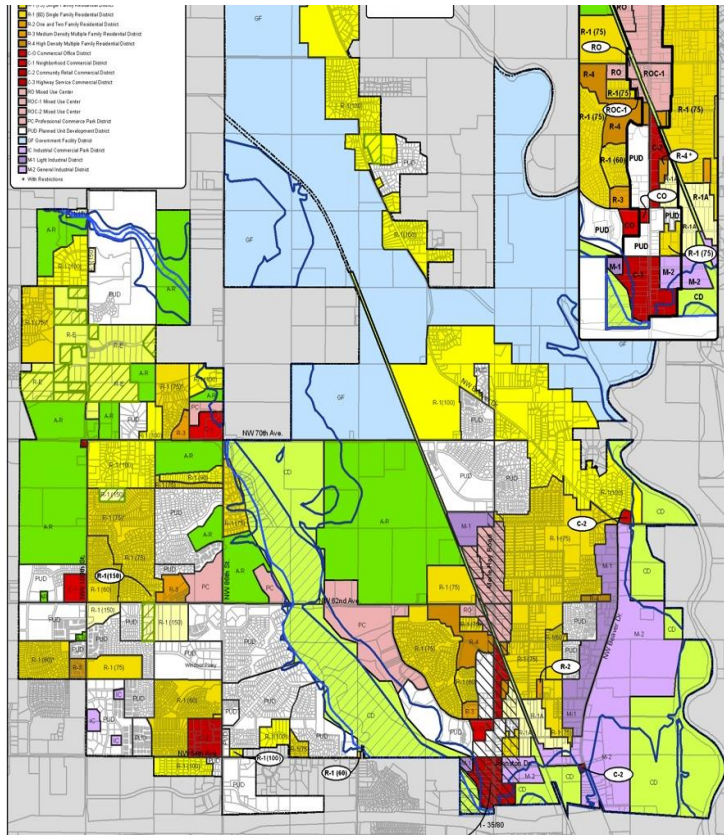
- Authorized by state law
 - Cities:
 - Chapter 414, Iowa Code
 - Counties:
 - Chapter 335, Iowa Code
- Nearly identical. Both based on a model act from the 1920s.

What is a zoning ordinance?

- *A local law.* Typical “Euclidian zoning,” which is the nearly universal form of zoning in Iowa, divides the community into zones or districts, and regulates...
 - land uses allowed within those zones,
 - the sizes of lots within those zones,
 - bulk, height, area, and setbacks of buildings,
 - parking, landscaping, accessory structures,
 - and other stuff...

Typical “Euclidian” Zoning: Two parts

Map delineates zones, and the uses allowed in those zones.



Text provides regulations that apply in each zone.

ARTICLE 5 USE CATEGORIES

Sec. 29.500. PURPOSE.

The purpose of this Section is to describe the different classifications of uses found in this Ordinance and to provide a systematic basis for assignment of present and future uses to zones.

Sec. 29.501. CLASSIFICATION OF USES.

(1) **Standards for Classification.** Uses shall be assigned to the category with the description and listing of uses most closely describing the nature of the Principal Use.

(2) **Developments with Multiple Principal Uses.** When all the Principal Uses of a development fall within one Use Category, then the development is assigned to that Use Category. When the Principal Uses of a development fall within different Use Categories, each Principal Use is classified in the applicable category and is subject to the regulations for that category.

(3) **Accessory Uses.** Unless otherwise stated in this Ordinance or otherwise indicated in the Use Tables for each zone:

- (a) Accessory Uses are allowed by right in conjunction with a Principal Use;
 - (b) Accessory Uses are subject to the same regulations as the Principal Use except as otherwise indicated;
 - (c) All uses include parking for residents, customers or employees as an Accessory Use;
 - (d) Examples of common Accessory Uses are listed within the Use Categories;
 - (e) Accessory Uses are incidental and customary to and commonly associated with the operation of the Principal Use;
 - i. Is clearly incidental and customary to and commonly associated with the operation of the Principal Use;
 - ii. Is operated and maintained under the same ownership or by lessees or concessionaires of the owner, and on the same zone lot as the Principal Use;
 - iii. Does not include structures or structural features inconsistent with the Principal Use;
 - iv. Does not include residential occupancy in conjunction with uses other than hotels, motels, tourist homes and similar transient housing accommodations, except by owners and employees employed on the premises and the immediate families of such owners and employees; and
 - v. Has a gross floor area that, in combination with all other uses accessory to Principal Uses located in the same structure or on the same lot, does not exceed 25% of the gross floor area utilized by all Principal Uses. This 25% floor area limitation, however, shall not apply to off-street parking.
- (4) **Uses Included.** The names of uses on the following Tables are generic, and similar uses not listed in the "Uses Included" list may also be included in the Use Category if they are not included in another Use Category. Uses included are based on the common meaning of the terms and not on the name that an owner or operator might give to a use.

