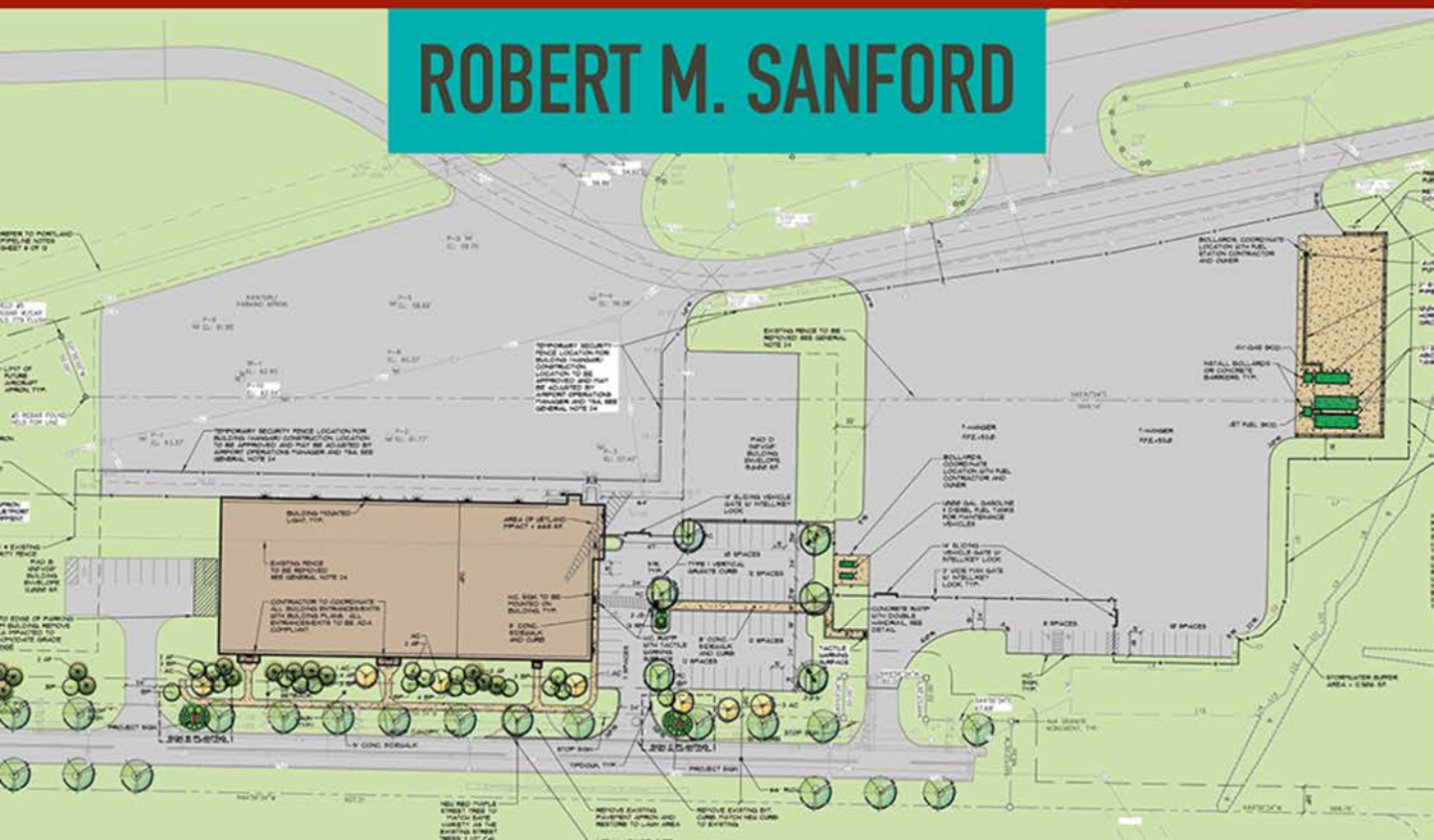




ENVIRONMENTAL SITE PLANS AND DEVELOPMENT REVIEW

ROBERT M. SANFORD



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The most effective way to participate in land stewardship and environmental management is to get involved in the review of proposed developments. In smaller communities, this review is primarily done by a planning board or commission made up of volunteer members, guided by professionals in certain aspects such as traffic, historic preservation, civil engineering, water supply, and wastewater disposal. In larger communities, professional planning staff, with the assistance of municipal engineers, conducts the review, which will then be presented to the planning commission. In either case, everyone—officials, volunteers, reviewers, consultants, neighbors, and the public in general—needs to know what is being proposed. The site plan itself is the primary tool for understanding the proposal.

Environmental review is not an easy task, even for consultants and professional planners. There is a need for a general guide that presents the design, infrastructure, and environmental issues to address, what a reviewer needs to know about these issues, and how to interpret them. The book points the reader to accessible, low-cost resources to aid in the review process. In these times of climate change, rising populations, energy challenges, and economic turmoil, there is a real need for development to occur in as efficient and environmentally responsible a manner as possible. Citizen review is a critical step in the approval, alteration, or denial of site plans for land subdivision and new development. Hence, informed participants in the review processes are more important than ever.

This book is designed to assist professional archaeologists, environmental consultants, and others interested in construction, development, and other physical land alteration that must go before some sort of review board. The book is also suitable for college undergraduates and graduate students in fields that bring them into environmental development of sites. And it is useful for neighbors and other members of the public who want to understand proposed land development in their neighborhood.

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Robert M. Sanford

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INTRODUCTION

