
Nebraska Planning Handbook

Second Edition
2025

An update to the Original Handbook Done in 2002
Update Sponsored by the Nebraska Planning and Zoning Association (NPZA), the Nebraska
Association of County Officials (NACO), and The Zoning Administrators Section of the
Nebraska Association of County Officials (NACO)

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Part I. – Introduction

Chapter 1 – Purposes and Use of the Handbook

■ The Importance of Sound Community Planning

Sections 19-901 and 23-114.03 of the Nebraska statutes together say it all – planning and zoning is “for the purpose of promoting health, safety, morals, convenience, order, prosperity, and the general welfare of the present and future inhabitants of Nebraska.” It bridges the gap between where communities are today to where they want to be tomorrow. It’s a process that defines the quality of life for our communities by helping citizens move their community from today’s reality to tomorrow’s possibilities. Planning and zoning is a forward-thinking process. Good planning and zoning is the basis for citizens, who serve their community, to make good decisions that will impact their future.

This *Nebraska Planning Handbook* is intended as a reference resource for use by citizens, elected officials, and professional planning practitioners in Nebraska to encourage and facilitate sound planning practices in the villages, cities, and counties of the state.

■ Precedents and Support for the *Handbook*

The first edition of the *Handbook* was made possible by collaborative efforts of several organizations and individuals whose collective efforts were instrumental in the original 2002 Edition. Although discussed many times since 2002, the *Handbook*, has not been updated. It would be remiss if those original organizations and individuals were not recognized for their efforts. This 2025 update of the *Handbook* seeks to continue their original goal to advance the knowledge and use of sound community planning practice among local citizens in the State of Nebraska:

Nebraska Planning and Zoning Association (NPZA)

The Nebraska Planning and Zoning Association (NPZA) was founded in 1971 to foster better understanding and practice of community planning and zoning in Nebraska. The organization consists of municipalities and counties from across the state, citizens, elected and appointed officials, as well as professional planners and consulting firms. The NPZA sponsors an annual Spring statewide conference and a Fall conference focusing on

a series of educational sessions pertaining to community planning issues especially relevant in Nebraska. Contacting the NPZA can be done by accessing the NPZA website at <https://npza.org>.

Nebraska Chapter of the American Planning Association (APA)

The American Planning Association (APA) is an independent nonprofit, professional, educational association, organized in 1978 with the consolidation of the American Institute of Planners and the American Society of Planning Officials. It was organized exclusively for charitable, educational, literary, and scientific purposes to advance the art and science of planning and the activity of planning – physical, economic, and social – the local, regional, state, and national level. Nationally, it represents over 40,000 practicing professional planners, elected and appointed officials, and citizens concerned with city and regional planning.

The Nebraska Chapter of APA is one of 48 chapters that exist nationally to involve each APA member in a more locally based component organization. The Nebraska Chapter APA has approximately 150 members, including planning commissioners, planning students, professional planning practitioners, and planning educators. The Nebraska Chapter of APA has worked with the Nebraska Planning and Zoning Association to organize annual training institutes now known as the Nebraska Planning Conference.

Contacting the Nebraska Chapter of the APA can be done by accessing the Nebraska Chapters website at <https://nebraska.planning.org>.

Community and Rural Development (CRD) Division of the Nebraska Department of Economic Development (DED)

For many years the Nebraska Department of Economic Development (NDED) has encouraged and supported sound community planning throughout the state. The CRD Division of DED currently provides this support primarily through the Community Development Block Grant (CDBG) program, which is made available to Nebraska by the United States Department of Housing and Urban Development. One of the separately delineated categories of community support available from the CDBG program is planning. Financial support for the development of the original *Nebraska Planning Handbook* was made possible through the CDBG program administered by the CRD Division.

The CRD Division can be contacted through the NDED Website at <https://opportunity.nebraska.gov/contact/#form> .

***Nebraska Association of County Officials (NACO);
Planning, Zoning and Development Officials***

Within the Nebraska Association of County Officials (NACO) a subgroup consisting of planning, zoning, and development officials, as well as other county officials, sponsors occasional training sessions focusing on county planning and zoning and related issues in Nebraska. The group usually meets for training sessions in conjunction with the annual NACO convention, as well as separately at other times and at various locations throughout the state. The name of a current contact person in this subgroup of NACO can be obtained from the NACO state office in Lincoln.

The NACO staff also normally has an individual who is conversant with planning and zoning issues and relevant state statutes. NACO can be contacted through the NACO website at <https://nebraskacounties.org> .

League of Nebraska Municipalities

The League of Nebraska Municipalities normally has staff who are conversant with planning and zoning issues and relevant state statutes. The League of Nebraska Municipalities can be contacted through its website at <https://www.lonm.org> .

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| Purposes of the *Handbook*

The *Nebraska Planning Handbook* is intended to provide citizen planners, elected and appointed officials, and professional planners in Nebraska with easy-to-use and easy-to-understand information concerning principles of community planning and the legal foundations of planning in the State of Nebraska.

More specifically, the *Handbook* is geared primarily toward citizens in Nebraska who serve as planning commissioners, members of boards of adjustment, appointed and elected officials in the nonmetropolitan communities and rural areas of the state, as well as others interested in the planning of their communities and counties. The goal of this reference resource is to facilitate informed citizen participation in the planning process and issues impacting their communities.

| How to Use the *Handbook*

The *Handbook* is designed either for self-instruction or for use in conjunction with training sessions facilitated by trainers.

Organization of the *Handbook*

The content of the *Handbook* is organized to be studied sequentially from beginning to end, but separate topics can be reviewed by simply going to the sections of the document that pertain to those topics. The table of contents and the index facilitate accessing specific subjects.

The content of the *Handbook* is organized into five parts:

Part I. – Introduction

Chapter 1 – “Purposes and Use of the Handbook – update of information

Part II. -What is Planning?

Chapters 2, 3, 4, and 5 – are combined into this part. This includes updated information found in Chapter 2 – “What is Planning?”; Chapter 3 “The Players in the Process”; Chapter 4

"The Planning Commission"; and Chapter 5 "The Board of Adjustment"

Part III.- The Plan

Chapter 6 – “The Comprehensive Plan.” – update of information and statutes

Part IV.- Plan Implementation

Chapters 7, 8, 9, 10, and 11 are combined into this part. This includes updated information found in Chapter 7 – “Zoning”; Chapter 8 – “Subdivision Regulations”; Chapter 9 – Environmental Issues”; Chapter 10 – “Other Implementation Tools”; and Chapter 11 - could be combined with Chapter 9 Chapter 11 – Management and Administration”

Part V.- Broader Scope of Planning

Chapters 12, 13, and 14 are combined in this part. This includes updated information found Chapter 12 – “Additional Directions and Opportunities in Physical Planning; Chapter 13 – “Community and Economic Development”; and Chapter 14 – “Legal Basis for Planning and Zoning”

Legal References in the *Handbook*

The *Nebraska Planning Handbook* contains numerous references to the Nebraska state statutes, the source of legal authority for local governments (villages, cities, and counties) to pursue land use in planning and zoning.

Nebraska Statutes

Several of the statutes which are frequently referred to in the *Handbook* are commonly reviewed in the practice of land use planning and in the implementation and administration of zoning and subdivision regulations are available on the

Nebraska Legislature’s website at:

<https://www.nebraskalegislature.gov/bills/intro.php>.

Go to the “Search Laws” and either enter the statute number of select “Browse Statutes by Chapter” to go to the Chapter of the statutes you are looking for.

Statute Numbering System

If you are not accustomed to Nebraska legal research, some aspects of the numbering system for the Nebraska statutes may be confusing.

The statutes, which are organized into chapters, articles, and sections, are numbered using a scheme devised by C.D. Yetter

and patented in 1926. This system is still in use today, with modifications.

One confusing aspect of the Yetter system is that the article and section are not separated by a punctuation unless there are more than 99 sections, so small code numbers at times appear to follow larger numbers. The table below illustrates how the system works. Note that sections and subsequent amendments numbered one through nine are preceded by a “0”, so the third and fourth entries below, 49-1499.01, is Chapter 49, article 14, section 99.01, and 49-14,103.01 is Chapter 49, Article 14, section 103.01.

Chapter	Article	Section	Subsequent Amendment	Citation
13	3	01		§ 13-301
49	14	99		§ 49-1499
49	14	99	.01	§ 49-1499.01
49	14	103	.01	§ 14-14,103.01

Classification According to Size of Municipality

Nebraska law establishes a classification system of municipalities based upon population size. The following table lists the classifications of Nebraska and indicates the number of municipalities (according to the League of Nebraska Municipalities) in each of the classifications:

Classification	Population	Number of Municipalities
Metropolitan Class	more than 300,000	Omaha only
Primary Class	more than 100,000; less than 300,000	Lincoln only
First Class	more than 5,000; less than 100,000	30
Second Class	more than 800; less than 5,000	106
Village	more than 100; less than 800	390
Total Number of Municipalities		528

Some chapters of the state statutes pertain to only counties (Chapter 23) or to only one of the classes of municipalities (Chapter 14 pertains only to Metropolitan class cities, Chapter

15 pertains only to Primary Class cities, Chapter 16 pertains only to First Class cities, Chapter 17 pertains to only Second Class cities and Villages); other chapters pertain to more than one class of city (Chapters 18 and 19.) Discussion in the *Handbook* points out differences in planning-related requirements for the different classifications of municipalities. When the term “municipalities” is used in the text of the *Handbook* in referring to particular provisions of the state statutes, the term includes cities of the first class, cities of the second class, as well as villages.

The cities of Omaha and Lincoln, as well as Lancaster County, have uniquely-defined frameworks for land use planning and zoning; these are not discussed in the *Handbook*. The *Handbook* limits its references to planning-related state statutes to the other 92 Nebraska counties and cities of the first and second classes and villages.

Agency-Issued Rules and Regulations

State agencies often develop rules and regulations that are promulgated under the authority of statutes. The rules and regulations may fill in necessary details of legislation where authorizing legislation may be limited to a statement giving the Agency authority to promulgate all necessary rules to carry out the Agency’s purpose. A good example of this is the Nebraska Department of Water, Energy, and Environment, which administers several regulatory programs for which extensive detailed legislation is not feasible. While the rules and regulations created by an Agency do not have the standing as statutes enacted by the Legislature, they are nonetheless enforceable law.

Each set of rules and regulations on a particular subject that is prepared by a State Agency is given an appropriate descriptive title by the Agency, and it is also given one of the title numbers that has been preassigned to the Agency through the structure of the *Nebraska Administrative Code*. The *Nebraska Administrative Code*, which also has been referred to as the *Nebraska Administrative Code Rules and Regulations* or the *Nebraska Administrative Rules and Regulations*, is subdivided into 483 separate titles, numbered 1 to 483.