Table 29.501(4)-1
RESIDENTIAL USE CATEGORIES

Group Living

Definition. Residential occupancy of a structure by a group of people who do not meet the Household Living definition. Size is larger than the average household size. Average length of stay is 60 days or longer. Structures generally have a common eating area for residents. Residents may receive any combination of care, training, or treatment, or none of these, as long as they also reside at the site.

Uses Included

- Assistant Living Facilities
- Boarding, rooming or lodging houses and single room occupancy (SRO) hotels with more than 6 units
- Congregate housing-

Euclidian zoning

- Basic objectives
 - Separate incompatible land uses
 - Optimize private property values by grouping similar land uses together (residential, commercial) and minimizing the negative impacts where incompatibilities must exist

Criticisms

- Has not kept up with times
 - A hundred years ago, cities were congested and dirty places. The goal was to spread things out and separate noxious uses
 - Today it can act as a barrier to good urban development
 - Raises cost of providing infrastructure (sprawl)
 - Discourages walkability
 - Prohibits or limits many types of housing, raising housing prices
 - Requires major code revisions to allow home-based businesses, mixed use neighborhoods, other ways we want to live and work today.

Other types of zoning codes

- ***Form-based codes*** emphasize built form over land use, focusing on building type, form, and design, and less on land uses (although land use is still a factor).
 - They establish zones based on geographic areas (e.g., urban core, suburban, residential, etc.) that may hold a wide variety of land uses
 - The regulations are applied to the buildings and public spaces to ensure compatible scale and architecture, and pedestrian and vehicular flow
 - Function follows form
 - Requires a very different skill-set to administer

Other types of zoning codes

- ***Unified development codes*** combine zoning and subdivision ordinances into a single ordinance. They integrate the review process and the regulatory standards. Goals are to...
 - streamline the approval process,
 - present the entire development proposal in a single submission to the community,
 - minimize/eliminate possible conflicts between two separate ordinances.

Other types of zoning codes

- ***Performance-based codes*** regulate the location of uses based on performance criteria (generation of noise, pollution, and traffic, and aesthetics and fiscal impact).
 - First employed for industrial uses
 - Difficulty in implementation has hampered adoption

The relationship of the plan to the zoning ordinance

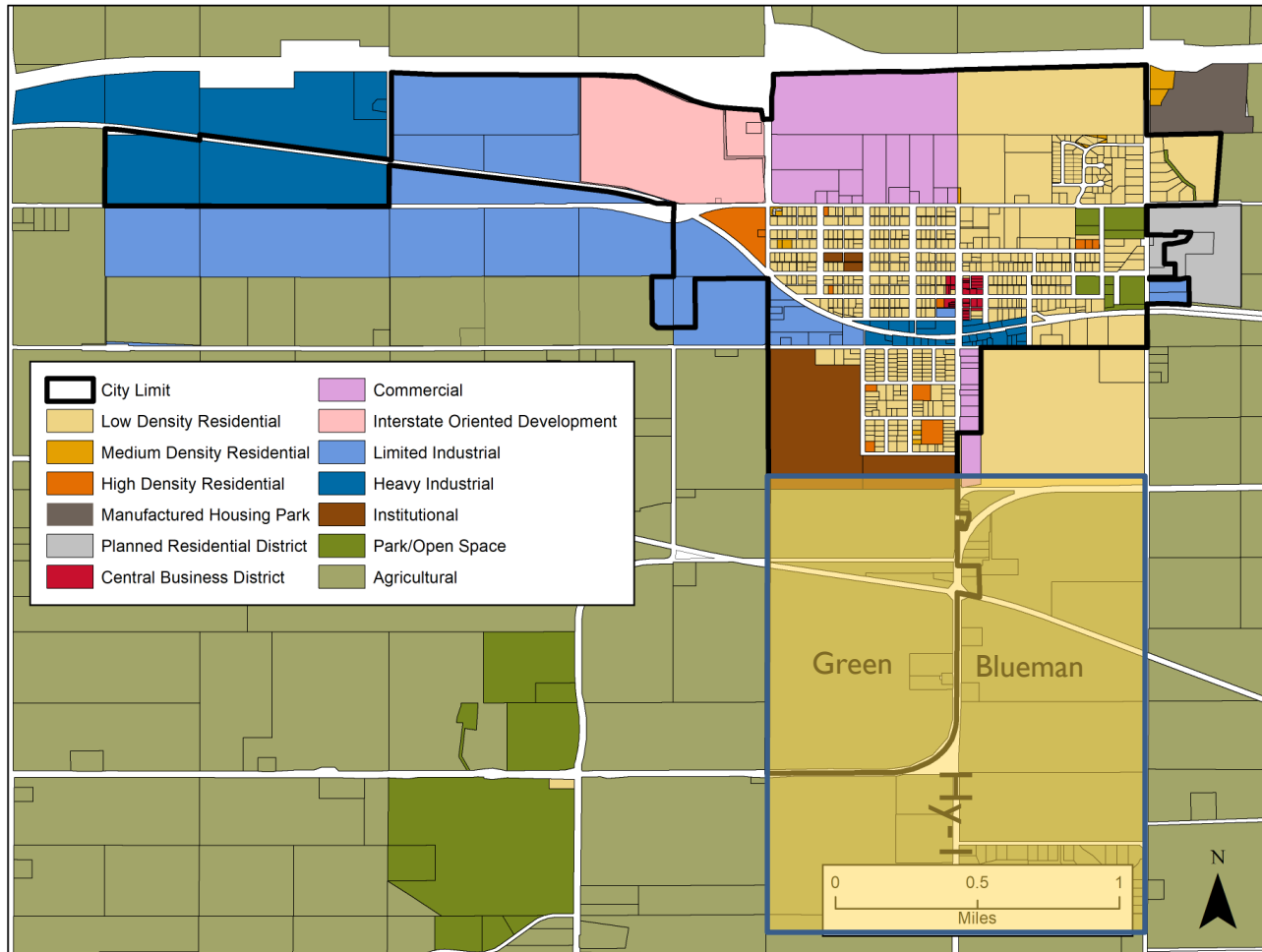
- According to state law, the zoning ordinance and zoning decisions “shall be made in accordance with a comprehensive plan....”
 - Iowa Code § 414.3 (Cities)
 - Iowa Code § 335.5 (Counties)