Growth and change are two hallmarks of America's cities, suburbs, and rural landscapes. In 1990, there were 248 million Americans. As of 2016, there are 324 million of us. It is like adding a large city every year. The U.S. Census Bureau has projected that by 2050, the nation's population will exceed 420 million. Thus, over the next 40 years, local governments will have to make many decisions about where new houses, stores, factories, schools, and offices should be located, and how they will be serviced by roads, mass transit, sewer and water facilities, and police and fire protection. Developers and landowners will propose projects that subdivide land parcels into smaller lots for eventual sale and will submit plans to develop land for commercial, residential, and industrial uses. Some of these proposals will be aimed at redeveloping urban areas; other proposals will seek to develop "greenfield sites" in the suburbs or countryside.

Local governments—cities, counties, villages, or townships—are usually required by law to review site plans that show proposed subdivisions (the creation of two or more lots) and land development plans to construct buildings. The reasons are simple:

1. To protect the public health, safety, and welfare according to the Tenth Amendment to the United States Constitution. That is, new lots created by subdivision and existing lots should be able to support new buildings with minimal risk of natural hazards;
2. To require certain infrastructure (such as sewer, water, streets, sidewalks) of all developers according to the equal protection clause of the 14th Amendment;
3. To create a system for the legal creation and sale of lots; and
4. To help implement the goals and objectives of the local government's comprehensive plan—the blueprint for growth and development.

Recently, the concept of sustainability has enjoyed widespread popularity. Sustainability implies the stewardship of land and community resources so future residents can enjoy a quality of life at least as good as that enjoyed by current residents. Sustainability has three related components: economic, environmental, and social sustainability. Sustainability is best thought of as a direction to move toward rather than a goal to reach. Thus, the subdivision of land and the development of land into houses, stores, factories, and offices should occur in such a way as to minimize impacts on the environment—especially on air, water, and wildlife habitats—to create well-paying jobs over the long-term, and to promote a mix of land uses and residents of differing incomes. All too often, the review of subdivisions and land development plans has been done with an eye toward how much property tax revenue (or sales tax revenue in the West) a development will

2 Introduction

generate. This is short-sighted and will result in traffic problems, such as congestion along highways with strip commercial outlets, as well as separating wealthy landowners from less wealthy residents.