Nebraska’s Administrative Procedure Act (*Neb. Rev. Stat. §§ 84- 901 to 84-920*) specifies that Agency-issued rules and regulations must be presented at a public hearing before they are adopted by the Agency. They also must be approved by the attorney general and governor, after which they are deposited with the Secretary of State’s Office and made available to the public. However, since a daily or weekly register containing

proposed and adopted rules and regulations is not published, it is best to check directly with the specific Agency to obtain the current approved rules and regulations

Part II. – The Planning Process

Chapter 2 – What is Planning

■ Planning Generally Defined

Everyone plans to some degree in their own daily lives. Taking it a step further, planning can be defined as a fundamental function, which involves deciding beforehand what is to be done, when is it to be done, how it is to be done and who is going to do it. It is an intellectual process which lays down a community's objectives and develops various courses of action, by which the community can achieve those objectives. It sets forth a process on how to reach the community's overall future goal for itself. Planning is thinking before any action takes place. It helps a community to take a look into the future and decide in advance the way to deal with the situations which the community may encounter. It involves logical thinking and rational decision making. More specifically, planning is conducted for the purposes of this *Handbook* by citizens and elected and appointed officials who represent their community – villages, cities, and counties.

■ Planning as a Process

Planning is a process in which information on existing physical, social, and economic conditions in a community is gathered, future trends are projected, and alternative courses of action in the community are contemplated. These activities of information-gathering, projection, and analysis are all part of the process of preparing a plan that is used by decision makers to guide the future development of the community. A planning process usually involves different interest groups that work toward a consensus about what should be done.

A community plan may be viewed as a statement about how a community intends to utilize all its resources – human, economic, and physical – to achieve what it collectively wants to be in the future. Plans can range from very detailed neighborhood plans to long-range regional plans.

In its simplest form, the process of planning can be described in the following steps:

1. Define the issues or problems which need to be solved or averted, as well as the goals to be achieved;

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2. Determine any alternative ways of solving the issues or problems and achieving the desire goal or goals;
 3. Evaluate the alternatives and their potential impact on how the goal or goals are met or achieved;
 4. After review and input from the community select and implement the best alternative;
 5. Evaluate the outcome. Determine if the goal or goals were met or achieved; and
 6. If not, begin again with step one.

Planning can be conducted for many specialized and focused issue areas, as well as in broad-ranging contexts. It may sound easy, but in today's world, planning often involves the consideration of all the many factors and their impact on complex issues and problems.

■ Why Plan?

Change is inevitable in today's world, and technology has increased the pace of change. Not only do changes occur more frequently and often unpredictably in today's world, but changes in one area often dramatically affect other areas. Today there are land uses that weren't in existence or even contemplated when the original *Handbook* was authored. Artificial Intelligence (AI) is in its infancy, but its impact is already being seen in many areas. Think about it, maybe the next update to the *Handbook* will be done by AI?

Change can be difficult to accept because of the "we've always done it this way" mentality. Change needs to be recognized for what it brings to community planning and the planning process. Most communities will want to avert the negative impact of change and guide the process of change toward a desirable future result. Planning is a process through which communities can manage change and influence the quality of life and its impact on their future.

■ Types of Plans and Planning

The foundation of planning as discussed in this *Handbook* is the community's comprehensive development plan, more commonly referred to as the "comprehensive plan". In addition, communities often choose to use other types of plans in the planning process – such as strategic planning and visioning. They may be used in

conjunction with or apart from the comprehensive planning process.

Strategic Planning

Strategic planning is used in a community planning approach as a means of overcoming obstacles to achieve a determined goal or desired outcome.

When used in the public sector, strategic planning most commonly focuses on decisions that must be made about issues confronting the community. These issues typically will have emerged from forces and trends that are both internal and external to the community. The strategic plan is designed to identify specific strategies that may be utilized by the community to achieve desired outcomes within a specific time frame.

Strategic planning is action oriented, relatively short-range in its scope, and involves consideration of a number of possible options to address problems or issues the community may be facing in the future. It may define the role of citizens and elected and appointed officials in defining and addressing those future issues or problems. Recently, common strategic planning processes pursued by communities have focused on the issues of economic development, housing, childcare, and tourism.

Community Visioning

Building upon strategic planning concepts, communities have also used a community visioning process that is directed toward developing a shared image of what a community wants to be become. Community visioning is longer-range in its scope than strategic planning.

Community visioning focuses on a wide range of concerns in the community. Visioning can be conducted as a community-wide process or focus on a particular issue like a downtown revitalization. The process explores the future by looking at alternative scenarios. The process develops a shared vision that is strongly geared to community values. The process relies heavily upon the direct participation and involvement of community citizens to articulate the vision and to define the path toward achieving it.

Community visioning has developed over the years since the original *Handbook*. It involves citizens answering the following questions as part of the process:

1. Where are we now? (Community Profile);

-
2. Where are we going? (Analyze the Trends);
 3. Where do we want to be? (Create the Vision); and
 4. How do we get there? (Develop an Action Plan).

The Comprehensive Plan

The scope of comprehensive planning is delineated in Nebraska State Statutes (Neb. Rev. Stat. § 19-903 for cities and Neb. Rev. Stat. § 23-114.02). Comprehensive planning in its traditional context sometimes is not comprehensive in the broadest sense, since it is tied primarily to land use, public facilities, transportation, utilities, housing, and sometimes a few other subject areas. Nevertheless, communities today are appreciating the need to think broadly and holistically about community planning. A comprehensive plan is a long-range plan that focuses primarily upon the factors and functions that affect the physical growth and development of a community.

The comprehensive plan is general in scope, designed to accommodate anticipated long-range future development which shall be based upon documented population and economic projections. It is based on trends of a several factors – population, employment, land use, vehicular traffic volumes, etc. – and the preferences of citizens and elected and appointed officials involved in the planning process. The comprehensive plan outlines future improvements and development that will change a community from its present condition to a desired future state.

Land use planning is the primary emphasis of work pursued by the planning commission and is the principal point of departure for discussion of planning in this *Handbook*. Land use planning may be referred to as planning for the physical environment. Pursuit of land use planning in a community or county sometimes is affected by negative experiences with various types of development and changes in land use within communities. The strength of any comprehensive plan is found in the degree of citizen participation in the process, especially by citizens who desire to see orderly and quality growth in the future.

Community Commitment to Planning

Whether a citizen lives in a city, a suburb, or a rural town or county, they are commonly faced with inadequate roads and streets and other costly public facilities and services. All of these facilities and services are supported primarily by the tax base of the community. Unless the community's tax base is sound and continually improving, the ever-rising demand for services and

facilities cannot be sustained. A community's commitment to planning is usually made in the context of limited resources with increasing demands.

The extent to which a community makes a commitment to planning depends on a number of factors, including its size, its location, its finances, its stage of development, and, most importantly, the attitude of its local elected officials and its citizen awareness and willingness to participate in guiding the development of the community.

Sound community planning requires broad participation by citizens at all stages of the process. In turn, a sound process also requires a commitment of its local leaders to support the process and later to give legitimacy to the process through decisions that implement the plan that was created in the process.

Chapter 3 – The Players in the Process

■ Key Participants in the Planning Process

Planning for any jurisdiction involves a number of different people with different backgrounds, viewpoints, and responsibilities with regard to the planning effort. Planning for the future of urban areas, rural areas, or Native American lands in Nebraska typically involves:

1. Local citizens who serve on planning commissions or other group given the responsibility of taking a leading role in any planning effort. Local citizens who also provide their viewpoints and concerns with regard to the plan or strategies to be developed;
2. Local officials and staff who are employed by the community or county;
3. Other officials and staff who are employed by other local and non-local entities, government agencies and departments who have expertise to offer to the planning process or who are an integral part of the planning effort by virtue of their relationship to the local community or county;
4. local elected officials who serve on the governing bodies of the community or county; and
5. Consultants who specialize in assisting local communities, and counties in successfully developing and implementing their planning efforts.

A closer look at each of these groups provides a better understanding of how the members of each group become players in the planning process.

■ Local Citizens

A “community,” be it a municipality, a county, or a group of similar ancestry such as a Native American tribe, is people who have common laws, interests, and hopes, but not necessarily the same viewpoints, resources, or awareness of change or needs of the total community. For any planning effort to be successful, it must involve the people who will be affected by implementation of any plan or strategies formulated in the planning process. In a democratic society, it is critically important that the viewpoints, opinions, ideas and concerns of the citizens be incorporated in and effectively addressed in each planning effort so that the resulting plan can have the citizen support necessary to allow and encourage those with decision making authority to implement the plan.

Identifying the viewpoints, opinions and concerns of the local citizens requires a concerted and on-going effort on the part of those charged with the planning effort.

Citizen input and participation in the planning process can be achieved in a variety of ways; several of these methods of gathering information are discussed in Part III, Chapter 6 of this *Handbook*. Some of the most commonly used methods are described here briefly:

Citizen Surveys and Questionnaires

Ideas, viewpoints, and concerns that local citizens may have can be identified and summarized through distribution of not only written questionnaires, telephone interviews, and similar survey techniques, but thanks to technology, the use of online resources.

Surveys and questionnaires are typically used to obtain citizen input for a planning effort at the initiation of the process in order to identify the various key issues in the community. Advantages of surveys and questionnaires include the ability to obtain considerable citizen input from a broad spectrum of the citizens surveyed. Online tools are able to collect and summarize survey results quickly and relatively cheaply. A valid survey requires that the researcher design proper unbiased questions for the survey and that the survey reach a sizeable and representative sample of the population.

Public Forums, Public Hearings and Citizen Focus Groups

The group charged with conducting the planning effort – usually the planning commission – may invite citizens to one or more meetings to seek their viewpoints, ideas, and concerns with regard to a wide variety of planning issues and topics. Forums are generally called to discuss more general planning topics and issues, while focus groups are used to focus in on the particular issues related to a particular planning topic. Focus groups may also focus on a perspective of a particular segment of the community's population, such as seniors or youth. Ultimately, public hearings, as are required by law, are used to receive and gauge citizen support or opposition to a particular issue, typically when a decision on the issue is about to be made. To ensure participation in forums, focus groups, and public hearings, special attention should be paid to the time, date, location, and how they each are publicized.

News Media and News Releases

Communication with local citizens is the key to effective citizen participation and input. When planning-related proposals or ideas

have been developed, they can be presented to the citizens either through news articles published in area newspapers or through coverage by radio and television, as well as the community's website and use of social media. It is important to understand where and how different segments of the community receive information and creating a communication plan for the planning process. The key is the accuracy of communication regardless of medium used, otherwise citizen input may be skewed or lead to mistrust in the process.

Use of the various media is an excellent and usually inexpensive method of obtaining citizen input on particular proposals or proposed actions, because if citizens have strong feelings regarding the proposal, either positive or negative, they will respond if they are first permitted to understand clearly and accurately what is proposed.

Local Officials and Staff

Municipalities and counties with larger populations, as well as Native American tribes, typically employ persons with various expertise to administer a multitude of local governmental functions for the benefit of the citizens. Their expertise typically will include personnel management, finance, planning, engineering, and overall program administration.