Scenario 2

Scenario 2

- The city updates its comp plan, designates 160 acres on *both* sides of the highway for future low density residential development.
- Green files a rezoning application to change his land from A1 to R5 (large lot residential)
- Blueman and neighbors sue, arguing:
 - Property is predominantly farmland
 - More housing = lower property values
 - Harms neighborhood character
 - More housing means more traffic ,noise, and hazards
- *What should be the court's primary consideration?*

Future Land Use Map



In accordance with...

- When a community has adopted a separate comprehensive plan, the law “contemplates the zoning ordinance will be designed to promote the goals of that individualized plan.”
 - » Webb v. Giltner (1991)
- Consistency with the comprehensive plan is “a primary consideration” when evaluating the legality of a city’s [or county’s] zoning action.
 - » Norton Trust v. City of Hudson (2009)

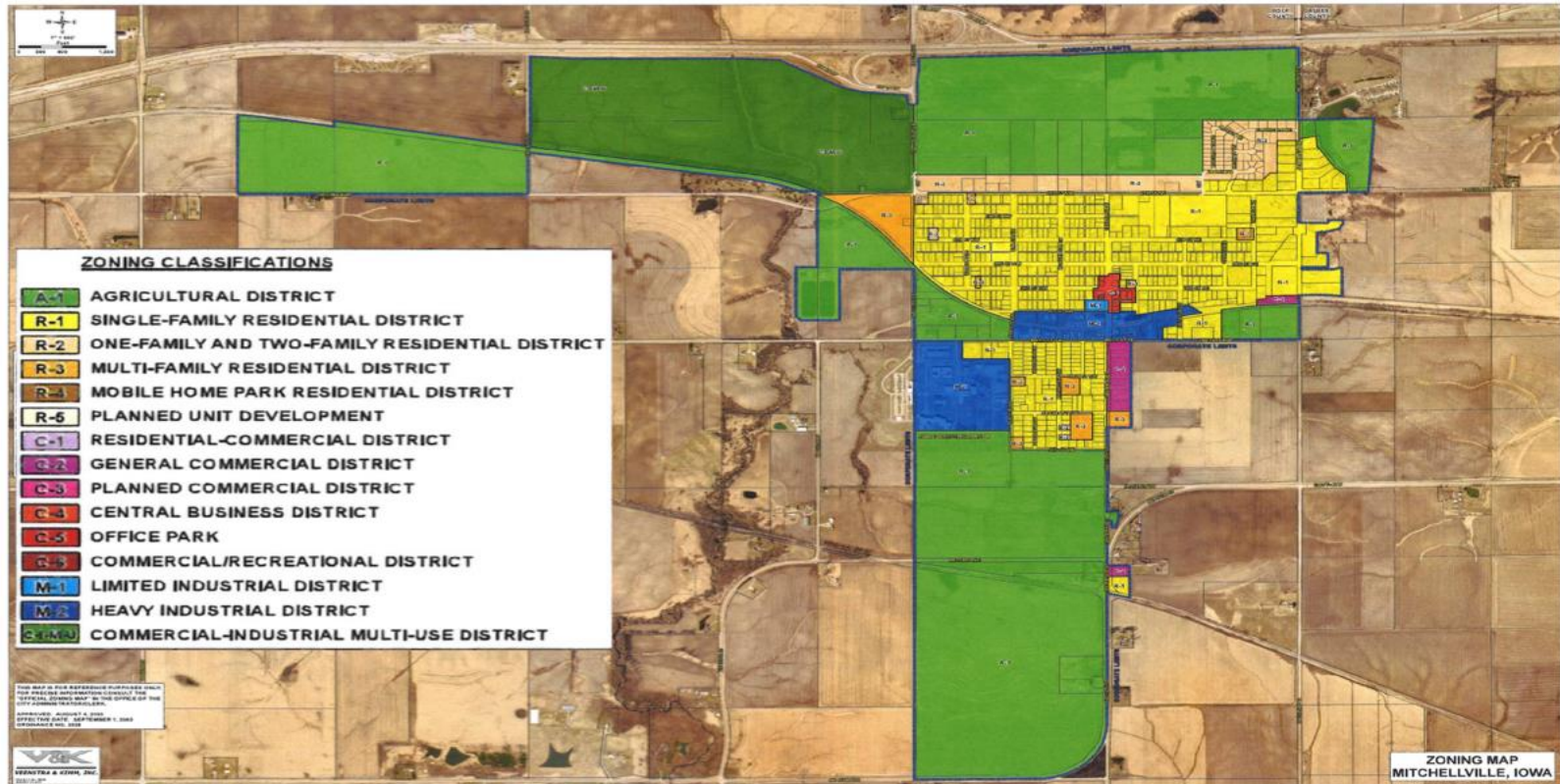
In accordance with...

- There is a strong presumption of the validity of a city ordinance, including any amendments.
- Courts reviewing zoning ordinances should not substitute their judgment as to the propriety of the city's action when the reasonableness of the ordinance or its amendment is *fairly debatable*.
 - » Neuzil v. City of Iowa City (1990)
- A decision is fairly debatable when the reasonableness of the board's action is open to a fair difference of opinion.
 - » Norton Trust v. City of Hudson (2009)