Keep in mind that the review process is primarily meant to help the landowner or developer come up with an acceptable subdivision or land development plan. Another purpose of the review process is to weed out development proposals that would jeopardize community identity, create large public service costs, or cause heavy pollution loadings. Often, however, some local governments use the review process as a way to delay making a final decision about a particular development. A local government may ask for one or more expensive studies about the traffic impacts, fiscal impacts, or environmental impacts expected from the proposed development. Or they may ask the developer to provide a different design of the development. Such studies or designs may be legitimate, but they mean time and money to a landowner or developer. In some cases, a developer may decide to withdraw a development proposal because of the escalating costs of obtaining an approval.

This book should be a quick reference for environmental consultants, planners, project reviewers, developers, non-profit organizations, students, and the general public about the subdivision and land development process and the information a site plan should contain. This information will help decision makers evaluate the likely outcomes of a proposed development. In particular, the reviewer of a site plan proposal needs to decide whether to approve the proposal unconditionally as presented, to approve the proposal with specific conditions the landowner or developer must meet, or to deny the proposal.

Part I provides the reader with some general information about the subdivision and land development process, where and how development sites get chosen, the content of site plans, and general principles and practices for reviewing site plans.

In Part II, the actual impacts caused by the development projects are examined. What a development does to the land is hard to undo. Native Americans conceived the idea that the changes we make to the landscape generally have consequences for at least seven generations. Planning commission members and planning staff, as well as the developers and designers of projects, have a responsibility to determine the imprint that a generation will leave on the land. When we enter a community with a visual coherence, a balance between structures and open space, smoothly flowing traffic, and a mix of business and housing opportunities, we know that planning is working. The hours spent poring over site plans and traffic studies have produced the desired results.

The people reviewing proposed projects have to be able to envision the potential impacts in order to make accurate and appropriate decisions. Part II provides a summary of major types of impacts as well as sources for more information. The goal is to enable reviewers to obtain enough detailed information on the likely impacts of a proposed development to prevent unwanted consequences and mitigate through conditions and other techniques those impacts that can be reduced. Part III concludes with advice for maximizing the effectiveness of site plan and development review.

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A site plan is typically drawn by a professional land use planner, landscape architect, or civil engineer and depicts the general layout of a subdivision (the splitting of land into two or more lots) or a development project on a single tract of land, including the proposed lots, building footprints, road access, streets, sewer and water facilities, drainage, and lighting. Depending on the complexity of the project and the requirements of the review board, the site plan may be one page or more of drawings with detailed information on topography, soils, vegetation, and waterways.

We explain the information a site plan should contain and how to evaluate the likely outcomes of the proposed development. Developers should know what information they need to provide in order to receive approval for their development proposals. The general public, citizens' groups, and non-profit organizations should recognize a good or not-so-good development proposal as they offer comments on the proposal or as they attempt to intervene in support or opposition. A planner or planning commission reviewing a site plan proposal needs to have the right information in order to make a reasonable decision about whether to approve the development proposal unconditionally, to approve it with conditions, or to deny it.

The review of development is done by city, county, village, or township governments through professional planners, appointed planning commissions, zoning boards, design review boards, and in some cases, environmental commissions. In some states, such as Florida and Vermont, development review is done at the local level and also at the state level for large developments of regional impact. At the local government level, elected officials often make the legally binding decisions about whether to approve, modify and approve, or reject proposed subdivisions and development plans. But the elected officials rely on the advice and reviews conducted by the commissions and board to help make their decisions. The site plans are the principle documentation of the intended changes to the land used in making these decisions.

A newly appointed planning commission member quickly finds out that he or she has to anticipate a variety of impacts, ranging from water quality to archeological resources to educational services. Commission members must distill large amounts of information, much of it complex and technical, in a short amount of time and arrive at decisions on proposed development projects. Their decisions must meet appropriate legal and regulatory planning standards. A failure on the part of a planning commission or its staff to fully evaluate a site plan and anticipate environmental impacts can result in haphazard development, which causes awkward land use patterns and traffic congestion (too many curb cuts along major roads), pollutes water supplies (excessive stormwater runoff and soil erosion), and is ultimately costly to the community. In addition, site plan reviewers must keep in mind the potential impact of a development proposal on surrounding land uses.