The administrative officials and staff of any planning jurisdiction are key players in the planning process. They can assist in the planning effort by providing services ranging from record keeping, procedural assistance, budgeting, identification of methods of financing the implementation of plans or strategies, and expert input into the development of plans and strategies. Not only do the administrative officials and staff have expertise to offer in the formulation of any plan, but they also typically are the people charged with implementing the action components or strategies of any plan. It is therefore imperative that these people understand and support the objectives and strategies of any planning effort.

Many smaller communities and counties have only a limited number of administrative officials and staff and, as a result, have limited expertise available to assist in any planning effort. To overcome this problem, the smaller local jurisdictions can seek assistance or guidance from the administrative officials and staff of other more populated jurisdictions or they can seek assistance of other officials and staff of non-local jurisdictions, including state and federal government departments, regional service agencies, and consultants who specialize in assisting local governments in their planning efforts.

Other Officials and Staff

In Nebraska, as in most states, there are a multitude of state and federal agencies and departments, regional service agencies, and other local and non-local officials and staff who can provide assistance in almost any planning effort. The services offered by these officials and staff people cover a wide range, including direct assistance in the development of plans and strategies, referrals to other officials who can provide the needed assistance, provision of data necessary to the planning effort, guidance in the financing of the planning effort, guidance in identifying financing for planned actions, and administrative leadership in implementing plans and strategies.

Local Elected Officials

The elected members of county boards of commissioners or supervisors, village boards of trustees, and city councils provide leadership in local government. They are held accountable for the actions taken by the governmental entities in which they are elected to office.

Support by elected officials of the planning function, as well as their active participation in the process, are key to the success of any planning effort. Even though members of the planning commission have a more focused and continuous role in the planning process, the active involvement of elected officials throughout the process is important in keeping them informed about planning and zoning issues and helping them to make informed decisions on matters that are directly or indirectly related to those issues.

Consultants

Consultants are used to supplement staff when a community is short on either or both staff time or staff expertise. Virtually all communities and counties utilize consultants at one time or another to provide expertise and “know-how” in a variety of areas. Such expertise and “know-how” can prove invaluable to the success of any planning effort. Consultants who provide services and expertise for planning and community/county development are capable of assisting local planning commissions in identifying citizen needs, developing plans and strategies to address these needs, developing regulations to assist in the implementation of the plans and strategies, designing projects to satisfy the needs, and identifying the financing sources necessary to implement the projects.

A planning effort may require the assistance of several different consultants or consultants with a range of expertise to assure that

plans, regulations, strategies, or projects can be properly and completely developed and implemented successfully.

Chapter 4 – The Planning Commission

■ Establishing a Planning Commission

Municipal and County Planning Commissions

Under Nebraska law, each incorporated municipality and county is granted the authority (Neb. Rev. Stat. § 19-901 for municipalities and Neb. Rev. Stat. § 23-114.01 for counties) to create an officially recognized committee known as the planning commission and to appoint local citizens to serve as members of the commission.

Interjurisdictional Planning Commission

Nebraska law (Neb. Rev. Stat. §§ 19-930 to 19-933) also authorizes the creation of an interjurisdictional planning commission when a municipality has extra-territorial zoning jurisdiction crosses a county line. The interjurisdictional planning commission provides a means for dealing with the regional planning and zoning issues that arise when the extra-territorial zoning jurisdiction of the municipality otherwise could raise jurisdiction questions and conflicts. The authority to create an interjurisdictional planning commission does not apply if the county into which the municipality's zoning jurisdiction extends has not established its own county planning commission.

■ Residency of Planning Commission Members

All members of a planning commission must be residents of the municipality or county creating the commission, except that in the case of a city or village planning commission, a maximum of two members instead may reside within the area outside of the city or village over which the city or village is authorized by statute to exercise extra-territorial planning and zoning jurisdiction. However, one member of the commission must be from the extra-territorial jurisdiction area if:

1. for a village, more than 200 residents reside within the extra-territorial area;
2. for a city of the second class, 500 residents live within such area; and
3. for a city of the first class, 1,000 residents live within such area. (Neb. Rev. Stat. § 19-926)

For county planning commissions, a majority of the members must reside in unincorporated areas of the county (Neb. Rev. Stat. § 23-114.01). This requirement does not apply to joint planning commissions.

Number of Members

The number of planning commission members is set by statute and varies depending on whether the commission being established serves a city, a village, or a county.

City and Village Planning Commissions

The number of members for planning commissions in Nebraska varies among cities and villages, depending upon the population of the municipality and the decision of the local governing body that establishes the planning commission (*Neb. Rev. Stat. § 19-926*).

- For all cities of the first class, the statute provides that the planning commission shall have nine (9) members.
- For cities of the second class and villages, the statute provides that the planning commission shall consist of either five (5), seven (7), or nine (9) members, as established by ordinance passed by the city council or village board of trustees.

Further, village and city planning commissions may have, by ordinance passed by the city council or village board of trustees, one alternate member who may serve to vote and participate when less than the full number of regular commissioners is present and capable of voting.

County Planning Commissions

For a county or joint planning commission, there is not a certain number of members stipulated by statute, but members of a county planning commission shall be appointed with due consideration to geographical and population factors of the County (*Neb. Rev. Stat. § 23- 114.01*).

Interjurisdictional Planning Commissions

An interjurisdictional planning commission is to consist of six (6) members (*Neb. Rev. Stat. § 19-931*), three of whom are to be chosen by the mayor from membership of the municipality's planning commission. The other three members are to be chosen by the county board from members of its county planning commission.

Conditions of Membership

Appointment

Planning commissioners in municipalities are appointed by the mayor with the approval of the majority vote of the members of

the governing body. The planning commissioners in municipalities are to represent, insofar as possible, the different professions or occupations in the municipality (Neb. Rev. Stat. § 19-926).

County planning commissioners are appointed by the county board. The planning commissioners in counties are to be appointed with due consideration to geographical and population factors (*Neb. Rev. Stat. § 23-114.01*).

Term of Service

Approximately one-third of members appointed to the first planning commission established by the governing body in a village, a city of the first class or second class, and a county, shall be appointed to a term of one year; approximately one-third shall be appointed for two years; and the remaining one-third shall be appointed for three years. After the terms of the initial appointments, all terms shall be three years. All members shall hold office until their successors have been appointed.

Compensation and Expenses

Members of planning commissions serve without compensation for the time they commit to their service.

A city council may provide funds, equipment, and accommodations necessary for the work of a city planning commission, but the expenditures of the commission, exclusive of gifts, must be within the amounts appropriated for the specified purposes by the council; no expenditures in excess of those amounts are valid (Neb. Rev. Stat. § 19-928).

A member of a county planning commission may be compensated in an amount to be fixed by the county board for actual and necessary expenses incurred in connection with his or her duties as a member of the commission (*Neb. Rev. Stat. § 23-114.01*). The mileage reimbursement rate for travel by personal automobile is established by state statute (*Neb. Rev. Stat. § 81-1176*), which states that the rate is set by the Nebraska Department of Administrative Services (DAS).

A member of a county planning commission may be paid an additional per diem payment, if approved by the county board, not to exceed \$15 for each day that the member attends meetings of the commission or is engaged in matters concerning the commission, provided that such compensation shall not exceed \$1,000 in any one year. The per diem payment is in addition to and separate from compensation for expenses.

Limitations on Holding Other Offices

Members of a city or village planning commission may hold any other municipal public office, except (a) mayor, (b) a member of the city council or village board of trustees, (c) a member of any community redevelopment authority or limited community redevelopment authority created under Neb. Rev. Stat. § 18-2102.01, or (d) a member of any citizen advisory review committee created under Neb. Rev. Stat. § 18-2715. (Neb. Rev. Stat. § 19-926)

Members of a county planning commission shall not hold any other county or municipal office, except that a member may also be a member of a city, village, or other type of planning commission. One member of the county planning commission shall be appointed to the county board of adjustment. (Neb. Rev. Stat. § 23-114.01 and 23-168.01)

Officers

The planning commission shall elect a chairperson from its members and such other officers as determined by the commission (Neb. Rev. Stat. § 19-927). The term of chairperson is one year, and the chairperson shall be eligible for reelection.

The vote to elect leadership within the planning commission may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes (*Neb. Rev. Stat. § 84-1413*).

Removal of Members

Any member may, after a public hearing before the city council or village board of trustees, be removed by the mayor with the consent of a majority vote of the members of the city council or by the chairperson of the village board of trustees with the consent of a majority vote of the members of the village board of trustees for inefficiency, neglect of duty or malfeasance in office, or other good and sufficient cause. (*Neb. Rev. Stat. § 19-926*).

In counties, members of the commission may be removed by a majority vote of the county board for inefficiency, neglect of duty, or malfeasance in office or other good and sufficient cause upon written charges being filed with the county board and after a public hearing has been held regarding such charges. (*Neb. Rev. Stat. § 23-114.01*).

Meetings

Frequency

Planning commissions serving cities and villages shall hold at least one regular meeting each calendar quarter (Neb. Rev. Stat. §

19- 927). However, the governing body of a city or village may require the commission to meet more frequently. Also, the chairperson of the commission may call for a meeting when necessary to deal with pending business before the commission. The chairperson may cancel a quarterly meeting, but no more than three quarterly meetings may be canceled per calendar year.

State statutes do not specify a minimum frequency of meetings for county planning commissions.

Public Open Meetings Act

Planning commissions are public bodies as defined in Nebraska statute (Neb. Rev. Stat. § 84-1409(1)(a)). All meetings of a planning commission shall be open to the public. (Neb. Rev. Stat. §§ 84-1408 to 84-1414).

Quorum

A quorum for the transaction of business in a village or city planning commission is the number of members equivalent to a majority of the regular appointed members (Neb. Rev. Stat. § 19-926).

State statutes do not specify a quorum for county planning commissions since there is no requirement as to the number of members. Therefore, a quorum would be a majority of those members appointed to the county planning commission.

Rules (Bylaws)

The planning commission shall adopt rules for transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which shall be a public record (Neb. Rev. Stat. § 19-927).

Minutes

The planning shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed. (Neb. Rev. Stat. § 84-1413). Any action taken on any question or motion that is moved and seconded shall be by roll call vote of the commission members in open session, and the record shall state how each member voted or if the member was absent and/or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a public body which utilizes an

electronic voting device which allows the yeas and nays of each member of such public body to be readily seen by the public. Minutes shall be written and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing or keeping the minutes is absent due to a serious illness or emergency.

Closed Sessions

The planning commission may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close. Closed sessions may be held for, but shall not be limited to, such reasons as:

- (a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;
- (b) Discussion regarding deployment of security personnel or devices;
- (c) Investigative proceedings regarding allegations of criminal misconduct; or
- (d) Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting; (*Neb. Rev. Stat. § 84-1410*).

The vote to hold a closed session shall be taken in open session. The vote of each member on the question of holding a closed session, the reason for the closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. Matters considered during the closed session shall be restricted to those purposes set forth in the minutes as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken.

