

Zoning and Site Plan Issues in 2024

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Methods of Regulation by Localities in Iowa

Basics

- Comprehensive Plan and Zoning Regulations
- Subdivision
- Site Plan

The Important Authorities

Who is involved?

- Municipal Staff - Usually planning departments and engineers
- Plan and Zoning Commissions - A recommending body
- Neighbors and Neighborhood Associations
- City Councils and County Board of Supervisors
- Zoning Board of Adjustments

Comprehensive Plan and Zoning Regulations

Iowa Code Sections 414.3 (Cities) and 335.5 (Counties)

Comprehensive Plan 414.3 Regulations and comprehensive plan — considerations and objectives — notice, adoption, distribution.

1. The regulations shall be made in accordance with a comprehensive plan and designed to preserve the availability of agricultural land; to consider the protection of soil from wind and water erosion; to encourage efficient urban development patterns; to lessen congestion in the street; to secure safety from fire, flood, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to promote the conservation of energy resources; to promote reasonable access to solar energy; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. However, provisions of this section relating to the objectives of energy conservation and access to solar energy do not void any zoning regulation existing on July 1, 1981, or require zoning in a city that did not have zoning prior to July 1, 1981.
2. The regulations shall be made with reasonable consideration, among other things, as to the character of the area of the district and the peculiar suitability of such area for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.
3. The regulations and comprehensive plan shall be made with consideration of the smart planning principles under section 18B.1 and may include the information specified in section 18B.2, subsection 2.
4.
 - a. A comprehensive plan recommended for adoption by the zoning commission established under section 414.6, may be adopted by the council. The council may amend the proposed comprehensive plan prior to adoption. The council shall publish notice of the meeting at which the comprehensive plan will be considered for adoption. The notice shall be published as provided in section 362.3.
 - b. Following its adoption, copies of the comprehensive plan shall be sent or made available to the county in which the city is located, neighboring counties and cities, the council of governments or regional planning commission where the city is located, and public libraries within the city.
 - c. Following its adoption, a comprehensive plan may be amended by the council at any time.

335.5 Regulations and comprehensive plan — considerations and objectives — notice, adoption, distribution.

1. The regulations shall be made in accordance with a comprehensive plan and designed to preserve the availability of agricultural land; to consider the protection of soil from wind and water erosion; to encourage efficient urban development patterns; to lessen congestion in the street or highway; to secure safety from fire, flood, panic, and other dangers; to protect health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to promote the conservation of energy resources; to promote reasonable access to solar energy; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. However, provisions of this section relating to the objectives of energy conservation and access to solar energy shall not be construed as voiding any zoning regulation existing on July 1, 1981, or to require zoning in a county that did not have zoning prior to July 1, 1981.
2. The regulations shall be made with reasonable consideration, among other things, as to the character of the area of the district and the peculiar suitability of such area for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such county.
3. The regulations and comprehensive plan shall be made with consideration of the smart planning principles under section 18B.1 and may include the information specified in section 18B.2, subsection 2.
4. a. A comprehensive plan recommended for adoption or amendment by the zoning commission established under section 335.8 may be adopted by the board of supervisors. The board of supervisors shall not hold a public hearing or take action on the recommendation until it has received the zoning commission's final report containing the recommendation.
b. Before taking action on the recommendation, the board of supervisors shall hold a public hearing at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of the hearing shall be published as provided in section 331.305.
c. The board of supervisors may amend a proposed comprehensive plan or amendment prior to adoption. The board of supervisors shall publish notice of the meeting at which the comprehensive plan or amendment will be considered for adoption. The notice shall be published as provided in section 331.305.
d. Following its adoption, copies of the comprehensive plan or amended plan shall be sent or made available to neighboring counties, cities within the county, the council of governments or regional planning commission where the county is located, and public libraries within the county.