In short, the review of subdivision proposals and land development plans involves careful thought, good judgment, communication skills, and a basic knowledge of planning. These reviews are a critical step for a community to move toward greater sustainability and a better quality of life.

Robert M. Sanford
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PART I

An Overview of the Subdivision and Land Development Process



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1

THE REVIEW OF SUBDIVISION AND LAND DEVELOPMENT PLANS

Why and How

Landowners and developers, planning commission members, planners, non-profit groups, and the general public need to understand the land subdivision and land development process, and the changes it can bring to a community. Landowners and developers need to know what information to provide and in what sequence as they seek approval for their development proposals. A land development plan or site plan must contain specific information for reviewers to evaluate the likely outcomes of the proposed development. A planner or planning commission needs to have sufficient information from which to make a reasonable decision about whether to approve a development proposal unconditionally, to approve it with conditions, or to deny it. The general public, citizens groups, and non-profit organizations should know how to read development plans and understand the review process before offering comments in favor or against a proposed development project.

What Are Subdivision and Land Development?

Subdivision is the dividing of land into smaller pieces called *lots*. A subdivision can divide bare land into two or more lots for future sale and development. Or, a subdivision could involve dividing a parcel of land with buildings on it into lots with buildings. Or, a parcel with buildings could be subdivided into lots with buildings and lots without buildings. *Land development* is the construction of buildings on individual lots and providing infrastructure (especially streets, sewage disposal, and a water supply) for each lot. The subdivision and sale of several lots and the construction of new houses or commercial buildings can change a neighborhood's appearance, traffic patterns, school enrollments, sewer and water facilities, natural resources, property values, and property or sales tax base.

Subdivision and land development regulations describe the information that a landowner or developer must provide before the local government allows the division of land into lots, the sale of those lots for building sites, or construction to occur on those lots. The purposes of the subdivision and land development regulations are to provide adequate public facilities (sewer, water, roads, schools, and police and fire protection services) and to avoid harm to people, property, and the environment. These regulations provide a structured framework to make land use decisions.

The subdivision and land development regulations list standards for specific infrastructure that a landowner or developer must install before any lots can be sold or construction can begin. Subdivision and land development regulations should ensure that the developer properly places new buildings on lots, traffic flow is smooth, and the development is not located in a flood-prone area and has adequate sewer and water facilities, schools, and police and fire protection services.

Reasons to Have a Subdivision and Land Development Ordinance

There are several reasons why a city, county, village, or township should have a subdivision and land development ordinance. First, subdivision and land development regulations provide a legal process for registering land ownership and for selling property. For instance, when a large tract of land is divided into lots and sold, the number of landowners will increase. Registration of these new lots with the county recorder of deeds enables the seller of the lots to create a secure legal title for each lot buyer. Property lines, right-of-way easements, and streets must be accurately shown on a survey map called a *plat*. Each new lot also has a *metes and bounds legal description*, based on a professional survey, describing the dimensions and exact location of the lot (see Table 1.1). This way, the buyer of a lot knows the location, size, and dimensions of the lot as well as the infrastructure available.

Second, the review and approval of a subdivision by the planning commission and elected governing body assures buyers that their building lots meet the minimum standards for all new lots in the community. This means that there will be adequate space for houses or commercial buildings; the lots will not be flooded; the lots will have proper access to a road or street; and there is an easement or right-of-way passing through each lot to bring utilities such as electricity, natural gas, and telephone service.

Third, subdivision and land development regulations provide a consistent set of standards for all developments within the community. The planning commission reviews each subdivision and land development proposal in order to maximize traffic safety; avoid damaging stormwater runoff onto neighboring properties; or even to preserve open space sites with valuable trees, wetlands, or other natural features.