Any member of any public body shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session or if the member contends that the closed session is neither clearly necessary for (a) the protection of the public interest or (b) the prevention of needless injury to the reputation of an individual. Such challenge shall be overruled only by a majority vote of the members of the public body. Such challenge and its disposition shall be recorded in the minutes.

The requirements of the Open Meetings Act does not apply to chance meetings or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened, if there is no vote

or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.

Example bylaws for a Planning Commission are included as Appendix 1 of this *Handbook*.

Functions and Duties

As specifically set forth in the applicable statutes (Neb. Rev. Stat. § 19-929 for municipalities and Neb. Rev. Stat. § 23-114.01 for counties), the functions and duties of a planning commission include:

1. Make and adopt a comprehensive development plan as defined by Neb. Rev. Stat. § 19-903 for the physical development of the city or village, including any areas outside its boundaries which in the commission's judgment bear relation to the planning of such city or village;
2. Prepare and adopt such implemental means as a capital improvement program, subdivision regulations, building codes, and a zoning ordinance in cooperation with other interested municipal departments as means of implementing the comprehensive plan and other plans;
3. Consult with and advise public officials and agencies, public utilities, civic organizations, educational institutions, and citizens in regard to development and implementation of the comprehensive plan and related regulations, codes, and other means of implementing the plan;
4. Delegate authority to any such group to conduct studies and make surveys for the commission, make preliminary reports on its findings, and hold public hearings before submitting its final reports;
5. Hold and conduct public hearings, at which the commission may summon witnesses, administer oaths, and compel the giving of testimony on any matter relating to the comprehensive plan or development of the area under the jurisdiction of the commission prior to making final reports and recommendations to the governing body;
6. With consent of the governing body and in its own name, may:
 - (a) make and enter into contracts with private or public bodies;
 - (b) receive contributions, bequests, gifts, or grant funds from public or private sources;
 - (c) expend funds appropriated to it by the governing body;

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- (d) employ agents and employees; and
 - (e) acquire, hold, and dispose of property; and
7. Granting conditional uses or special exceptions to property owners for the use of their property if the city council or village board of trustees has, through a zoning ordinance or special ordinance, generally authorized the commission to exercise such powers and has approved the standards and procedures adopted by the commission for equitably and judiciously granting such conditional uses or special exceptions.

Review Authority Over Actions of Governing Body

A planning commission also has review authority over any actions of the governing body which relate to the above-listed powers and duties of the commission. In fact, the governing body which appoints a planning commission shall not hold any public hearing or take any action on matters relating to the comprehensive plan, capital improvements, building codes, subdivision development, annexation of territory, or zoning, including amendments thereto, until it has received the recommendation of the planning commission (Neb. Rev. Stat. § 19-929 for municipalities and Neb. Rev. Stat. § 23-114.01 for counties).

Planning Commission Recommendation is not Required for Certain Subdivisions

A recommendation from the planning commission shall not be required for subdivision of existing lots and blocks whenever all required public improvements have been installed, no new dedication of public rights-of-way or easements is involved, and such subdivision complies with the ordinance requirements concerning minimum areas and dimensions of such lots and blocks, if the city council or village board of trustees has designated, by ordinance, an agent pursuant to Neb. Rev. Stat. § 19-916. (Neb. Rev. Stat. § 19-929).

Use of the Interlocal Cooperation Act

One tool for carrying out some of the planning commission's functions and duties is the Interlocal Cooperation Act (Neb. Rev. Stat. §§ 13-801 to 13-827), which enables one or more public agencies to contract with other public agencies to perform any governmental service or activity which at least one of the public agencies is authorized by law to perform. The Act is one of the most powerful provisions under Nebraska law. For example, some of the studies or planning work for which the planning commission is responsible could be conducted in conjunction with one or more other public agency, such as a village, city, county,

school district, department of state government, etc. Further discussion of the Interlocal Cooperation Act is included in chapter 10, “Other Implementation Tools.”

Limitations of Authority

A planning commission is a review and recommendation body only. It is not empowered to have independent authority over the implementation of the plans it is responsible for preparing or to implement or administer any regulation or program established to implement the comprehensive plan or other plans prepared by the commission. These authorities are left up to the governing body of the jurisdiction which created the planning commission.

Planning Commission Authority to Grant Conditional Uses

There is one exception to the limitation of independent authority for planning commissions. If a commission has been properly authorized to do so by the governing body which created the commission, the planning commission may have the sole authority to grant conditional uses or special exceptions as provided for in the zoning regulations (*Neb. Rev. Stat. § 19-929* for municipalities and *Neb. Rev. Stat. § 23- 114.01* for counties). Once granted this authority by the governing body, the planning commission’s actions with regard to conditional uses or special exceptions are not subject to review or approval by the governing body. Alternatively, rather than giving authority to the planning commission, the governing body may retain for itself the power to grant conditional uses or special exceptions, but the governing body also must have formally adopted standards and procedures for granting such conditional uses or special exceptions in a manner that is equitable, and which will promote the public interest.

Common Problems

A problem common to those planning commissions which have been granted by the governing body the authority to grant conditional uses or special exceptions is that commission members sometimes do not understand the statutory limitations or the limitations or procedural requirements required within the zoning regulations associated with this authority. Too often they pay no attention to these limitations and thereby grant conditional uses or special exceptions which are inconsistent with the comprehensive plan and zoning regulations that the commission itself is responsible for preparing and upholding. It is very important that each member of the commission understand the limitations set forth in the statutes and in the zoning regulations

and that the commission attach conditions appropriate to the granting of a conditional use or special exception to ensure that such uses will be consistent with the comprehensive plan and zoning regulations.

Ethical Issues

Participation in Meetings

Some planning commission members may decide that attending meetings is not an important consideration when serving as a member of the commission. Since the commission has a limited number of members, lack of attendance by enough members can cause unnecessary delays in actions by the commission, thereby resulting in the commission not performing its statutory duties. Lack of commission action on such issues as a petition for a change of zoning or a conditional use or special exception, or subdivision review, can cause unnecessary financial costs or other time-related problems to be incurred by applicants.

Conflicts of Interest

It is essential to the proper operation of democratic government that public officials and employees be independent and impartial, that governmental decisions and policy be made in the proper channels of governmental structure, and that public office or employment is not used for private gain other than the compensation provided by law.

A planning commission member may have a conflict of interest with regard to a application presented for action by the Commission. For example, a commissioner may own property that is impacted by a petition for a change of zoning, a petition for granting of a conditional use or special exception, or a petition for subdivision review, that has been presented to the commission. State accountability and disclosure laws and the commission's own bylaws or rules of procedure typically provide that any member who has a direct or indirect financial interest in the application presented to the commission shall not participate in the discussion of the petition and shall abstain from voting on any action taken by the commission on such application.

Ethical issues may arise when commission members may want to vote in favor of an applicant in a case under consideration by the commission, due to friendship or personal or business relationships with the applicant, or they may refrain from voting in such a case to avoid potential disruption of the relationship with the applicant. If the commissioners were to vote in favor of the

applicant when the application presented to the commission does not comply with the reasonable application of the zoning regulations, the statutory limitations, or limitations set forth in the zoning or subdivision regulations, such a vote is a violation of their duties as members of the commission and is therefore unethical. Abstention from voting in such an instance, although not necessarily unethical, can result in delays of commission action due to inability to maintain a quorum.

Nebraska Political Accountability and Disclosure Act

The Nebraska Political Accountability and Disclosure Act (*Neb. Rev. Stat. §§ 49-1401 to 49-14,140*) deals with election campaigns, legislative lobbyists, and conflicts of interest. While it is beyond the scope of this *Handbook* to present a detailed description of all the requirements of this Act, there are a few important aspects of the Act which pertain to public officials involved in the planning and zoning process.

Specifically, the conflict of interest issues addressed in the Act (*Neb. Rev. Stat. §§ 49-1492 to 49-14,104*) are often raised in public hearings at the local level of government. The wise planning commission member, city council or village board member, or county board member will learn to recognize those instances where a concerned citizen will allege that such member has a conflict of interest and learn to avoid such situations.

Certain individuals are required to file annually a statement of financial interests with the Nebraska Political Accountability and Disclosure Commission (*Neb. Rev. Stat. § 49-1493*). These individuals include, among others:

1. a member of any board or commission of the state or any county which examines or licenses a business, trade, or profession or which determines rates or otherwise regulates a business;
2. a member of a land use planning commission, zoning commission, or authority of the state or any county with a population of more than 100,000 inhabitants;
3. an elected official of the city of the primary or metropolitan class;
4. an elected county official; or
5. an official or an employee who is responsible for taking or recommending official action of a non-ministerial nature with regard to, among other actions, land use planning or zoning.

The real gist of conflict of interest provisions in this Act is that an individual serving in one of the capacities described above must

take certain actions as soon as a potential conflict of interest surfaces (*Neb. Rev. Stat. § 49-1499*). A conflict of interest is defined as any action or any decision that the individual would make in the discharge of his or her official duties that may cause financial benefit or detriment to him or her or a member of his or her immediate family or a business with which he or she is associated. To fully comply with the Act, the individual should take the following actions:

1. prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict;
2. deliver a copy of the statement about the potential conflict to the Nebraska Political Accountability and Disclosure Commission; and
3. if the person has no immediate superior, take such steps as the Nebraska Political Accountability and Disclosure Commission may prescribe or advise to remove himself or herself from influence over actions and decisions on the matter.

In the normal business of a planning commission, city council or village board, or county board, how should a member of the body declare a conflict of interest? The short answer is that when an appearance of a conflict of interest arises, the member of the body should first declare his or her conflict of interest as soon as possible on the record before the body. He or she should then recuse himself or herself from the public hearing on the matter. He or she should then step down from where the body is seated or should leave the room in which the discussion or public hearing is occurring depending on the body's rules or bylaws.

If in doubt, the individual may request an advisory opinion from the Nebraska Political Accountability and Disclosure Commission (*Neb. Rev. Stat. § 49-14,100*). Such an advisory opinion is

probably a good idea when any member of the body is in doubt as to the propriety of his or her participation in an action proposed to be taken by the body. If the request to the Nebraska Political Accountability and Disclosure Commission is complete and accurate, an advisory opinion is a complete defense to any charge of violation of the Act.

There are further prohibitions for any member of the county board or city council to be involved with any contractual relationship with the governing body. The existence of any interest in a contract shall render the contract voidable unless the board member makes a declaration on the record regarding the nature and extent of the interest prior to official vote on the contract and such member does not vote on the matter granting the contract.

Nationally Recognized Principles of Ethical Behavior in Planning

Overall guidance on ethical behavior in the field of community and regional planning is provided by professionals and other participants in the planning process across the United States, who have come together in the American Planning Association (APA) to outline principles of ethical behavior in the field that have been adopted by the national organization.

The American Planning Association and the national professional institute – the American Institute of Certified Planners (AICP) – within APA have developed a statement of principles to guide ethical conduct of all who participate in the process of planning as advisors, advocates, and decision maker – including certified planners, other practicing planners, appointed and elected officials, and others who participate in the process of planning.