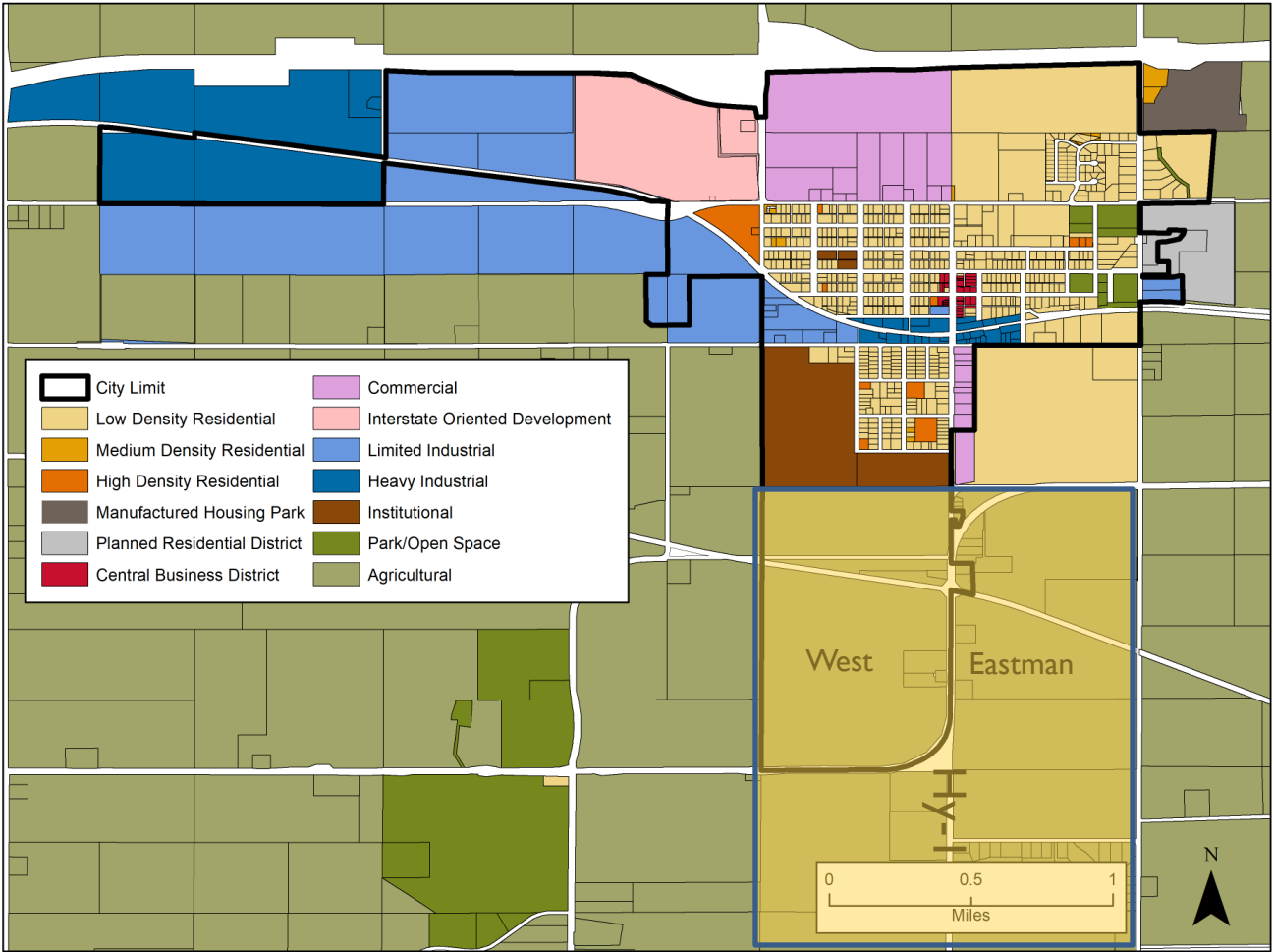
Planning vs. Zoning

- The plan is a *policy statement*.
- The plan directs *future* land use.
- The zoning ordinance is *law*.
- The ordinance regulates land use *today*.

Contrast: Current Zoning Map



Contrast: Future Land Use Map



Zoning Roles

Elected body

- **Elected body (city council/county supervisors)** is ultimately responsible for actions that set overall land use policy for the community
 - Initiating work on comprehensive plan,
 - Adopting and amending zoning ordinance,
 - Text and map
 - Approving major site development plans,
 - Appointing board/commission members.

Conditional Rezoning

- City council/County supervisors may impose reasonable and necessary conditions if agreed to in writing by property owner prior to public hearing of legislative body (conditional rezoning agreements).
 - » Iowa Code § 335.7 (counties)
 - » Iowa Code § 414.5 (cities)

Planning Commission

- **Planning and zoning commission** is an independent advisory body to the elected body. Zoning duties are set out in zoning ordinance.
 - Recommendations to elected body on zoning ordinance adoption and amendments
 - Text
 - Map (rezoning)
 - Recommendations to zoning board of adjustment (if required by ordinance).
 - Directing preparation of comprehensive plan or special studies (on request of elected body)

Zoning Administrator

- **Zoning administrator** administers the zoning regulations