The regulations ensure that subdividers and land developers provide safe, efficient infrastructure to meet the needs of future residents and businesses. Typical infrastructure includes: streets, lights, sidewalks, gutters, water lines, sewers, drainage culverts, and water retention basins. Also, the subdivision regulations can require that new streets connect to streets in an adjoining existing development. Taxpayers can assume that their tax dollars will not be used to reconstruct roads that were not built to established standards. Developers can assume that all other developers in the jurisdiction must meet the same standards and pay similar fees to create lots for sale.

Fourth, subdivision regulations spell out who must pay for the necessary infrastructure. The regulations require the subdivider or land developer to install the infrastructure in a timely fashion or else post a

TABLE 1.1 The contents of a subdivision ordinance

The subdivision and land development ordinance should contain the following elements, though your state enabling legislation may require more or less detail.

- Authorizing statutes, citation, and jurisdiction
 - Statement of goals, priorities, and intent
 - Enforcement and compliance requirements
 - Definitions and terms used
 - Fees and payments, impact fees
 - The preparation of plats and the subdivision process
 - Installing or paying for public improvements
 - Floodplain and National Pollutant Discharge Elimination System permits
 - Lot splits, re-plats, and major and minor subdivisions
 - Conflicting rules—conditions, covenants, and restrictions
 - Dedications and reservations
 - Lot numbering and street naming
 - Site plan preparation and review
-

performance bond to ensure that adequate funds are available to install the infrastructure. These regulations place a major share of the financial burden of the infrastructure on the subdivider, land developer, and the purchasers of the new lots. In the past, many communities did not require the subdivider or land developer to install sidewalks and streets, or pay to extend sewer and water lines, and the local taxpayers had to pick up the entire cost of providing these public facilities.

Fifth, subdivision and land development regulations often require the subdivider to donate land or money for parks, school sites, and roads. These requirements are known as *exactions* and the donation of land is called a *dedication*. Cash payments required of the subdivider or land developer are called *money in lieu of dedication* or *impact fees*.

Sixth, a town subdivision and land development ordinance works together with the zoning ordinance and the community's comprehensive plan to promote orderly and efficient development. The zoning ordinance states the desired density of development in particular zones. The size of each lot in a proposed subdivision must be at least as large as the minimum size lot spelled out in the zoning ordinance for that zoning district. For example, if an R-1 single family residential zoning district requires lots of at least 5,000 square feet, all lots in the subdivision must be at least 5,000 square feet. In addition, the zoning ordinance designates maximum building bulk and lot coverage standards for buildings for each zoning district. For instance, a lot coverage standard might say that buildings can cover no more than 30% of a lot. Developers must meet these standards in the final subdivision design.

The subdivision and land development regulations help to put the comprehensive plan into action, and should support the goals and objectives of the comprehensive plan. For example, the creation of two-acre lots in an area zoned for conservation does not really support the goal of preserving open space and wildlife habitat. But dividing a two-acre parcel into eight quarter-acre lots in an R-1 single family residential zone would help achieve the goal of providing more single-family housing in the community.

The Origins of Subdivision Regulations

The subdivision process began in the 19th century, long before the practice of zoning emerged in America. As cities and towns grew, outlying landowners sold their properties for development to add to the city or town. The local government was expected to acquire the necessary land for streets and utility easements, and provide parks and public facilities. The developers surveyed, mapped, and filed these subdivisions with the county register of deeds, and sold the new lots. Then the developers departed for greener pastures, leaving the town with unpaved streets, substandard sewer projects, no sidewalks, and more than a few lots without access to a street except through an alley.

In 1928, the U.S. Department of Commerce published a Standard City Planning Enabling Act for states to pass in order to allow local governments to control the subdivision of land and approve the necessary infrastructure. A community could adopt subdivision and land development regulations by referring to the authority of its state enabling act. But few communities created consistent regulations for the subdivision of land. Instead, local governments began to approve a variety of subdivision policies, standards, and practices that fit local needs.