Further, the American Institute of Certified Planners has adopted an “AICP Code of Ethics and Professional Conduct,” which is a guide to the ethical conduct required of members of AICP. In order for a planner to qualify and become a member of the American Institute of Certified Planners, he or she must

- (1) be a current member of APA;
- (2) be, or have been, engaged in the practice of professional planning as defined by AICP;
- (3) have completed a stated combination of planning education and experience set by the national AICP Commission;
- (4) pass a nationally administered examination covering the field of planning; and
- (5) agree to be guided by, and aspire to uphold, the “AICP Code of Ethics and Professional Conduct.”

Not all practicing professional planners are members of AICP, but this does not imply that they do not subscribe to and abide by the ethical principles espoused by APA and AICP.

The current version of the code of ethics can be found at: <https://www.planning.org/ethics/ethicscode>

Chapter 5 – The Board of Adjustment

■ Establishing a Board of Adjustment

Municipalities and counties formulate and adopt zoning regulations as a tool for the long-term implementation of their comprehensive plans. When such regulations are adopted, applicable statutes require that the governing body appoint persons to another planning committee, separate from the planning commission (*Neb. Rev. Stat.* §§ 19-907 to 19-912 for municipalities and *Neb. Rev. Stat.* §§ 23-168.01 to 23-168.04 for counties).

This appointed body is known as the Board of Adjustment. The Board has only three (3) powers:

- (1) to hear appeals where it is alleged by the appellant that there is an error in any order, requirement, decision, or refusal made by the zoning official based on or made in the enforcement of any zoning regulations or any regulation relating to the location or soundness of structures;
- (2) to hear and decide, in accordance with the provision of any regulation, requests for interpretation of any map; and
- (3) where by exceptional narrowness, shallowness, or shape of a specific piece of property either at the time of the adoption or amendment to the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner or such property, to authorize, upon an appeal relating to such property a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted :
 - a. without substantial detriment to the public good, and
 - b. without substantially impairing the intent and purpose of any zoning regulations is meant to be a safety valve for the zoning regulations.

The Board is meant to be a safety valve for the zoning regulations so that no undue or unnecessary hardship results from the proper enforcement of such regulations on any particular property within the jurisdiction of the Board.

The Board of Adjustment is a public body as defined in the Nebraska Open Meetings Act.

Membership

Number and Categories of Members *

Boards of adjustment for villages, cities, and counties are to have five (5) regular members, plus one (1) additional member designated as an alternate. The alternate shall attend and serve at the meetings of the board only when one of the regular members is unable to attend for any reason.

One (1) member of the board of adjustment shall be appointed from the membership of the planning commission of the jurisdiction. The rationale for this is to establish an on-going link and avenue for communication between the board and the planning commission.

No member of the board of adjustment shall be a member of the county board of commissioners or county board of supervisors. (*Neb. Rev. Stat. § 23-168.01*).

The governing body of a village may provide by ordinance that it will serve also as the board of adjustment for the jurisdiction (*Neb. Rev. Stat. § 19-911*).

The governing body of a city of the first or second class or village also has the option of requesting that the county board of adjustment serve as the city's or villages board of adjustment (*Neb. Rev. Stat. § 19-912.01*).

* LB289 passed in the 2025 Session of the Nebraska Legislature provides for a 3- member village board; provides for staggered terms for village board members; outlines the petition process for villages that want to change to a 3-member board; and allows city councils for first and second class cities to constitute the board of adjustment.

Residency of Members

Members of the board of adjustment shall reside within the jurisdictional area of the board.

Commencing September 9, 1995, when a vacancy occurs on the board of adjustment of a city or village, the new position is to be filled by the appointment of a person who resides within the extraterritorial zoning jurisdiction of the city or village if more than 200 persons reside within the extra-territorial area. Thereafter, at least one member of the board must reside outside of the corporate boundaries of the city or village but within its extraterritorial zoning jurisdiction. The intent of this requirement is to include the voice of rural citizens in zoning decisions that will impact their areas.

Terms, Vacancies, and Removal

Members of the board are appointed for a term of three (3) years (*Neb. Rev. Stat. § 19-908* for municipalities and *Neb. Rev. Stat. § 23-168.01* for counties). However, in the case of a village board of trustees also serving as the board of adjustment, the terms of the members shall coincide with the terms of the members of the village board.

If the planning commission member who is serving on the board of adjustment loses membership on the planning commission, he or she also loses membership on the board of adjustment (*Neb. Rev. Stat. § 19-908* for municipalities and *Neb. Rev. Stat. § 23-168.01* for counties). A replacement for the planning commission member must be appointed from the planning commission to the board of adjustment.

Vacancies shall be filled by appointing a replacement member for the unexpired term of any member whose term becomes vacant.

Members of the board of adjustment may be removed for cause by the appointing body after receiving written charges and after a public hearing.

Meetings and Voting Requirement

Board of Adjustment Requirements and Authority

The board of adjustment shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to *Neb. Rev. Stat. §§ 19-901 to 19-914*. Meetings of the board of adjustment shall be held at the call of the chairperson and at such other times as the board may determine. Such chairperson, or in his or her absence the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board of adjustment shall be open to the public under the Nebraska Open Meetings Act. The board of adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, failing to vote, or absent and not voting indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

Required Number of Votes

In voting on an appeal related to any of the three authorized functions of the board (see “Functions and Authority” section below), a concurring vote of four members of the board of adjustment is required to make the change requested in appeal (*Neb.*

Rev. Stat. § 19-910). Where the village board of trustees is serving as the board of adjustment, concurring votes of two-thirds of the members of the village board are required (Neb. Rev. Stat. § 19-911).

Example rules and procedures for a board of adjustment are included as Appendix 3 of this *Handbook*.

Functions and Authority

The board of adjustment is a “quasi-judicial” body; thus, unlike the planning commission, its actions are not subject to review and approval of the governing body.

The board of adjustment deals exclusively with the application of zoning regulations within the jurisdiction of the board. Unlike the planning commission, the board is not granted any statutory authority to conduct other planning efforts, and its authority with regard to application of the zoning regulations is restricted to three specific powers. The board, in taking action on any of the three authorized powers is also limited by statute and the zoning regulation itself, regarding what actions it can take and how far it can go.

In each of the three specific powers authorized for the board of adjustment, the concurring vote of four (4) members of the five-member board shall be necessary to reverse any order, requirement, decision, or determination of the zoning administrator or to grant a zoning variance. (*See*, last paragraph under *Number and Categories of Members* above)

Brief descriptions of the Board’s three authorized powers, the limitations applicable to each power, and common problems associated with each power, are provided below. Applicable statutes more specifically delineate limitations (*Neb. Rev. Stat. § 19-910* for municipalities and *Neb. Rev. Stat. § 23-168.03* for counties).

(1) Authority Regarding Administrative Appeal

The board of adjustment has the authority to hear and decide appeals from any person who believes that the zoning administrator made an error in the application or interpretation of the zoning regulations or an error relating to the location or soundness of structures.

Limitations

In exercising this authority, the board may agree with or reverse part or all of the decision(s) made by the zoning administrator in the specific case being appealed, provided that such decision is consistent with the intent of the zoning regulations. In exercising

this authority, the Board has the power of the zoning administrator, except that a concurring vote of a minimum of four (4) members of the board is required by statute to reverse all or any part of the decision(s) of the zoning administrator.

Common Problems

Common problems encountered in exercising this authority include a lack of understanding by board members of what the zoning regulation requires and why the particular requirement being appealed is included in the regulation. This lack of understanding may lead to reversing decisions which are, in fact, correct and consistent with the adopted zoning regulations. Therefore, it is important that the board investigate the reasons and logic behind the zoning requirement being appealed prior to taking action on any such appeal.

A second problem often encountered is that the motions of the board in acting on an appeal do not include the reasons for such action (findings of fact and conclusions of law), and subsequently the reasons for such action are missing from the minutes of the board. This lack of stated reasons can lead to reducing the public's confidence in the integrity of the board, as well as leaving the board's decisions open for a legal challenge.

A third problem is that board members may forget that a concurring vote of at least four (4) members is required to reverse all or part of the administrator's decision in each case. Reversing a decision without this four-fifths (4/5) majority leaves the action of the board subject to legal challenge and, if overturned after the appellant has taken action in accordance with the board's erroneous decision, could result in legal action against the local government for damages.

A fourth problem encountered is that persons sometimes bypass the board of adjustment and appeal directly to the district court concerning zoning issues that are normally heard first by the board. This procedural error may be held against the appellant.

(2) Authority Regarding Interpretation of Maps

The board of adjustment has the authority to hear and decide, within the limits established in the zoning regulations, requests by any person regarding the interpretation of any zoning related map, including the "official zoning map" of the area for which the board has jurisdiction.

Limitations

Most cases of this type which come to the board are appeals from the zoning administrator with regard to where a particular zoning district boundary line is located or what specific land use(s) is/are indicated on the "future land use plan" for the area in question. In

exercising this authority, the board must comply with the concurring vote of a minimum of four (4) members of the board to reverse all or part of the decision of the zoning administrator regarding interpretation of the applicable map.

Common Problems

A common problem encountered by the board in exercising this authority is the board not being aware of or ignoring the rules and limitations for interpretation of the “official zoning map,” as contained within the zoning regulation itself. Also, the “official zoning map” may not have been properly updated with regard to changes in zoning district boundaries, resulting in an inappropriate interpretation of the map.

(3) Authority Regarding Variances

The board of adjustment has the authority to hear and decide applications for a variance from the zoning regulations with regard to a particular piece of property. A variance is a limited relaxation of one or more of the zoning regulations applicable to a particular piece of property. The variance may be granted to avoid creating unnecessary or undue hardship for reasonable use of such property.

Limitations

Nebraska statutes severely limit the authority of the board to grant variances through a listing of conditions under which the board may grant a variance. These conditions include:

The board may only authorize a variance from the portion or portions of the zoning regulation affecting a particular piece of property where, due to the exceptional narrowness, shallowness, shape, topographic conditions, or other extraordinary and exceptional situation or condition of the property, the strict application of such zoning regulations would result in peculiar and exceptional practical difficulties or exceptional and undue hardships upon the owner of such property.

A variance may be granted if the relief from specific difficulties or hardship can be achieved without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning regulations. No variance shall be granted, however, unless the board finds that each of the following conditions exist:

- (1) that the strict application of the applicable zoning regulations would, in fact, produce undue hardship;
- (2) that such hardship is not generally shared by other properties in the same zoning district and same vicinity as the property in question;

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- (3) that the authorization of a variance will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of a variance;
 - (4) that the granting of the variance is based upon reasons of demonstrable and exceptional hardship as distinguished from a variance for the convenience, profit, or caprice (whim of the owner); and
 - (5) that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

It is important to note that the board has the authority to attach any reasonable condition to its action to authorize a variance which will ensure that any substantial detriment to adjacent property is avoided and the character of the zoning district will not be changed. In order to grant a variance, four (4) of the five board members must vote for the variance.

