

The Powers and Functions of the Local Planning Commission in Tennessee

A paper prepared for the citizen planning commission member to be used as a general guide in the performance of his/her duties.

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Introduction

Local governments in Tennessee have a long history of local planning. Brought about through programs initiated during the late 1920s and early 1930s, most states adopted local planning legislation in that period. Tennessee's planning enabling legislation was passed by the General Assembly in 1935 with the influence of the Tennessee Valley Commission and the Tennessee Valley Authority.

The State and Regional Planning Act created the Tennessee State Planning Commission and regional planning powers. Also passed that year were four other acts that established the structure for local planning in Tennessee: County Zoning Act, Municipal Planning Act, Municipal Subdivision Act, and the Municipal Zoning Act.

Primarily through the efforts of the Tennessee State Planning Commission (the agency no longer exists) and TVA during the 40s and 50s, local planning in Tennessee has continued and grown. Further stimulation was provided in the 1960s by the federal government through various grant and loan programs. Thus, today most cities over 1,000 in population, as well as many under that size, and many counties have a local planning commission. Additionally, most cities over 10,000 population and counties experiencing high rates of growth have hired full-time planning staff. Even though the Tennessee State Planning Commission and its successor agency the Tennessee State Planning Office no longer exist in state government, the Local Planning Assistance Office housed within the Department of Economic and Community Development and formerly a part of the State Planning Office is a functioning planning agency providing professional assistance to cities and counties across the state. Consequently, the legacy of planning established by the early founders thrives within Tennessee and continues to guide the local decision-making process.

Why Plan?

Before discussing what a planning commission may do, one question should be addressed. Why Plan? Why should a city or county spend money for a planning program? The impetus for appointing or revitalizing a planning commission and starting a continuing planning program may come from a variety of circumstances. Growth in an area always raises issues that only a planning program can address. What about public services? Are the water lines adequate? Who builds the streets and to what standard? How should commercial services be provided? Should prime industrial land be reserved? How will the local tax rate be impacted? All of these questions and more arise in a growing community.

As each new development occurs, whether it is a five-lot subdivision or a major shopping center, the community of the future takes shape. The population density, the use to which the land is put, and the physical arrangement of the developed area will determine the need for services. This also has a very real and significant impact upon the local property tax. Attractive, carefully developed, and orderly communities have a sound economic foundation. Haphazard, disorganized, and unattractive developments can destroy the very essence of functional and efficient community life.

Another situation that calls for a planning solution may be the crisis of the loss of a major industry or overall economic depression may be prevalent. A planning program may help identify the types of industries most likely to locate in the area and help provide the climate for economic development. Other situations might involve overcrowded schools, overloaded sewers, or environmental concerns that divide the citizenry. However, perhaps the most direct answer to the question of why plan is that it is necessary to support the enforcement of land use controls, and most communities exercise some form of land use control. Across the country, the courts are increasingly recognizing the inter-relationship between planning and zoning and the public regulation of private land.

What is Planning?

Another question that will confront a community and more specifically, the members of the planning commission, involves just what planning is. Planning means different things to different people, but here a rather general definition is offered that will apply to most any problem or situation that may be encountered by local governments.

Planning is a continuous approach to problem solving, a process for making informed decisions about the future. Every community plans, although the lack of a formalized plan a process means that planning is done on a day-to-day, crisis-to-crisis basis. A better approach is to try to anticipate the consequences of possible courses of action and select what appears to be the best course based upon a prescriptive method of problem analysis and solution selection.

Formal planning is usually characterized by such activities as follow:

- **Identifying the problems or issues**
- **Analyzing them**
- **Formulating goals**
- **Development and evaluation of alternative courses of action**
- **Selecting a preferred alternative**
- **Implementing the preferred alternative and**
- **Monitoring implementation and making adjustments based upon results and /or changing policies**

In practice, these activities are rarely discrete, sequential steps. They often overlap in a cyclical process in which experience provides the impetus for continuous course corrections. Like budgeting, governmental planning is also a political process for allocating scarce resources among competing demands.

Another way of defining planning is as follows:

- **Where are we now?**
- **Where are we going?**
- **Where do we want to go?**
- **How are we going to get there?**

In summary, the purpose of planning is not to prepare plans but to produce intelligent informed decisions.

Legal Basis for Local Planning

Local planning and land use regulation rest on powers granted to cities and counties by the state constitution, but state legislation shapes the manner in which these powers are exercised. Basically, cities and counties draw upon two broad categories of legal powers in the planning programs: corporate powers and police powers. Corporate power is the authority to collect money through bonds, taxes, fees, and assessments, and to spend it to provide services and facilities, such as streets, water, sewage disposal facilities, parks, recreation, and the like.