The single subdivision case that appears in most planning law books is *Mansfield & Swett, Inc. v Town of West Orange* in 1938 [120 N.J.L 145]. In this case, the New Jersey Supreme Court ruled that the subdivision process and development regulations are legitimate uses of government police power to protect the public health, safety, and welfare.

What to Include in the Subdivision and Land Development Ordinance

The planning commission is responsible for drafting and amending subdivision regulations and recommending them to the governing body, which gives final approval to the subdivision ordinance. A professional planner should write or help update the subdivision ordinance because of the technical and legal matters involved. Still, the planning commission and governing body should have input into the process and understand what the subdivision ordinance contains and how the subdivision process works.

The subdivision and land development ordinance must state that the sale of lots may proceed and a building permit be issued only after all requirements of the ordinance have been met. The ordinance also must emphasize that no public improvements (roads, sewer and water lines) may be installed until the preliminary plat is approved, and these public improvements cannot be used until the final plat is approved and recorded.

Authorizing Statutes, Citation, and Jurisdiction

It is important to tie the subdivision and land development regulations to state enabling statutes and to specify where the regulations apply. Documentation should cite authorizing legislation and identify the agency or office that has jurisdictional authority. In addition to being a matter of good form and good communication, this provides a logical chain should compliance issues arise.

Statement of Goals, Priorities, and Intent

Explaining the purpose of the subdivision and land development regulations makes clear what the regulations are trying to accomplish. A proposed subdivision must conform to the goals and objectives of the community's comprehensive plan, the zoning ordinance, and zoning map. The purpose is to regulate and control the division and development of land within the community in order to:

1. Promote public health, safety, and general welfare.
2. Further the orderly layout and use of land.
3. Prevent the overcrowding of land.
4. Lessen congestion in the streets and highways.
5. Facilitate the adequate provision of water, sewerage, and other public facilities.
6. Provide for proper ingress and egress.
7. Promote proper "monumenting" of subdivided land and conveyance by accurate legal description.

Definitions and Terms

The subdivision and land development process has its own special terms, and the subdivision and land development ordinance should present a clear definition of these words.

Keep in mind that if the state enabling statutes define a word or process in a certain way, you should not define it differently. The glossary at the end of this book provides some brief definitions, but we need to start with some terms that are key to our consideration in the chapters ahead.

The definition of a subdivision is very important, and varies from state to state depending on the definition in the State Planning and Zoning Enabling Act. In Minnesota, for example, a subdivision is the division of a parcel into two or more lots. In Iowa a subdivision is the division of any parcel of land into three or more lots. Also, local governments usually define major and minor subdivisions. For instance, a minor subdivision might be the creation of up to four lots; a major subdivision then is more than four lots. A minor subdivision will involve a quicker review than a major subdivision.

Tales From the Trenches: The Profiler

I asked a well-known and highly successful development consultant to speak to a class in site planning and design. In my capacity as an environmental regulator I had reviewed many projects submitted by various developers who had hired this consultant, and I hoped he would share a few words on strategy with the students. We were interested to learn that his company carefully researched each board member or commissioner who would review his clients' projects. He prepared brief profiles of each reviewing official and would use them in crafting an overall strategy for steering a project through the permit process. The students were quite amazed. He told them it made sense when so much money and energy were invested in a project and that it was just good business. Many times in development review, the amateurs are reviewing the work of the professionals, and it is good to remember just how strategic the professionals really are.

The terms *tract*, *lot*, and *parcel* are often confusing. A *tract* is a piece of land under a single ownership. A *parcel* is also a piece of land under a single ownership, though usually smaller than a tract. A *lot* is a piece of land for a building site. The owner of a tract or parcel may divide the land into lots or parcels. For instance, a subdivider may subdivide a tract of 60 acres into two 20-acre parcels and four five-acre lots.

A *plat* is a map, prepared by a professionally licensed surveyor or engineer, which shows the surveyed location of all lots, blocks, roads, easements, and any covenants and restrictions in the deed. The plat is signed by all owners and responsible government officials, and recorded as the official description of the subdivided land.