It must be emphasized that variances are not for the “use of land.” Use variances are not permitted and are illegal in the State of Nebraska. If a property owner wants to obtain a change of use, a rezoning request should be filed instead. Variances are only granted for purposes of giving property owners relief from the area requirements of the zoning ordinance, such as setbacks, including side yards, front yards and rear yards or other dimensional requirements.

Common Problems

The most common problem which boards of adjustment encounter when dealing with a variance petition is that the board fails to evaluate the application in accordance with the statutory limitations listed above and any further limitations established in the zoning regulations and as a result may authorize a variance which is not in accordance with these limitations. Such actions result in the board overstepping its statutory authority and can lead to reducing the public’s confidence in the integrity of the board, as well as leaving the board’s decisions open to legal challenge and claims for damages by any aggrieved person. Further, if an action of the board is overturned after the appellant has taken action in accordance with the board’s erroneous decision, the appellant may take legal action against the local government for damages.

A second problem often encountered in dealing with variance application is that findings of fact by the board relative to the application of the statutory limitations in each variance petition are not included in the motions of the board and therefore do not

appear in the minutes of the board. This lack of findings of fact and recording of the same in the minutes may again leave the board's decisions open to legal challenge.

A third problem often encountered is a procedural problem relating to the board not authorizing a variance by the required concurring vote of four (4) members of the board (two-thirds in the case of the village board of trustees acting as the board of adjustment). A simple majority vote does not constitute legal action by the board with regard to authorizing a variance. The granting a variance on the basis of a simple majority vote leaves the Boards action open to legal challenge.

Ethical Issues

Three common ethical issues which face members of the board of adjustment are the following:

1. A board of adjustment member may have a conflict of interest with regard to an application presented for action by the board. Disclosure laws and the board's own bylaws or rules of procedure typically provide that any member who has a direct or indirect financial interest in the petition presented to the board shall not participate in the discussion of the petition by the board and shall abstain from voting on any action taken by the board on such petition.
2. Some board of adjustment members may decide that attending meetings is not an important consideration when serving as a member of the board. Since the board has only five (5) voting members and one alternate, and since action on any petition to the board must be decided by a concurring vote of four (4) members (two-thirds of the members if the village board of trustees serves as the board of adjustment), lack of attendance by enough members can cause unnecessary delays in action by the board with the resulting time delays causing financial costs or other time-related problems to be incurred by the petitioner. Note the quorum of 5 members is 3. This means that the board can meet but would be powerless to exercise any of its three (3) powers. A board's bylaws may wish to provide that a quorum of the Board is four (4) instead of three (3).
3. Board of adjustment members may vote in favor of the applicant in a case under consideration by the board due to friendship or personal or business relationship with the petitioner or may refrain from voting in such case to avoid potential disruption of the relationship with the petitioner. Voting in favor of the applicant, if the application presented to the board does not comply with the reasonable application of the zoning regulations or the statutory limitations for

authorization of a variance, is a violation of the duties of a member of the board and is therefore unethical. Abstention from voting in this instance, although not necessarily unethical, can result in delays of board action due to the inability to muster the required number of concurring votes for action. In those cases, abstention is synonymous to a “no” vote.

Process for Appeals to the Board of Adjustment

Appeals to the board of adjustment may be taken by any party aggrieved by a decision of the local official in charge of administering the zoning regulations, typically referred to as the zoning administrator. An appeal shall, however, be filed within a reasonable period of time after the action being appealed, with such reasonable time period being set forth in the rules or bylaws of the board (*Neb. Rev. Stat. § 19-909* for municipalities and *Neb. Rev. Stat. § 23-168.02* for counties).

The party taking the appeal to the board of adjustment must file a notice of appeal with the board and with the zoning administrator.

The board of adjustment must schedule a hearing of the appeal within a reasonable amount of time. Any party may appear at the hearing in person, by agent, or by attorney.

The board of adjustment must decide the appeal within a reasonable amount of time.

The statutes do not define what is a “reasonable time”. Therefore, the board’s rules or bylaws are an important procedural requirement for the board to develop and adopt.

Please note however, appeals of decisions on conditional use permits or special exceptions to the zoning regulations, do not go to the board of adjustment. Those appeals go directly to the district court.

Process for Appeal of Decisions by the Board of Adjustment

Any person aggrieved by any decision of the board of adjustment may appeal the board’s decision. An appeal involves presenting a duly verified petition to the district court that has jurisdiction over the municipality or county of the board of adjustment within fifteen (15) days of the filing of the board’s decision in the office of the board of adjustment. This petition must specify the grounds upon which the aggrieved person considers the decision of the board of adjustment to be illegal.

The district court may appoint a referee to take additional evidence if it determines the record before the board of adjustment may be

deficient in some respect. The referee file his/her report along with his or her findings of fact and conclusions of law with the district court. The referees report becomes part of the record before the district court.

The district court may reverse or affirm, wholly or partly, or may modify the decision of the board of adjustment that is brought up for review. The legal procedures and time frame for action by the district court is further described in state statutes (*Neb. Rev. Stat.* § 19-912 for municipalities and *Neb. Rev. Stat.* § 23-168.04 for counties).

Part III: – The Plan

Chapter 6 – The Comprehensive Plan

■ A Guide for Physical Growth and Development

The comprehensive plan, or comprehensive development plan as it is referred to by Nebraska law, is the “heart” of a local government’s planning and implementation program that guides the physical growth and development in Nebraska villages, cities, and counties. The comprehensive plan serves as a guide, a road map, for the preservation of existing conditions that are valued and the development of desired future changes.

The comprehensive plan provides goals, policies, and action strategies in the areas of land use, public facilities and utilities, transportation, and housing, as well as recommendations for plan implementation and plan maintenance. The planning process results in the creation of general, as well as specific and practical, directions and guidelines for both the community and its economic development.

■ Planning Time Horizon

A realistic life for most comprehensive plans is 10 to 20 years. A planning period in this range normally provides an adequate and realistic time frame for achieving the various programs of economic and community development that is defined in the plan.

■ Planning Jurisdiction

City and Village Jurisdiction

The planning jurisdiction for cities and villages refers to the land area within the corporate limits or any city of village and any extraterritorial area which a city of village exercises land use planning and zoning authority. The planning jurisdiction for a county is all area within the county outside the zoning jurisdiction of a city or village. As mentioned, the planning jurisdiction of a city or village is not necessarily confined to the land area within its corporate limits. Nebraska statutes define the land area that may be included in the planning jurisdiction of municipalities and counties. This is called “extraterritorial jurisdiction” (ETJ) and is adopted by ordinance. The ETJ may be one (1) mile outside of the corporate limits for villages and second class cities, two (2) miles for cities of the first class, and three (3) miles for primary and metropolitan class cities.

County Planning Jurisdiction

A county does not necessarily include all of the land area within the county's boundaries. However, it includes any rural area within the county boundary, but outside the planning jurisdiction of any city or village. If a city or village chooses not to claim any extraterritorial planning jurisdiction, a county may extend its planning jurisdiction up to the corporate limits of the city or village.

Municipal Planning Jurisdiction

The geographical area included in a municipality's comprehensive plan (the planning jurisdiction) encompasses all of the area within the corporate limits of the city or village, but also may include an area, known as extraterritorial jurisdiction (ETJ), outside the boundary of the city or village. The extraterritorial jurisdiction is the unincorporated area that extends a prescribed (by state statutes) maximum distance beyond, and adjacent to, its corporate boundaries.

Extraterritorial Jurisdiction - Neb Rev. Stat. § 16-901 and Neb. Rev. Stat. § 17-1001 (amended by LB614 in the 2025 Session of the Nebraska Legislature)

As cited above, each statute has the same provisions except for Subsection (1). Subsection (1) provides the extraterritorial zoning jurisdiction of a city of the first class shall consist of the unincorporated area two miles beyond and adjacent to its corporate boundaries and one mile for a city of the second class or village. For purposes of administering several planning-related ordinances, a village or city may treat the extraterritorial jurisdiction as though it were within the corporate limits of the municipality.

Subsection (3) provides the ordinances that may be applied in the extraterritorial jurisdiction include zoning, property use regulations, building ordinances, electrical ordinances, and plumbing ordinances, except no ordinance shall be applied by villages or cities of the first or second class in their extraterritorial jurisdiction so as to prohibit, prevent, or interfere with the conduct of existing farming, livestock operations, businesses, or industry.

Also, Subsection (3) provides even if the extraterritorial land outside the corporate limits of the municipality extends into another county, the municipality still retains its powers to enforce its planning-related ordinances in that part of its extraterritorial area notwithstanding the area is located in another county.

Subsections (4) and (5) provide:

(4) (a) Any city of the first class, city of the second class or village may exempt from application of its zoning regulations, property use regulations, building ordinances, electrical ordinances, plumbing ordinances, (and health regulation ordinances authorized by section 16–240 – cities of the first class only) within its extraterritorial zoning jurisdiction, by action of the board of adjustment pursuant to sections 19–907 to 19–915 and any applicable ordinance, certain farm buildings when such structures are consistent with the comprehensive development plan, including anticipated long-range future growth based upon documented population and economic projections, as required by sections 19–907 to 19–915.

(b) For purposes of this subsection, farm building means a building utilized for agricultural purposes as defined in section 77–1359 on a farmstead of twenty acres or more which produces one thousand dollars or more of farm products each year.

(5) (a) A city of the first class, city of the second class or village shall provide written notice to the county board of the county in which the city's extraterritorial zoning jurisdiction is located when proposing to adopt or amend a zoning ordinance which affects the city's extraterritorial zoning jurisdiction within such county. The written notice of the proposed change to the zoning ordinance shall be sent to the county board or its designee at least thirty days prior to the final decision by the city. The county board may submit comments or recommendations regarding the change in the zoning ordinance at the public hearings on the proposed change or directly to the city within thirty days after receiving such notice. The city may make its final decision (i) upon the expiration of the thirty days following the notice or (ii) when the county board submits comments or recommendations, if any, to the city prior to the expiration of the thirty days following the notice.

(b) Subdivision (5)(a) of this section does not apply to a city of the first class, city of the second class or village (i) located in a county with a population in excess of one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census or (ii) if the city and the county have a joint planning commission or joint planning department.

The permitted extent of the extraterritorial jurisdiction for a village or city is prescribed by Nebraska law. The village or city may designate by ordinance the portion of the territory located within the prescribed maximum distance away from the corporate limits that constitutes the planning jurisdiction (Neb. Rev. Stat. §§ 16-902 and 17-1002). As a community expands its corporate limits via annexations, its planning jurisdiction also may be expanded accordingly.

The extraterritorial jurisdiction of a village or city also affects the process of subdividing and plating land. This is discussed in Chapter 8 of this *Handbook*.

Primary and Metropolitan Class Cities Extraterritorial Jurisdiction

The only primary class city in Nebraska – Lincoln, and the only metropolitan class city – Omaha both have planning jurisdictions extending a maximum of three miles outside their corporate limits.