Police power, reserved to the states by the Federal Constitution and delegated to cities and counties by the state, is the authority to regulate a citizen's behavior—including the use of private property—to promote the health, safety, welfare, and morals of the public. The police power is elastic, evolving to accommodate changing community values, but its use is constrained by constitutional principles of equal protection and due process, including unlawful taking or damaging of property. Land use planning, zoning, subdivision regulation, and building regulation are all exercises of the police power.

Charts I and II at the end of this paper list the powers of municipal and regional planning commissions as authorized by Title 13 of the Tennessee Code. Chart I lists the “Powers of a Municipal Planning Commission” and Chart II lists the “Powers of a Regional Planning Commission”. The regional powers are somewhat different in some areas.

The Municipal Planning Commission

1) Prepare and adopt an official General Plan.

Section 13-4-201, Tennessee Code Annotated, states that it shall be the function and duty of the commission to make and adopt an official General Plan for the physical development of the municipality including any area outside its boundaries which bears a relationship to the planning of the municipality. The legislation further stipulates what may be included in such a plan and is very broad in nature.

The plan, as described in the legislation, is to show the planning commission's recommendations for the physical development of the area. The plan "...may include, among other things. The general location, character and extent of streets, bridges, viaducts, parks, parkways, waterways, waterfronts, playgrounds, airports, and other public ways, grounds, places, and spaces, the general location and extent of public utilities and terminals, whether publicly or privately owned, for water, light, power, sanitation, transportation, communication, and other purposes; ...". The legislation continues a general listing of other items that may be included, as well.

In short, it may be said that the General Plan may cover any service that the municipality might provide, as well as direction for many private activities. While the plan is not a legal instrument, the municipality does have ample power to implement it through a variety of means.

Three words are frequently used interchangeably to describe the plan. These are general, comprehensive, and master plan. All mean the same thing. It is not the purpose here to describe in detail such a plan.

It is generally concluded that a general or comprehensive or master plan should include the following elements:

- **Land use** – An investigation of existing land utilization within the city that analyzes and depicts the current situation.
- **Physical Characteristics** – An analysis of all natural and physical characteristics that may affect the development of the area, including such factors as soils, topography, bedrock, geology, and surface drainage.
- **Economy** – An investigation of employment and economic foundations and trends in the community.
- **Population** – An analysis of population trends, distribution, and characteristics, including projections of future growth.
- **Transportation** – An analysis of the existing systems for the movement of people and goods.
- **Community Facilities** – A survey of existing public facilities such as schools, parks, sewers, water, libraries, and fire and police protection, and an analysis of their adequacy for the present and future.
- **The Long Range Plan** – A plan, including maps and text, for future land use, streets, and public facilities.
- **Capital Improvements Program and Budget** – A prioritized program of projected public facilities along with a budget for the financing thereof.
- **Land Use Controls** – Legal tools for the enforcement of certain standards of development including a zoning ordinance and subdivision regulation.

2) Make advisory reports and recommendations to all public officials and agencies regarding the plan and development of the area.

Section 13-4-103, Tennessee Code Annotated, gives the local planning commission the power to make advisory reports and recommendations that relate to the plan, to any public official or agency, whether local or not, utility company, civic, educational, or professional organization. In addition, all such public officials are required to furnish the commission with any information that may be needed for its work. There is also a statement that the commission shall have such powers as may be necessary to enable it to perform its purposes and promote municipal planning.

These powers are advisory only. However, it does mean that the commission may advise any body, public or private, whether a project or

activity is in agreement with the General Plan and use the power of moral persuasion or information dissemination to affect the course of action. The commission may also request and obtain information from such agencies as a school board, power board, industrial development board, housing authority, etc., to determine whether their activities are in compliance with the plan.

3) Have advance notification of the location and extent of the construction or authorization of any public street, building, park, open space, or utility, whether publicly or privately owned, for the purpose of commission review and approval.

This broad power to review and comment on any public project is sometimes referred to as mandatory referral. Section 13-4-104, Tennessee Code Annotated, states unequivocally that the planning commission shall be consulted **prior** to the construction or authorization of any project, and this includes private utilities. The law provides that all state, county, and local agencies and officials having jurisdiction over such projects must comply with the referral requirement.

The purpose of such referral is to assure that public projects and their locations are in compliance with the General Plan and further, to assure coordination between various agencies of different levels of government. Compliance with the planning commission's recommendations is not mandatory since the legislative or other responsible authority (e.g. a school board) can override the commission. However, it does guarantee that the commission has the opportunity to comment. Failure to comply with this provision could, in case of a court challenge, delay a project or even jeopardize some all together.