 - Review and approve administrative permits as provided in the zoning ordinance
 - Zoning permits
 - Minor site plans
 - Temporary use permits
 - Intake of applications for development requests (rezonings, variances, SUP, etc.)
 - Technical review, assistance to decision makers

Zoning Board of Adjustment

- Performs a “quasi-judicial” function:
 - Interpret and apply the standards of the ordinance to requests made by landowners.
- The ZBA’s job is narrowly defined by state law.
 - Variances, special exceptions, and appeals.
 - *No role* in rezoning requests.
- The ZBA’s decisions are final at the local level; i.e., only subject to judicial review.

Elected body overruling ZBA?

- The elected body may provide for its review of variances *granted* by the board of adjustment before its effective date and may *remand* a decision to grant a variance back to the board of adjustment *for further study*.
 - » Iowa Code § 335.10 (counties)
 - » Iowa Code § 414.7 (cities)

Zoning Board of Adjustment Actions

Conditional/Special uses

- Each zoning district has a list of permitted uses (“uses by right”). *Conditional uses, special uses, special exceptions* appear in the ordinance as a list of uses that must go through the ZBA for approval.
- The zoning ordinance will list criteria that the landowner must meet for the ZBA to grant the special exception.
 - Usually, 4 or 5 criteria focused on compatibility of the proposed special exception with the neighborhood.