Demarcating Boundaries of the Planning Jurisdiction

A municipality has two (2) options for defining the boundary of its planning extraterritorial jurisdiction:

1. Extend an arc pattern, produced by measuring the distance of the planning jurisdiction from each point of boundary from the corporate limits to form a series of connected arcs around the municipality; or
2. Select certain measurable mapped features, such as roads or section lines, within the area defined by the arc pattern, to serve as the boundary of the planning jurisdiction.

Using the second method – following section lines or parts of section lines – for delineating the planning jurisdiction will result in less over- all land area being included in the planning jurisdiction; however, the second method may ease the task of determining whether individual parcels of land located at the fringe of the designated extraterritorial boundary is inside or outside the planning jurisdiction.

Authority to Plan

Nebraska municipalities are authorized and empowered by state law to prepare and adopt a comprehensive plan (Neb. Rev. Stat. § 19-925). Nebraska counties have the power to make, adopt, amend, extend, and implement a comprehensive plan (Neb. Rev. Stat. § 23-114.01 for counties).

Required Content of a Comprehensive Plan

The Nebraska statutes refer to the comprehensive plan as the “comprehensive development plan.” The statutes specify that a comprehensive plan document for a community or county must contain both graphic and textual materials, but other than specifically requiring five (5) principal elements for municipalities and four (4) elements for counties that must be included in a comprehensive plan, the statutes do not specify particular text or graphic items that must be included in the plan document.

Comprehensive Plan elements required for municipalities

The principal elements found in Neb. Rev. Stat. § 19-903 that must be included are:

- (1) A land-use element which designates the proposed general distributions, general location, and extent of the uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands, and other categories of public and private use of land;
- (2) A transportation element showing the general location, character, and extent of existing and proposed major roads, streets, and highways, and air and other transportation routes and facilities;
- (3) A community facilities element showing the general location, type, capacity, and area served of present and projected or needed community facilities including recreation facilities, schools, libraries, other public buildings, and public utilities and services;
- (4) An energy element when a new comprehensive plan or a full update to an existing comprehensive plan is developed, an energy element which: Assesses energy infrastructure and energy use by sector, including residential, commercial, and industrial sectors; evaluates utilization of renewable energy sources; and promotes energy conservation measures that benefit the community. This subdivision shall not apply to villages; and
- (5) An annexation element when next amended after January 1, 1995, which identifies sanitary and improvement districts, subdivisions, industrial tracts, commercial tracts, and other discrete developed areas which are or in the future may be appropriate subjects for annexation.

Comprehensive Plan elements required for counties

The principal elements found in Neb. Rev. Stat. § 23-114.02 that must be included are:

- (1) A land-use element which designates the proposed general distribution, general location, and extent of the uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands, and other categories of public and private use of land;
- (2) A transportation element showing the general location, character, and extent of existing and proposed major streets, roads, and highways, and air and other transportation routes and facilities;
- (3) An energy element when a new comprehensive plan or a full update to an existing comprehensive plan is developed, an energy element which: Assesses energy infrastructure and energy use by sector, including residential, commercial, and industrial sectors; evaluates utilization of renewable energy sources; and promotes energy conservation measures that benefit the community; and
- (4) a community facilities element showing the general location, type, capacity, and area served of present and projected or needed community facilities including recreation facilities, schools, libraries, other public buildings, and public utilities and services.

Other elements that may be included for both municipalities and counties

It is important to note that the state statutes also leave open the possibility that any number of other possible content elements, beyond the those described above, may be included in a comprehensive plan.

The statutes specify that the anticipated long-range growth of a municipality or county, upon which the comprehensive plan is premised, must be based upon documented population and economic projections (*Neb. Rev. Stat.* §§ 19-903 and 23-114.02). As a result, the process of preparing a comprehensive plan, discussed below, must include the necessary research and analysis of population and economic characteristics that provide the basis for determining the extent of growth.

County Comprehensive Plan Further Defined

In addition to the requirements and contents for a county comprehensive plan spelled out above (*Neb. Rev. Stat.* § 23-114.02), additional requirements for county plans are described elsewhere in the statutes (*Neb. Rev. Stat.* § 23-174.05).

This section pertains to counties in which a city of the primary class is located and is written without reference to this specific condition.

Regulations Based on the Comprehensive Plan

State statutes enable cities and villages to enact regulations that will carry out the comprehensive plan (*Neb. Rev. Stat. § 19-903*).

Specifically, the statutes allow that regulations enacted in accordance with the plan may be designed to accomplish the following:

1. lessen congestion in the streets; to secure safety from fire, panic, and other dangers;
2. promote health and the general welfare;
3. provide adequate light and air; to prevent the overcrowding of land;
4. secure safety from flood;
5. avoid undue concentration of population;
6. facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
7. protect property against blight and depreciation;
8. protect the tax base; to secure economy in governmental expenditures; and
9. preserve, protect, and enhance historic buildings, places, and districts.

The process and procedure employed in the development of a comprehensive plan includes involvement from all sectors of the community or county, with the planning commission taking the lead role. The planning commission provides guidance and direction in the process and monitors procedures to enable the successful development and adoption of the plan.

The Comprehensive Planning Process

Background Information and Research for Planning

The planning process requires obtaining vast amounts of information from various sources. Information is needed at the very outset of the planning process to define the planning issues and problems and to develop and articulate goals.

Some information must be gathered by using direct, firsthand, field methods, including various online technologies, while other

information may be obtained from existing records or secondary sources.

Community Participation

Vital to the success of the comprehensive planning efforts of any community or county is the involvement of its citizens – their input and ideas, their likes and dislikes, and opinions and beliefs. Community intake or participation should include many planned activities throughout the duration of the planning process.

Steering Committee

The process may start with the local planning commission or governing body forming a planning steering committee comprised of a number of individuals from the planning jurisdiction. This steering committee should represent the diversity that exists in the community – including persons of various ages, income, educational, and cultural characteristics. The planning steering committee should meet throughout the planning process to review pertinent data and address important ideas. If used, the steering committee is instrumental in helping to articulate a planning “vision” for the community or county.

Community Survey

Opinion or attitude surveys conducted in person, by questionnaires, through the newspaper, and/or online methods aid in involving the entire citizenry in the comprehensive planning process. The survey should include careful wording to be easy to understand; and assurance that all responses are anonymous; the survey should be open for a reasonable length of time; respondents given an adequate length of time to respond; and provide language access if the community has a significant population of people who may not be proficient in English. Surveys should strive to evaluate existing community conditions, as well as identify needs, such as necessary improvements of public facilities, utilities, housing, streets, sidewalks, etc. Surveys also allow the citizenry to express their opinions regarding community and economic development activities, downtown improvement concepts, and other ideas that may have been implemented, discussed, or proposed in the community. It is recommended that all households in the planning jurisdiction have the opportunity to participate in a community survey.

Other types of surveys can be utilized to elicit input from special interest groups in the community, thereby helping to address specific concerns and needs. For example, a business and industry

survey could be conducted, or surveys targeted toward elderly citizens or youth could be administered.

Community Meetings

Community meetings during the comprehensive planning process may be categorized as two types: (1) informal gatherings of interested citizens and (2) official public hearings. Official public hearings are advertised through legal notices and are required in conjunction with the approval of the comprehensive plan by the planning commission and adoption by the governing body (village board of trustees, city council, county board of commissioners or supervisors, etc.).

Less formal meetings scheduled by the planning commission and planning steering committee are very useful in building consensus and in building a community vision for the planning jurisdiction. The times, dates, and purposes of these meetings should be advertised, and the public should be encouraged to attend and participate.

Town hall meetings that are open to the entire community or county should be scheduled at various stages of the comprehensive planning process to allow the entire citizenry to comment on information and the emerging plan. These meetings serve to refine and validate the activities of the planning program.

It does not hurt if the media reports on these community meetings as long as the information that is used is accurate. Good reporting can help build community consensus and confidence in the process.

Role of Planning Commission and Elected Officials

The planning commission is legally responsible for the development of the comprehensive plan and, as previously discussed, coordinates all the associated planning research and planning activities in the process.

Elected officials need to keep themselves informed of the happenings and findings of the comprehensive planning process. These officials ultimately are responsible for both the adoption and implementation of the comprehensive plan.

Research Approaches

The comprehensive planning process involves research that is both qualitative and quantitative in nature. That is why the process itself must include both people and their input, as well as reliable data retrieved from governmental and other sources and from field observations.

Qualitative Research

As alluded to previously, an important qualitative research component in the comprehensive planning process includes a series of citizen participation strategies, such as a community-wide attitude survey, focus group meetings with special interest groups, town hall meetings to develop specific planning and implementation strategies, and private interviews with community leaders. Public hearings that are required to be held by the planning commission and governing board (village board of trustees, city council, or county board of commissioners or supervisors) also allow for citizen input.

Quantitative Research

Quantitative research necessary to complete a comprehensive plan includes the analysis of statistical data provided by the U.S. Bureau of the Census and other pertinent local, state, and federal agencies. This quantitative research also includes the field research activities needed to inventory and evaluate the present condition and profile of local land use, housing, public infrastructure and facilities, transportation systems, and environmental factors.

Information and knowledge from both the qualitative and the quantitative research approaches form the foundation upon which a logical and sound comprehensive plan can be prepared.

Field Methods of Information Gathering

Among the field methods of information gathering for the planning process are the following:

1. Site surveys.

For planning issues relating to specific geographic areas of a community, existing conditions in those areas need to be studied, summarized, and analyzed through direct observation that is best accomplished through site visits.

2. Windshield surveys.

Windshield surveys are quick site surveys, often conducted by traveling in a vehicle so that the observer can cover a large area efficiently. Windshield surveys are often used to inventory, map, and record graphically the current conditions in a geographic area. Such surveys are used also to verify and update existing records and information that had been compiled earlier or through other methods. One category of information collected using this method is existing land use, which is mapped on a parcel-by-parcel

basis. This information is used to analyze the growth and development of the area, determine the needs of the community, prepare a land use plan, and define zoning districts.

3. Self-administered questionnaires.

In the more traditional use this method requires the respondent to answer questions in writing on a questionnaire, but usually without putting his or her name on the questionnaire. While the questionnaire may be administered in the presence of the researcher, the respondent can maintain a degree of anonymity by not having to respond directly to questions asked orally by the researcher. A more modern method is the use of technology using the internet and online programs to administer questionnaires while ensuring confidentiality of the respondent.

4. Mail-in questionnaires.

This method has the advantage of allowing respondents to complete the questionnaire at their leisure. Also, this is a relatively low-cost method of gathering information. The principal disadvantage of mail surveys is that they often yield low response rates.

5. Face-to-face field interviews.

Interviews can be either informal or formally structured through the administration of a standardized questionnaire. Whether the interviews are structured or unstructured depends upon the nature of the information needed and the size and characteristics of the population to be studied.