Restricting the use of land through the subdivision process is an important process. The most common type of restriction is the *easement*. There are several types of easements, but a general definition is: granting a right to another person or persons for the limited use of your land. For example, a right-of-way easement allows a landowner to cross a neighbor's property along a driveway. A utility easement enables companies or local governments to extend power lines, phone lines, or sewer and water pipes across a property. The easement is surveyed and indicated on the plat, and will allow utility companies or a local government to install overhead or underground service lines or pipes. The lot owner may not block the utility easement or put a structure within the easement area. A drainage easement allows water runoff through more than one property, and no buildings may be placed in the drainage easement area. Another kind of easement is a *conservation easement* which restricts the use of land, usually to farming, forestry, or open space uses.

A second type of restriction is a *covenant* or *restrictive covenant*. A covenant is a legal agreement between the seller and the buyer of land. The government usually is not a party to the covenant but special circumstances do exist in a few states and for planned unit developments. Covenants may confer benefits or place burdens on the property. For example, a covenant may require the landowner to refrain from certain actions, such as blocking a scenic view; or a covenant may require the landowner to take certain actions, such as maintaining a fence between properties. Covenants are filed with the Register of Deeds at the same time a final plat is officially recorded. A notation of any covenants should appear on the plat to warn prospective buyers that covenants do exist.

Covenants are useful when people buy lots in a new subdivision. Covenants may specify several requirements that a landowner must observe when building a house or using the property. For instance, covenants may specify that driveways may only be placed at the corner of the lot, not the center. A covenant may require a homeowner to build only a pitched roof and restrict the roof to wood shingles. Covenants are commonly used by homeowners associations to ensure conformity in yard maintenance and house style among all landowners in the association.

There is no conflict between restrictive covenants and public regulations unless otherwise indicated by state law. Take, for example, a home occupation that is on a list permitted by the covenants, contracts, and restrictions (CCRs) of a homeowners association, but not spelled out as a permitted occupation in the

zoning ordinance. An applicant would not be entitled to this particular home occupation. The reverse in this situation is that the zoning administrator can issue a home occupation permit for a use listed under permitted uses even though it does not appear in the approved occupations list in the homeowners association's CCRs.

A third type of restriction is a *condition*. Most building sites are unique: some sites have heavy drainage flows, some are located in areas with difficult traffic patterns, and others have physical features that complicate building and site design. Subdivision regulations cannot address all situations. Conditions imposed upon the developer during the subdivision and land development review process can help to correct negative impacts that might occur when the property is developed. For instance, a large building lot proposed for multifamily development is located along a main road that already carries heavy traffic. Placing a stop sign on the main road may not be sufficient. As a condition of platting the subdivision, the planning commission could require the subdivider to open a secondary access road to another portion of the lot that would connect with a less heavily traveled road. The planning commission should impose conditions to avoid harm to future owners within the subdivision, to neighbors, and to the community at large. But first, the planning commission and governing body should adopt standards and guidelines for conditions.

Three important definitions for the subdivision and land development process include the sketch plan, preliminary plat, and final plat. A *sketch plan* is a concept plan, showing how the subdivider or land developer is proposing to subdivide the property or build on it.

The *preliminary plat* is the most important document in the subdivision and land development review process. The preliminary plat is prepared by a professional licensed surveyor. It includes the information provided in the sketch plan but in greater detail. All lots, streets, easements, and building lines appear in precise detail together with the topographic features of the land.

The *final plat* contains all changes to the preliminary plat, engineering and survey detail, and signature spaces for dedications of land and infrastructure, approval, and owner certification. The final plat is then ready for official approval by the planning commission and governing body. Next, the final plat is recorded with the County Recorder of Deeds. A digital copy should be held by the planning staff as well.