4) Regulate the development of land through subdivision regulations and site plan review.

The subdivision of land is the first step in the continuing process of shaping the future pattern and adding to the housing stock of a growing community. Prior to the regulation of new subdivisions through planning commission authority, many new subdivisions turned out to be liabilities for the community as a whole and for the individual homebuyer. Subdivisions were created without adequate water and sewer, in areas subject to frequent flooding, and without streets. Many times land would be subdivided and

homes built and sold, and then, the city or county would have to add all improvements.

New lots and streets can alter or intensify traffic on existing streets; they can increase the storm water runoff; they can create more demands for water supply or sewage treatment capacity; and they will enlarge the need for the whole spectrum of public services.

Unregulated development can also lead to wild speculation in land. In 1939, Chicago inventoried enough vacant, subdivided lots to accommodate 15 million people in single-family housing. In 1962, Florida contained enough subdivided lots to house the entire population of the United States. Proper land regulation assures that the developer won't subdivide without reasonable assurance that the development will sell.

The Tennessee Code gives local government the necessary authority to adopt and enforce subdivision regulations. The law defines what constitutes a subdivision, provides that no plat may be recorded until it is approved by the planning commission, prohibits a county register from recording a plat until it is duly approved, provides a procedure for the adoption of regulations and on the submission of plats, and provides penalties for the transfer or sale of lots in unapproved subdivisions.

The Tennessee Code is rather liberal in its grant of power to a planning commission, and the community may, if it so chooses, adopt stringent controls. Section 13-4-303 provides that in exercising its powers the planning commission shall adopt regulations and those regulations may provide for the harmonious development of the municipality and environs, for the coordination of streets with existing or planned streets or with the plan of the area, for adequate open spaces, for traffic, recreation, light, and air, and "...for a distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience, and prosperity." This last part appears to give a planning commission authority to consider the spatial relationships of new developments as well as timing – a factor that not many commissions have addressed in the past.

Section 13-4-307, Tennessee Code Annotated, deals with the acceptance of unapproved streets and re-enforces the mandatory referral provisions mentioned earlier. This section generally states that no municipality or public official shall accept, layout, open, improve, pave, or light any street

without planning commission review. No water or sewer mains may be laid in any street that is not public or shown on an approved subdivision plat. It is further provided that the chief legislative body may open, accept, or pave streets but such matter shall first be submitted to the planning commission. If disapproved by the commission, the legislative body may override the commission by a majority vote of the entire membership. Here again, the planning commission's recommendations may be overridden, however, the law does give the commission the opportunity for prior review.

Site plan review is a planning commission power only through the enforcement of a zoning ordinance. While some have argued that the statute does not confer the power to review site plans on the planning commission, the practice is widespread and, as yet, unchallenged. Once the zoning ordinance is adopted, the planning commission may be given the prerogative to review and approve or disapprove a site plan of any proposed use on any lot prior to the issuance of a building permit. The enforcement of these provisions can result in the improved location, layout, and design of buildings on individual lots and the site improvements associated with the development.

5) Prepare and recommend to the chief legislative body a zoning ordinance and map.

The preparation of a zoning ordinance and map as well as subsequent amendments thereto are but two of the powers of a planning commission. However, zoning is at once the most visible and controversial aspect of any planning commission's business. This is because it deals with how an individual may use private property.

The subject of zoning in general is rather complex and requires much more explanation than is the purpose of this paper. There are many multi-volume legal treatises available, and case law as a result of the many lawsuits in zoning abounds. Therefore, this paper will simply summarize the role of the planning commission in the zoning process.

Section 13-7-201, Tennessee Code Annotated, empowers the chief legislative body of a municipality to adopt a zoning ordinance and also specifies the broad areas that may be regulated by zoning. However, Section 13-7-202 specifies that before the legislative body may exercise these powers, the planning commission must make and certify to the legislative

body a zoning plan which includes the full text of a zoning ordinance and zoning maps.

After a public hearing that has had proper public notice, the chief legislative body may enact the zoning ordinance. Section 13-7-203 provides that no change in or departure from the text or maps as certified by the planning commission shall be made unless such change is first submitted back to the commission for comment. Here again, the legislative body may override the planning commission, but the commission gets its opportunity to comment. Some ordinances have been successfully challenged in court for failure to comply with this section. A caption and a summary of the zoning ordinance must be published in a newspaper of general circulation in the city.