Conditional/Special uses

- **Purpose** is to make sure slightly-out-of-character uses can be made to “fit” with surroundings.
 - Home occupations
 - Cell/wind towers
 - Duplexes
 - Drive-thru businesses
 - Special events
 - Relaxation of dimensional requirements

Variations

- A *variance* if approved by the ZBA, is an authorization to use property in a manner generally *forbidden* by the ordinance.
- A list of “acceptable variations” will not be found in a zoning ordinance.

Types of Variances

- **Dimensional variance** – permits relaxation of height, bulk, setback, and related building requirements.
- **Use Variance** – permits use of land otherwise not allowed in the zoning district.
 - Your ordinance may (should) prohibit ZBA from granting use variances.
 - Why?

Variations

- A *variance* can only be granted if the landowner proves that an *unnecessary hardship* will result if the zoning regulations are enforced.
- The intent of the standard is to prevent the property from being *worthless as zoned*.

Variiances - Example



Unnecessary hardship means...

1. Land in question cannot yield **reasonable return** if used only for purpose allowed in that zone;
2. Plight of owner is due to **unique circumstances** and not to general conditions in neighborhood;
3. The hardship must not have been **self-created**; and
4. Use to be authorized by variance will not alter **essential character of locality**.
 - Greenawalt v. Davenport ZBA, (1984)

Unnecessary hardship

- The burden is on the landowner/applicant to show all four elements.
- Failure to demonstrate any one of them requires the ZBA to deny the request.
 - Greenawalt v. Davenport ZBA, (1984)
- Note that the unnecessary hardship standard does *not* apply to conditional/special uses. The standards in your ordinance apply.

Rule of thumb

A variance should prevent a hardship,
not grant a special privilege not
available to other landowners faced
with similar situations.

Conditions on variances and conditional/special uses

- ZBA may place conditions on variances and special exceptions, to ensure that the use is compatible with surroundings.
- If it cannot be made compatible, permit should not be granted.
 - (follow ordinance standards)
- Once imposed, conditions can be enforced the same as ordinance provisions.

Appeals

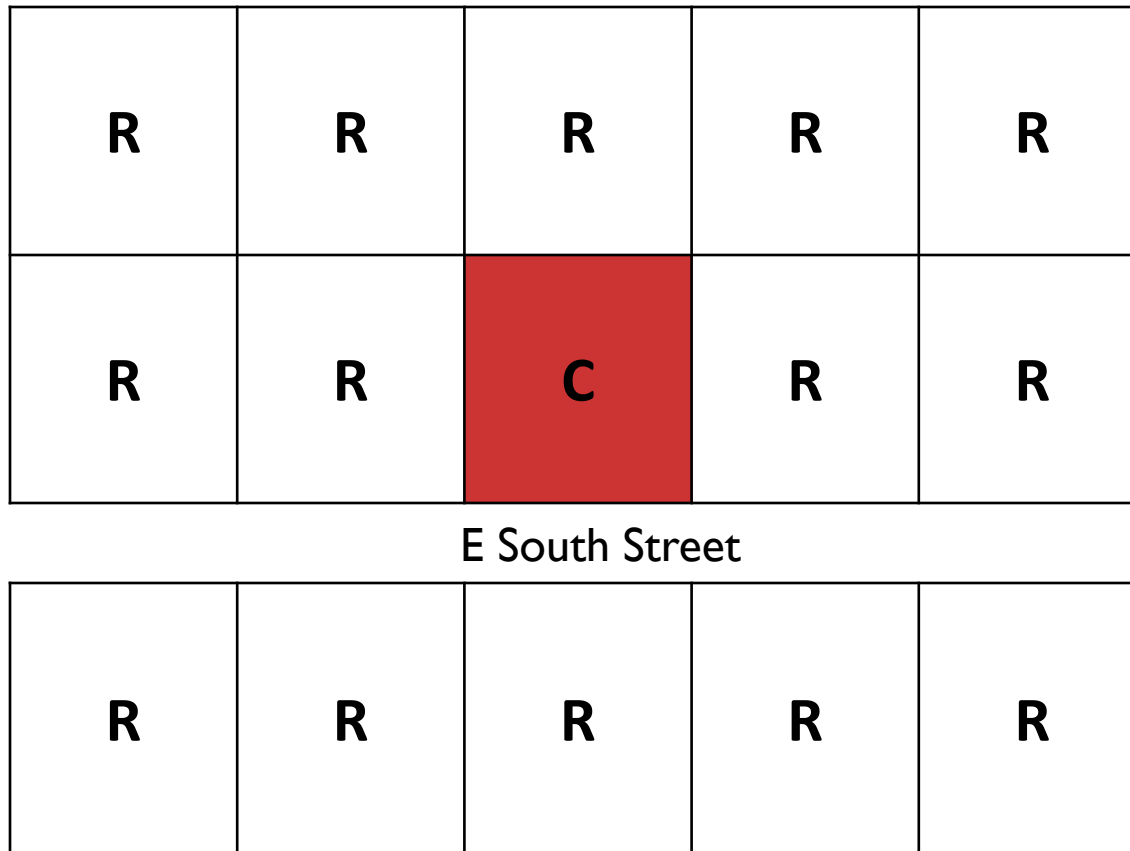
- [The] board may... reverse or affirm, wholly or partly, [the decision] appealed...and to that end shall have all the powers of the officer from whom the appeal is taken.
 - Iowa Code § 414.12
- The party challenging the decision has the burden to show why it was wrong.
- The ZBA should consider a reasonable interpretation by the zoning administrator; however, the ZBA is free to interpret the ordinance differently.