Subdivision Regulations

- Chapter 354 - Platting and Subdivision of Land
- Section 354.8 requires it to be reviewed by governing bodies.
- Also subdivisions of land within two (2) miles of a city that has a zoning ordinance require city approval. Section 354.9

Plan & Zoning Commission

335.8 Commission appointed — powers and duties.

1. In order to avail itself of the powers conferred by this chapter, the board of supervisors shall appoint a commission consisting of eligible electors, as defined in section 39.3, who reside within the county, but outside the corporate limits of any city, to be known as the county zoning commission. The commission may recommend the boundaries of the various districts and appropriate regulations and restrictions to be enforced in the districts. The commission shall, with due diligence, prepare a preliminary report and hold public hearings on the preliminary report before submitting the commission's final report. The board of supervisors shall not hold its public hearings or take action until it has received the final report of the commission. After the adoption of the regulations, restrictions, and boundaries of districts, the zoning commission may, from time to time, recommend to the board of supervisors amendments, supplements, changes, or modifications. The commission's report and any recommendations may include a proposed ordinance or amendments to an ordinance.

2. The zoning commission may recommend to the board of supervisors for adoption a comprehensive plan pursuant to section 335.5, or amendments thereto.

3. The zoning commission, with the approval of the board of supervisors, may contract with professional consultants, regional planning commissions, the economic development authority, or the federal government, for local planning assistance.

Note: The City provision found at Section 414.6 is the same except there is no sub-section (3). However, Planning and Zoning Commissions of the city do hire professional consultants. This would be an example of Home Rule Authority in Iowa.

Home Rule in Iowa

The home rule amendments of the Iowa Constitution give cities and counties authority to determine their own local affairs and government in a manner which is not inconsistent with state statute, except that home rule power and authority does not extend to the authority to levy a tax without the express authorization of the General Assembly.

See Homebuilders Ass'n of Greater Des Moines v. City of West Des Moines, N.W.2d 339 (Iowa 2002)(Finding no legislative authority for cities to impose an excise tax on developers or builders for creating parks).

County Home Rule

The county home rule amendment, the thirty-seventh amendment to the Iowa Constitution, reads as follows:

Counties home rule. Sec. 39A. Counties or joint county-municipal corporation governments are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the general assembly. The general assembly may provide for the creation and dissolution of joint county-municipal corporation governments. The general assembly may provide for the establishment of charters in county or joint-municipal corporation governments.

If the power or authority of a county conflicts with the power and authority of a municipal corporation, the power and authority exercised by a municipal corporation shall prevail within its jurisdiction.

The proposition or rule of law that a county or joint county-municipal corporation government possesses and can exercise only those powers granted in express words is not a part of the law of this state.

City Home Rule

The city home rule amendment, the twenty- fifth amendment to the Iowa Constitution, reads as follows:

Municipal home rule. Sec. 38A. Municipal corporations are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the general assembly.

The rule or proposition of law that a municipal corporation possesses and can exercise only those powers granted in express words is not a part of the law of this state.

The Board of Adjustment

- The Zoning Board of Adjustment is also created by the Iowa Code. Iowa Code Section 414.7 (Cities) and Iowa Code Section 335.10 (Counties).
- It is the judiciary branch of city and county zoning law.
- Members are appointed by the City Council or Board of Supervisors on staggered terms.
- Are quasi-judicial in nature so cannot be lobbied.

Judiciary Nature of the Board of Adjustment

In case law

- Cannot lobby board of adjustment members. Rodine v. Zoning Bd. of Adjustment, 434 N.W.2d 124, 126 (Iowa Ct.App. 1988).
- City councils may not invade the power of the Board of Adjustment. Holland v. City Council of Decorah, 622 N.W.2d 681, 685 (Iowa 2003) (Invalidating city council ordinance authorization of placing fill in a floodplain area and determining it was a special exception).
- Where a legislative body establishes standards in advance, the application of those standards to a specific situation is an administrative or quasi-judicial act. The application cannot be handled by the legislative body that created the standard without danger of contravening the separation of powers doctrine. When the Iowa legislature mandated a board of adjustment, whose members are appointed for long terms on a staggered basis, and provided for appeal directly to the courts, it eliminated the objection. Thus the constitutional issue does not arise. Depue v. City of Clinton, 160 N.W.2d 860, 862 (Iowa 1968)

Board of Adjustment Authority

The Judiciary of the Zoning

- Appeals
- Special Exceptions.
- Variances.