Tales From the Trenches: The Difficult Committee

Most towns fancy themselves somehow different—more difficult or picky or political—than all other towns. I don't want to start my client relationships by popping their bubble and asserting that people are really the same everywhere, so I smile and humor my clients, and begin by trying to understand what their individual concerns are, and also finding out who else in the town needs to be contacted. Usually by making sure that everyone is heard, and by going slowly to get consensus each step of the way, we arrive at design solutions that have broad support.

In one town a certain Library Planning Committee had truly been struggling with process, communications, and personal styles long before they hired their consultants. They were divided into almost angry factions, but through their own efforts they had stayed together and still all agreed that they wanted a beautiful and expanded library. I was very impressed with their determination to make the committee work. I learned from them that sometimes there has to be a very rigid set of rules about talking in group settings and about decision making. For example, they went around the table as many times as it took to be satisfied, but never allowed debate or "cross-talk" between two impassioned committee members. This defused their personal heat and kept everyone involved, even those who might prefer to "check out" when the going gets rough. I have used this equal-air-time technique in many group situations since being exposed to it with the Library Planning Committee of that town. And they do now have a beautiful library.

Fees and Payments, Impact Fees

Most local governments impose a fee on developers to cover the costs of the review of proposed subdivisions and land developments, including inspections and permits. This fee should be large enough to cover any special consultants that will be needed. Often, there is a base fee and additional per-lot fees.

An *impact fee* is a one-time payment for off-site infrastructure needs resulting from a new development (see also Chapter 11). For instance, a new development will increase the demand for park space. To pay for future park space, an impact fee can be charged on a per-dwelling-unit basis. Impact fees are allowed in most but not all states. Where allowed, the local government must clearly document the connection between a new development and the increased demand for certain public services, such as park land. The local government must set up a separate account for collecting and spending the impact fees on the desired services, such as park land. Some states allow the collection of impact fees for road improvements, schools, and other public needs generated by a proposed new development, while other states do not.

Incentives can be applied to fees (and taxes) by reducing, waiving, or phasing them into application. Incentives are a tool to manage growth through the site plan and development review process.

Enforcement and Compliance Requirements

Enforcement of subdivision and land development regulations is necessary to ensure that developers obey the regulations. The subdivision regulations must clearly state that land cannot be divided, conveyed, and recorded without government approval. Enforcement of the regulations can occur through warnings, stop work notices, citations, and court orders. A developer should expect to comply with the regulations through building permits, inspections, and certificates. Without the building permit, construction cannot legally proceed. A series of inspections is conducted by the local government's engineer to make sure that the installation of utilities, roads, and sidewalks meets the standards of the subdivision and land development regulations. In addition, the engineer may need to check on compliance with state and federal requirements, such as filling and dredging of wetlands, groundwater withdrawal, stream diversion, or sewage discharge into a waterway. The final land development stage involves the certificate of occupancy, indicating that the lot and buildings comply with the standards in the subdivision regulations; now the homes can be inhabited and employees can work in the commercial buildings.

The Subdivision Process

A registered land survey must be completed for any property proposed for subdivision. The developer must pay for the survey and must preserve all boundary markers. In addition, the developer may be required to preserve certain natural features, such as mature trees, if specified in the subdivision ordinance.

The developer must also present a title search from an attorney or title abstractor certifying the names of the owners of the property proposed for subdivision or development. Another title search should be required at the time of the filing of the final plat to confirm that the applicant owns the property in question, has the legal ability to subdivide, and is legally empowered to offer dedications of the land to the public. All too often joint or common owners, life estates, and corporate parties are not identified, rendering the subdivision process invalid.

Both the developer and the planning commission or planning staff must be organized and thorough to ensure that a development proposal is properly reviewed. Due diligence means that the developer has done a complete study of the proposed project, including the physical design and financing. For the planning commission or planning staff, due diligence involves a detailed checklist of questions about the property and proposed development project. Due diligence also demands that the planning commission or planning staff have checked the zoning of the property, taxes paid, and liens. The developer should be asked to respond to the checklist of questions to see if there are any omissions or oversights, particularly any necessary state or federal permits.