Record of ZBA decisions

- ZBA shall make written findings of fact on all issues presented in any proceeding.
- Detailed minutes, or minutes and a transcript of the hearing have been found to satisfy this requirement.
- The intent is "to enable a reviewing court to determine ...the factual basis and legal principles upon which the board acted."
 - A-Line Iron & Metals v. Cedar Rapids ZBA (2010)

Common Zoning Questions

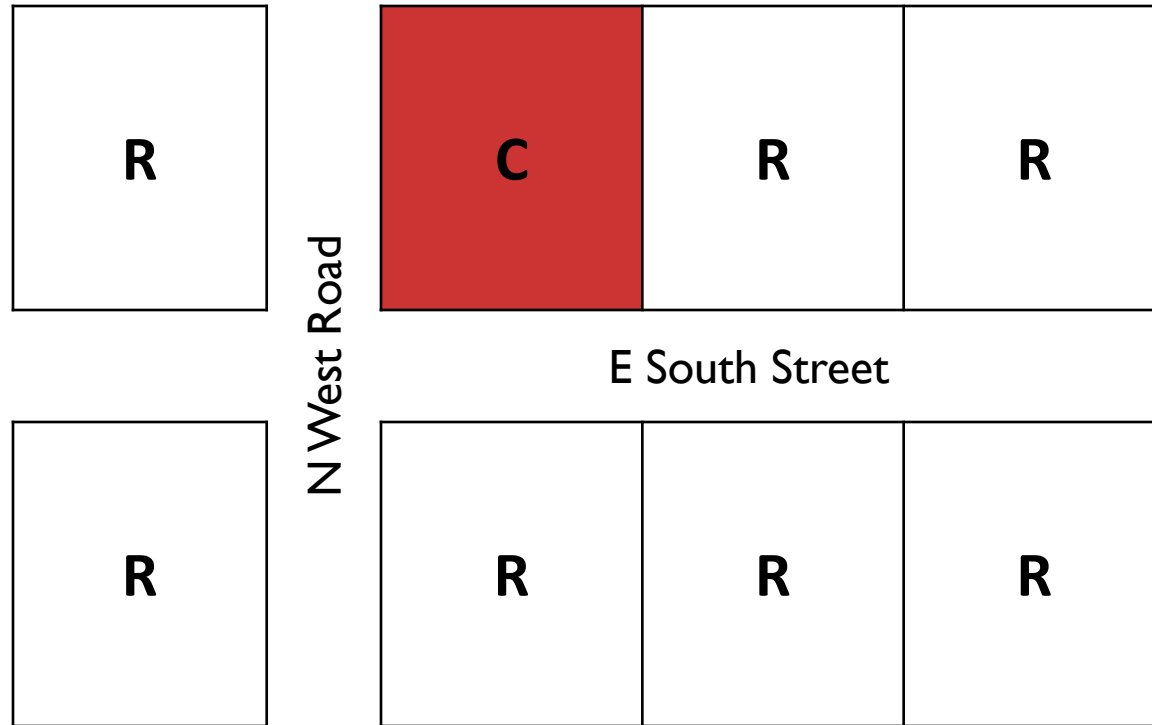
Spot Zoning?