After the ordinance is adopted, the planning commission has no role in its administration. This is the responsibility of the staff of the municipality.

6) Review and make recommendations for any amendment to the zoning ordinance or map.

The zoning ordinance and map may from time to time be amended as the need may arise. Since such action would change a city ordinance, it must be passed by the chief legislative body, and a public hearing held thereon. Section 13-7-204 provides that the planning commission shall first review the amendment. A caption and a summary of the zoning amendment must be published in a newspaper of general circulation in the city.

It is this one aspect of the planning commission's power that consumes so much of the commission's time. In many communities, the commission may spend 80-90% of the meeting discussion on zoning amendments. As noted, however, this is only one function of the commission, and while it is an important aspect of the zoning process, it should not be allowed to dominate all meetings. This can mean that other important planning commission functions get ignored.

One way to simplify the procedure and speed up discussion of amendments is to correlate all amendments with an adopted general plan and to follow a specific procedure.

A proposed amendment should be able to meet several tests before the planning commission recommends approval:

- Is the proposed change in agreement with the general plan?
- Does the change violate the legal purposes of zoning?
- Has it been determined that there will be no adverse impact upon adjoining property or that any adverse impact can be justified by the overwhelming public good or welfare?
- Has it been determined that no one property owner or small group or property owners will benefit materially from the change to the detriment of the general public?
- Has it been determined that public services and facilities will not be adversely affected?

If all of these tests are met but the proposed change fails to agree with the general plan, then the commission should examine conditions and changes in the area since the original zoning map was adopted. The commission may find that many changes in physical condition, infrastructure, or policy have occurred that indicate the plan may need altering. In this event, the general plan can be amended and subsequently, the zoning map.

The result of following such a procedure for zoning amendments is that all the necessary questions get asked and the proper kind of information is generated so that the planning commission can make an informed and rational recommendation. This is the purpose of planning commission review of amendments, and the commission should not get involved in just the personal interests of the applicant or how the neighbors feel about it. Such a procedure is also much more able to withstand any legal challenge.

The Regional Planning Commission

Regional planning commissions have powers which are similar to municipal commissions but with certain differences which are related to the regional nature of the commission. In Tennessee, a regional planning commission is a county planning commission or a municipal commission that has been designated as regional for a specified planning region outside of, but contiguous to, the corporate boundaries. Within the planning region, regional planning powers apply as opposed to municipal. A planning region may also consist of one county, two more contiguous counties, or parts of counties.

1) Promote the mutual cooperation of municipal planning commissions within the region, coordinate the plans of the municipalities with the regional plan, and confer with and advise municipal and county legislative bodies and officials to promote the coordinated and adjusted development of the region.

Section 13-3-104, Tennessee Code Annotated, seems to contemplate that a regional planning commission will be a county planning commission and gives the commission the power to promote cooperation among city governments as well as county officials. It would not seem to serve the public interest if two or more municipalities had plans that were in conflict with each other's and with the county plans. For example, suppose both communities had plans that called for a new high school, but enrollment figures could only support one such school. Or perhaps, each community had plans for new roads but there was no way to blend them into a total county system. The regional planning commission is thus a logical and necessary body for resolving such issues based on a regional approach and for providing coordination and consistency between municipal and county plans.

2) Advise county and municipal legislative bodies in the formulation of public improvement programs and the financing thereof.

The above-cited section also provides that a regional planning commission may advise both the county and any municipal legislative body with respect to the formulation of public improvement programs and the means of financing such programs. This gives the planning commission the authority

to have input to capital improvements made by either type of government regarding whether the project is feasible, is in agreement with long-range plans, or perhaps duplicates other services. Here again such reports are advisory not mandatory.

3) Prepare and adopt a general regional plan for the physical development of the region.

Section 13-3-301, Tennessee Code Annotated, gives regional planning commissions the power to plan much as the earlier citation for municipal planning commissions does. However, this section goes even farther and authorizes the planning commission to include in the plan the “general character, location and extent of ... town sites or housing developments; the location and extent of forests, agricultural areas, and open development areas...; a land classification and utilization program.” Additionally, the plan may include a zoning plan that among other considerations may cover “the distribution of population.”

The purpose of the general plan is further amplified by Section 13-3-302. In addition to the usual health, safety, and welfare purposes of the police power, this section covers efficiency and economy in the process of development and the reduction of waste of financial and human resources that result from excessive congestion or excessive scattering of the population.

Apparently, it may plan and therefore regulate and time the development of such things as utilities and housing areas. The commission may prevent urban sprawl and help preserve agricultural and open space areas. It may plan for schools and roads. In short, the statute may contain more power than many counties are willing to exercise, and that, of course is a local option.