Appeals to the Board of Adjustment

- Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the city or county by any decision of the administrative officer. Iowa Code Section 335.13 and Iowa Code Section 414.10.
- Appeal is just whether the official is correct or incorrect. The Board acts as fact-finder and determiner of such questions.
- Can be use in conjunction with an application for Special Exception or Variance Request.

Traditional Powers of the Board of Adjustment

- Special Exception, Conditional Use, Special Use Powers are determined by the Zoning Board of Adjustment. Iowa Code Section 414.7(1) for Cities and Iowa Code Section 335.10 for Counties.
- Variances also authorized but they have a high standard of proof. If an applicant for a variance does not make the required unnecessary hardship showing, granting a variance is an illegal act by the board. *Earley v. Bd. of Adjustment of Cerro Gordo County*, 955 N.W.2d 812, 817 (Iowa 2021).

Findings of Fact - Zoning Board of Adjustment

- In 1979, the Iowa Supreme Court promulgated the requirement that “boards of adjustment shall make written findings of fact on all issues presented in any adjudicatory proceeding.” Citizens Against Lewis & Clark (Mowery) Landfill v. Pottawattamie County Bd. of Adjustment, 277 N.W.2d 921, 925 (Iowa 1979).
- The court later clarified that substantial compliance with the written-findings requirement will suffice and strict compliance is not required. Bontrager Auto Serv., Inc. v. Iowa City Bd. of Adjustment, 748 N.W.2d 483, 488 (Iowa 2008).

Zoning Board of Adjustment - Record

- The fact finding issues of the trial court on Board of Adjustment appeals have been altered by Iowa Supreme Court in Bontrager Auto Serv., Inc. v. Iowa City Bd. of Adjustment, 748 N.W.2d 483, 488 (Iowa 2008).
- The district courts accept the Board of Adjustment findings of fact now if supported by substantial evidence.

Tension Between Board of Adjustments and City Councils

An ongoing saga

- Tension has existed since the 1960's between city councils and zoning board of adjustments.
- City council may provide for review of Variances granted under Section 414.7(2). The Board is not obligated to change its opinion. City councils have no right to request decisions on conditional uses be reviewed.

Site Plan Review

- Traditionally, site plans did not require much involvement by lawyers.
- Usually Site Plans were handled by engineers and land surveyors.
- Now site plan has become a further method of government control and to enforce policies rather than ordinance.
- And potentially a chance to regulate and prevent uses deemed undesirable to a neighborhood.

Site Plans Popular In Regulation

- Site plan review is at the legislative level with planning and zoning commission and city council review.
- No findings of fact required.
- City councils are not required by law to give any reasons for denial unless the local ordinance says so.

Kading v. City of Indianola

Iowa Court of Appeals March 30, 2022

- Site plan approval of a multi family workforce housing development.
- City Council took over an hour of comment from neighbors who objected to the development.
- City Council then without discussion or asking a question of any speaker, denied the site plan.
- The Indianola ordinance provided that if the Council denied the site plan, it “will” give reasoning to the Developer for the denial.
- Deemed as harmless error by the Court of Appeals.

Des Moines Site Plan Ordinance

- <https://online.encodeplus.com/regs/desmoines-ia/doc-viewer.aspx#secid-141>
- Des Moines used to be administrative or staff alone approval.
- Illustrative of the efforts now being put in at the site plan level to regulate and or enforce design standards.
- Items are not labeled to be requirements but instead are design principles which keep control of “waivers” out of the zoning board of adjustment.

Type 1 - Site Plan Approval

- Type 1 site plan issues are now waived by staff.
- These relate to building styles as well as landscaping.
- Very advantageous to get items considered Type 1 if can as that saves going to the Planning and Zoning Commission or City Council.

Type 2 Waivers

- Certain waivers that are not Type 1 are deemed Type 2 waivers and can only be granted by the Planning and Zoning Commission or if necessary the city council.
- No supermajority requirement for matters denied by the Planning and Zoning Commission to go to the Council. So it only takes a majority vote.

Conclusion

- Bontrager record requirements make Board of Adjustment litigation more difficult. Particularly if developers are not represented by legal counsel at the Board of Adjustment proceeding.
- Site Plan seems to be the battleground for developers in the future and best to win these efforts at the City Council if possible.