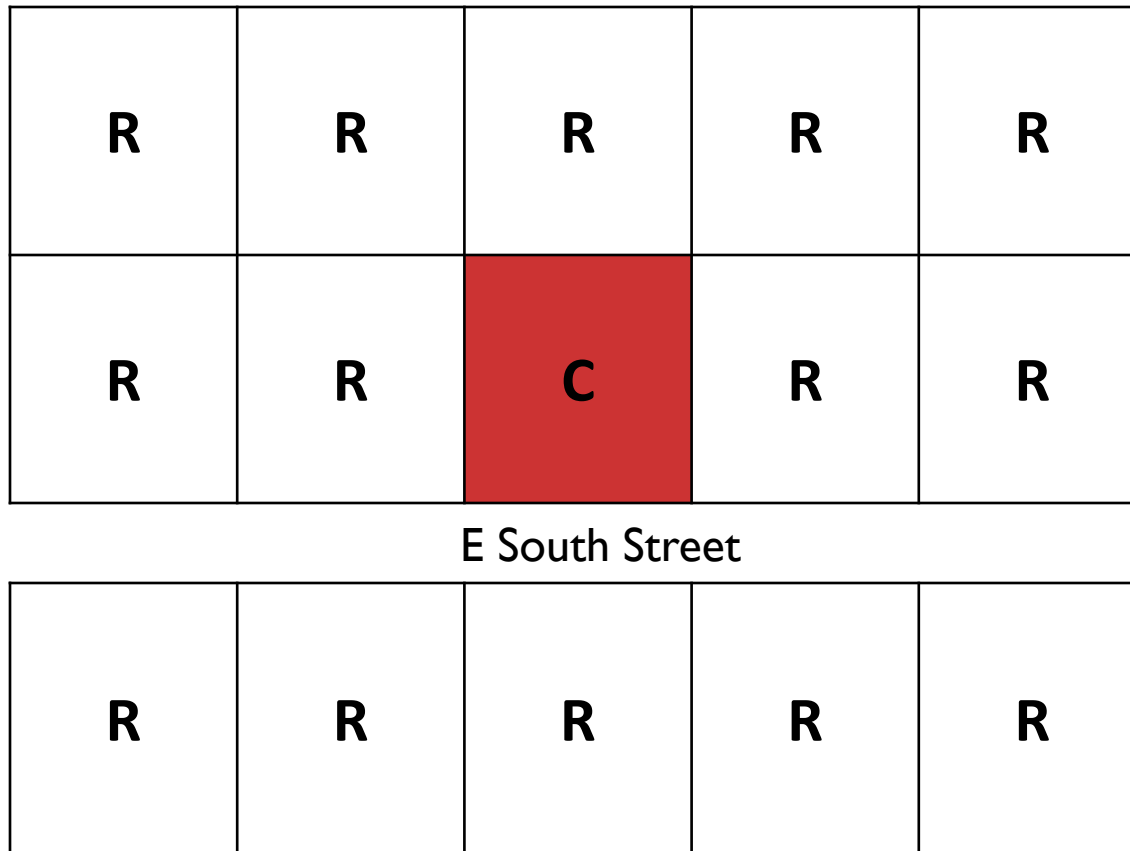
“Illegal” spot zoning

- A small zone of inconsistent use...
- that benefits an individual landowner...
- where the parcel is not particularly adapted, and...
- cannot be supported by a comprehensive plan,
 - either is inconsistent with the plan, or
 - no plan has been adopted by the city.

Spot Zoning?



Spot Zoning?



Nonconforming Uses

Nonconforming uses

- “Uses” that were legal when established, but do not conform to regulations of the current zoning ordinance.
 - Nonconforming uses
 - Nonconforming structures
 - Nonconforming lots
- Zoning ordinances must allow nonconforming uses to continue (cannot force closure, removal) to protect prior investments in property.

Abandonment

A nonconforming use may lose its protection if the use is **abandoned**.

Abandonment implies intent.

“[E]ven under ordinances which dispense with subjective intent there is some room to perpetuate a nonconforming use in situations where the period of discontinuance takes place under circumstances beyond the property owner's control.”

- Smith v. Cedar Rapids ZBA (1990)

Court pronouncements

A nonconforming use may lose its protection if the use of the property is **enlarged** or **extended**.

- The use at the time the ordinance became effective is the standard of comparison.

An **intensification** is permissible so long as the “nature and character of the use is unchanged and substantially the same facilities are used.”

- An increase in business, standing alone, does not constitute an illegal enlargement, but rather a permissible intensification.

» City of Okoboji v. Okoboji Barz (2008)

Destruction rule

- Most ordinances have a 50% (or so) of assessed value destruction rule that permits city/county to prevent redevelopment of the nonconforming use.
- Purpose is to bring properties into conformity with current regulations.
 - The property investments protected by the nonconforming use provisions no longer exist.

Summing up nonconforming uses

"The prohibition against expanding or enlarging a nonconforming use defends against the growth of a pre-existing aggravation. That pre-existing aggravation (the nonconforming use) survives as a matter of grace. The public is not required to expand upon that grace to its increasing aggravation."

» Stan Moore Motors v. Polk County ZBA (1973)

Thank You