In summary, it can be said that a regional planning commission has broad powers to plan for the total region.

Enforcement of plans by a county is another question. Due to the nature of county government in Tennessee, enforcement and implementation of plans is not as easy as in a municipality. The strict enforcement power is generally limited to a subdivision and zoning controls where legal action may be instituted as an enforcement measure.

4) Regulate the development of land through subdivision regulations and site plan review.

The discussion presented earlier under municipal planning powers applies as well to regional planning powers. The grant of power from the Tennessee Code is under a different section but it is very similar to the municipal section.

There is one important difference. Section 13-3-403, Tennessee Code Annotated, in addition to basic similarities with the municipal section states that subdivision regulations may provide for “the avoidance of such scattered or premature subdivision of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of water supply, drainage, transportation or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.” This section clearly gives a regional planning commission the power to develop growth management strategies that would time the development of land to the availability to public services and facilities. For example, “leap-frog” development and urban sprawl into rural areas could be prevented if public facilities were lacking.

A planning commission may not exercise this power in an arbitrary manner. Such decisions must be founded upon definite plans, policies, and programs to substantiate them and ultimately provide the necessary services. The statute, however, does give a regional commission adequate authority to regulate the time and the location of land development.

Site plan review powers are the same as described in the section of this report regarding municipal powers and are conveyed through the power to zone.

5) Review and approve the design, opening, grading, paving, or lighting of any road or any utilities to be authorized or placed in any such road prior to any public official’s or agency’s action.

This power granted by Section 13-3-406, Tennessee Code Annotated, is the regional planning commission’s claim to mandatory referral as covered under the municipal section. Here the review power of the commission covers only county roads and highways and utilities in county roads, and

therefore, is not as broad as the municipal power. Again, however, the planning commission must be given advance notification of any road project and must review it prior to a road becoming a public road. The chief legislative body of the county may accept, layout, or locate a road but not before the proposal is submitted to the planning commission for a recommendation.

6) Prepare and certify to the chief of legislative body a zoning ordinance and map.

The chief legislative body of the county is empowered by Section 13-7-101 to adopt and enforce county zoning. As in municipalities, the planning commission must first prepare and certify the zoning plan, including text and maps, to the legislative body. After certification of the zoning plan by the planning commission and before enactment, the legislative body shall conduct a public hearing with proper public notice being given and can make no change in the zoning plan without first submitting the change to the planning commission for a recommendation. A caption and a summary of the zoning ordinance must be published in a newspaper of general circulation in the county.

7) Review and make recommendations for any amendment to the zoning ordinance or map.

The chief legislative body is authorized to amend the text or map by Section 13-7-105, and the planning commission must first review the amendment and make a recommendation thereon. Before the amendment can be adopted, the legislative body must conduct a public hearing after proper public notice of the hearing, and a complete summary of the amendment must be published in a newspaper of general circulation.

All of the comments made under the previous municipal section apply as well to this section.

Chart I

Powers of a Municipal Planning Commission

- Prepare and adopt an official general plan. (TCA 13-4-201).
- Make advisory reports and recommendations to all public officials and agencies regarding the plan and development of the area. (TCA 13-4-103).
- Have advance notification of the location and extent of the construction or authorization of any public street, building, park, open space, or utility, whether publicly or privately owned, for the purpose of commission review and approval. (TCA 13-4-104).
- Regulate the development of land through subdivision regulations. (TCA 13-4-302).
- Prepare and recommend to the chief legislative body a zoning ordinance and map. (TCA 13-7-202).
- Review and make recommendations for any amendment to the zoning ordinance and map. (TCA 13-7-204).

Chart II

Powers of a Regional Planning Commission

- Promote the mutual cooperation of municipal planning commissions within the region, coordinate the plans of the municipalities with the regional plan, and confer with and advise municipal and county legislative bodies and officials to promote the coordinated and adjusted development of the region. (TCA 13-3-104).
- Advise county and municipal legislative bodies in the formulation of public improvement programs and the financing thereof. (TCA 13-3-104).
- Prepare and adopt a general regional plan for physical development of the region. (TCA 13-3-301).
- Regulate the development of land through subdivision regulations. (TCA 13-3-403)
- Review and approve the design, opening, grading, paving, or lighting of any road or any utilities to be authorized or placed in any such road prior to any public officials or agency's action. (TCA 13-3-406).
- Prepare and certify to the chief legislative body a zoning ordinance and map. (TCA 13-7-102).
- Review and make recommendations for any amendment to the zoning ordinance and map. (TCA 13-7-105).