

## **ARTICLE 2**

### **THE BASIS OF DECISION-MAKING**

As with other "police powers", the exercise of zoning and subdivision regulations is subject to certain legal limitations. One of the most important of these limitations requires that zoning and subdivision regulations cannot be applied in an "arbitrary or capricious" manner. Decisions regarding zoning and subdivision issues cannot be fixed or arrived at through an exercise of will or by caprice without consideration or adjustment with reference to principles, circumstances, or levels of significance.

**Zoning Issues.** Before making any recommendation or decision on a zoning request, the Planning Commission must first hold a public hearing. The purpose of the hearing is to allow both sides to express their views on the issue and to discuss all relevant factors. Although the hearing is a valuable mechanism for gauging the community's attitudes toward development and for establishing the facts of each case, it is important that decisions not be based solely on the opinions of the largest or most vocal group of participants. Instead, zoning decisions must be based on the best interests of the entire community, and not just the interests of a particular property owner or neighboring property owners. In addition, the Planning Commission should try to distinguish between facts and opinions at a public hearing. Unsubstantiated assertions ("This project would reduce the value of my property by 75 percent") or generalizations ("People who live in apartments always drive fast cars and race up and down the streets") should be analyzed for their validity. Even "expert witnesses" should be pressed to give as factual a basis as possible for their judgments.

Second, zoning decisions should include consideration of long-range community goals as well as short-range needs. The recommendations of the Comprehensive Plan should be the primary source for this information. Because of its importance in the zoning process, the Comprehensive Plan should be reviewed by the De Soto Planning Commission on a regular basis and amended as necessary to ensure that it remains current.

Third, it is important to zone based on land use issues, not the issues affecting the individual applicant. An error frequently made is approval of a rezoning to accommodate an applicant's personal circumstances without consideration of land use conditions and characteristics. Such rezonings are rarely in the public interest and, if challenged, can be held to be invalid. Instead, decisions should be based on whether the land is appropriate for the proposed zoning district. Appropriate factors for consideration of a rezoning application include:

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1. The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space;
2. Compatibility of the proposed zoning and uses permitted therein with the zoning and uses of nearby properties;
3. The suitability of the subject property for the uses to which it has been restricted under its existing zoning;
4. The length of time property has remained vacant as zoned;
5. The extent to which there is a need in the community for the uses allowed in the proposed zoning;
6. The availability and adequacy of required utilities and services to serve the uses allowed in the zoning;
7. The extent to which the uses allowed in the proposed zoning would adversely affect the capacity or safety of that portion of the road network influenced by the use, or present parking problems in the vicinity of the property;
8. The environmental impacts that the uses allowed in the proposed zoning would create (if any);
9. The economic impact on the community from the uses allowed in the proposed zoning;
10. The extent to which the zoning amendment may detrimentally affect nearby property;
11. The relative gain (if any) to the public health, safety, and welfare from denial of the rezoning application as compared to the hardship imposed upon the rezoning applicant from such denial;
12. Consistency with the Comprehensive Plan, Utilities and Facilities Plans, Capital Improvement Plan, Area Plan, ordinances, policies, and applicable City Code of the City of De Soto; and
13. The recommendation of professional staff.

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It should also be pointed out that the entire class of uses which the zoning district allows should be considered rather than just the use the applicant proposes, since a change in ownership or in market conditions could easily result in a change of the proposed use.

The granting of a special use permit requires a case-by-case approach. The zoning ordinance sets forth conditions which must be met before a special use may be granted. The district regulations also may establish additional conditions. The recommendation to grant a special use permit should be made to the City Council only after the Planning Commission has found all the standards as set forth in the zoning regulations have been met.

The granting of a short term special use is provided in the regulations for temporary uses such as trade shows, street fairs, and other specified public events. Applications for temporary permits under this section may be submitted to the City Council by the City Clerk without referral to the Planning Commission under certain circumstances.

**Appeals and Variances:** The Board of Zoning Appeals has the important task of interpreting the Zoning Ordinance in situations where the language of the ordinance is alleged to be ambiguous, the specifics of the case are unusual enough to warrant special consideration, or an appeal is made. Thus, the decisions made by the Board of Zoning Appeals must be carefully thought out and clearly stated in order to safeguard the integrity and purpose of the zoning ordinance.

In deciding an appeal, the Board of Zoning Appeals must interpret sections of the zoning ordinance, as well as preserve the intent and consistency of the regulations. The specifics of the applicant's situation are largely irrelevant, since the ruling of the Board of Zoning Appeals will affect not only the case at hand, but will also set precedent, and so will affect each subsequent use of that section of the zoning ordinance.

The granting of a variance requires a very careful examination of the applicant's situation. Although the Board of Zoning Appeals should be careful to avoid setting any unintentional precedents, the variance process requires a case-by-case approach. Before a variance can be granted, facts must be presented supporting the standards set forth in the De Soto zoning ordinance. These conditions require the existence of practical difficulties or unnecessary hardship, and that any variance granted be consistent with the intent of the regulations, the general welfare of the community, and the rights of adjacent property owners.

In each of the duties described above, it is important to point out that it is not the role of the Board of Zoning Appeals or Planning Commission to change or weaken the intent of the zoning ordinance. If the ordinance needs changing, an amendment should be passed by the Governing Body after the Planning Commission's review and recommendation.

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**Subdivision Plats.** The decision to approve or disapprove a preliminary or final plat should be based on technical standards that can be set out in written form. Standards for subdivision design are included in the subdivision regulations. Standards for engineering design and construction should be available from the City Engineer. There are other elements of "good subdivision design", however, that are not easily quantified or expressed in writing. These include aesthetics, compatibility with adjoining subdivisions, relationship to topographic conditions, efficiency of the utility layout, and general suitability of the lot and block design to the intended use of the land. These issues will have to be resolved in the best judgment of the Planning Commission after consideration of the plans for the subdivider.

In reviewing a subdivision plat, there are two distinct sets of interests to be considered: the interests of the property owner or owners and the City-at-large. Initially the subdivider is the property owner, but eventually lots in the subdivision are likely to be sold to a variety of people. The property owner(s) needs a subdivision design that can be developed easily and economically. This means an efficient street and utility layout, and lots which have the appropriate size, shape and topography to develop and maintain for their intended use. The broader community needs a subdivision design that blends well with the development pattern of the City, and that will not be a financial drain on local government. This means that the subdivider must adhere to appropriate standards for design and construction, and give adequate financial guarantees to ensure that all public improvements are installed.

**Development Approval in De Soto.** Zoning regulations in De Soto require that plans for developments, other than single-family and two-family dwellings, be reviewed by the Planning Commission before building permits can be issued. Two stages of review are normally involved, preliminary and final. The preliminary plan is a detailed depiction of the entire project and its relationship to adjoining property. Elements that must be included are depicted on the following pages.

Upon approval of the preliminary plans, the final plans may be prepared and submitted to the Planning Commission for approval. Simultaneous submittal of preliminary and final plans is allowed at the discretion of the City. It is the intent of the zoning process that final plans be essentially the working or contract drawings that will be used by the contractor in building the project.