6. Key-informant interviews.

A special type of face-to-face interview is the key-informant interview. Key-informant interviews involve targeting a few people who are in positions or roles that allow them to communicate knowledgeably about a certain subject and/or a specialized perspective on that subject. Such interviews are useful when it is important to obtain comprehensive or in-depth information that cannot be obtained from a sampling of the community's population. Often key-informant interviews are conducted at the outset of a planning process to ensure that the problems and critical variables to be addressed in the process have been identified.

7. Telephone interviews.

This method enables the researcher to conduct more interviews in a shorter time than required for personal interviews and mail- in questionnaires. However, this method has a disadvantage in limiting the degree of social rapport and interaction that can be established between the interviewer and respondent.

8. Focus group interviews.

This technique involves interviewing in a small group setting, where a moderator stimulates discussion rather than asking each of the group members in turn to answer questions. In this method one person's comments can spark new ideas in another person, thus generating an interactive process that allows the participants to thoroughly explore differences and similarities among their responses to the topics brought to the group.

Secondary Sources of Information

Much of the information used in the planning process has been collected by other organizations. Referred to as secondary data, such information often is available in published form, on microfiche, or online. While such sources of information can be immensely useful in the planning process, there sometimes are problems in using secondary data sources. First, such information may usually have been collected for a purpose other than the local planning process. Second, such information sources are diverse in their content, format, location, and accessibility. These problems may diminish the utility of certain secondary information sources; however, intelligent and selective use of secondary information is common in community planning.

Federal Sources

An important source of secondary data for community planning is the United States Bureau of the Census, which conducts regular ten-year censuses plus a variety of other surveys, studies, and activities.

The most widely known and perhaps most frequently used censuses for community planning are the Census of Population and the Census of Housing. These censuses are conducted once every ten years. Data for specific towns and counties can be found at data.census.gov. Nebraska's state data center is the Center for Public Affairs Research (CPAR) at the University of Nebraska-Omaha. This center is Nebraska's designated liaison to the US Census Bureau, and can assist with community data requests.

Other censuses on various forms of economic activity are conducted every five (5) years by the Census Bureau. These include the censuses of manufactures, wholesale trade, retail trade, service industries, agriculture, construction industries, mineral industries, transportation, foreign trade, and government. Monthly or annual surveys also are conducted for most of these economic areas and are reported in monthly or annual publications, most notably the American Community Survey (ACS).

A variety of other information useful in the local planning process is available from a number of other federal departments and agencies, such as the Department of Health and Human Services, the Public Health Service, the Department of the Interior, the Federal Highway Administration, the Department of Transportation, the Bureau of Labor Statistics, the Department of Housing and Urban Development, the Department of Education, the Fish and Wildlife Service, and the Department of Energy.

State Sources

Several of the agencies and departments of Nebraska state government have information that is useful to local communities that are pursuing land use planning and community development. Several of the key agencies and departments are mentioned below.

Nebraska Department of Revenue

The Nebraska Department of Revenue can provide information on the following topics to aid in both land use planning and community development: Local Sales Tax receipts and projections, changes in municipal boundaries, Nebraska and County lodging tax receipts, occupation taxes, research and statistical reports, tax incentive programs, and sales tax turnback programs.

Nebraska Department of Economic Development (NDED)

The Nebraska Department of Economic Development includes several divisions and components that provide useful information and resources to support planning at the local level of government.

The Community and Rural Development Division of NDED administers the federal Community Development Block Grant (CDBG) program for the state. Funding assistance for planning, as well as funding for community and economic development projects, can be obtained through the CDBG program. The Division offers a number of programs that focus specifically on housing.

In addition, the NDED currently has these other divisions which may have useful information for the development of the plan:

- Affordable Housing Commission
- Community Development Block Grant Advisory Committee
- Rural Development Commission
- Business Recruitment Division
- Existing Business Assistance Division
- Research Division
- Field Services
- Division of Travel and Tourism
- Economic Development Commission

The Business Recruitment Division of NDED strives to expand job opportunities in Nebraska by attracting new business and industry, while encouraging expansion of existing industry.

The Existing Business Assistance Division works to attract, create, and keep businesses in the state.

The Research Division collects and maintains economic development information that is useful for community planning. The Division is responsible for preparing the *Nebraska Directory of Manufacturers* and the *Nebraska Statistical Handbook*. The Division maintains community data on population, income, and other characteristics and provides advice on how to conduct various kinds of research.

The Travel and Tourism Division promotes Nebraska attractions and events to the traveling public. The Division works with communities to promote existing attractions and develop new attractions; the Division provides marketing assistance grants to nonprofit tourism groups for promoting their areas or events.

The Department of Economic Development has four field service representatives in northeast, southeast, central, and western Nebraska. The field offices are located in Norfolk, Beatrice, Greeley, and Gering. The field service representatives provide assistance in designing programs to meet community development goals and cooperate with other service providers to ensure comprehensive development support for communities.

Nebraska also has eight (8) Economic Development Districts managed by NDED as part of the Nebraska Regional Officials Council:

- Central Nebraska Economic Development District (CNEDD)
- Metropolitan Area Planning District (MAPA)
- Northeast Nebraska Economic Development District (NENEDD)
- Panhandle Area Development District (PADD)
- Siouxland Interstate Metropolitan Planning Council (SIMPCO)
- South Central Nebraska Economic Development District (SCEDD)
- Southeast Nebraska Development District (SEND)
- West Central Nebraska Development District (WCNDD)



NDED can be contacted as follows:

Nebraska Department of Economic Development

245 Fallbrook Blvd, Suite 002

Lincoln, NE 68521

Phone 402-471-3111

Toll-free phone: 800-426-6505

Web site: <https://opportunity.nebraska.gov>

Online contact information:

<https://opportunity.nebraska.gov/contact/>

Nebraska Department of Water, Environment and, Energy (NDWEE)

The Nebraska Department of Water, Environment, and Energy became effective July 1, 2025, by merging the Department of Environment and Energy with the Department of Natural Resources and has powers and duties relating to the administration of rules, regulations, and standards adopted to protect and improve water, air, and land quality in the state. The department also

provides service to municipalities, industries, and individual citizens through conferences, meetings, environmental assistance as requested, and review of plans and specifications of pollution control facilities.

The NDWEE is organized into five (5) divisions: the Inspection & Compliance Division, Planning & Aid Division, Permitting & Engineering Division, Drinking Water & Groundwater Division, and the Monitoring & Remediation Division. An Environmental Quality Council, with 17 members appointed by the governor and confirmed by the state legislature to four-year terms, is responsible for adopting and promulgating rules and regulations that set standards for air, water, and land quality in the state. The Council meets at least two (2) times per year and holds public hearings on proposed regulations.

The NDWEE can be contacted as follows

Nebraska Department of Water, Environmental, and Energy
245 Fallbrook Blvd, Suite 100
Lincoln, NE 68521
Phone 402-471-2186
Web site: <https://dee.nebraska.gov>

Nebraska Department of Transportation (NDOT)

The Nebraska Department of Transportation has responsibility for highways and roadways in the state system, as well as aeronautics in the State of Nebraska. An eight (8) member State Highway Commission is appointed by the Governor and approved by the Legislature. The Commission advises the NDOT Director in establishing policies and programs and meets at least six (6) times per year. They assist in conducting public hearings, investigations and studies related to providing an adequate and safe highway system for the state. Commissioners also provide assistance in advising the public regarding policies, programs and activities of NDOT.

The NDOT has eight (8) field Districts, each with their own District Office and District Engineer. Questions from the public concerning issues within a certain District should be directed to the District Office in that area. Districts are responsible for the maintenance and construction of all state highways within their district boundaries. Use the map above to find your appropriate district.

The Department's eight district offices are located in Lincoln, Omaha, Norfolk, Grand Island, Gering, North Platte, McCook, and Ainsworth.

The Department is organized into the following divisions: Aeronautics, Bridge, Construction, Local Assistance, Materials & Research, Operations, Program Management, Right-of-Way, Roadway Design, and Traffic Planning.

The NDOT can be contacted as follows:

Nebraska Department of Transportation
1500 Nebraska Parkway,
P.O. Box 94759
Lincoln, NE 68509-4759
Phone: 402-471-4567
Web site: <https://dot.nebraska.gov/>
Online contact: <https://dot.nebraska.gov/contact-us/>

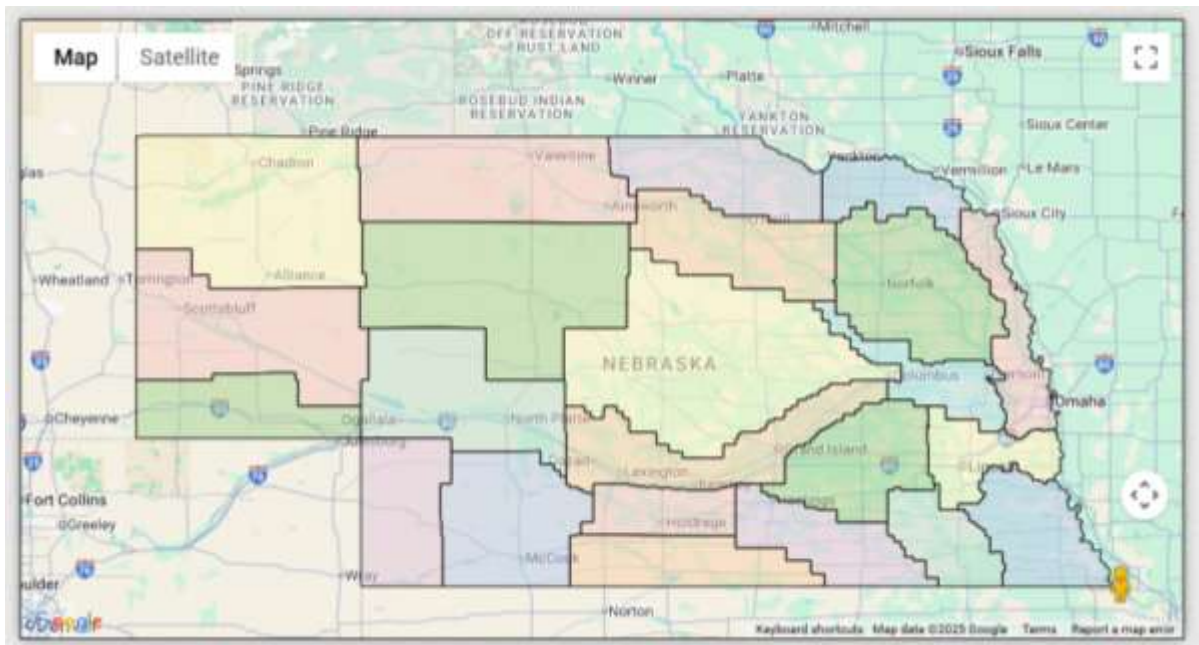
Local Sources

A number of sources of information are available in departments and agencies of county and local government. Sub-state regional organizations, such as Nebraska's natural resources districts and economic development districts (mentioned previously), also have information that is useful in local planning processes.

Natural Resources Districts (NRDs)

Nebraska has 23 multipurpose natural resources districts, the boundaries of which are established in accordance with Nebraska's natural river basin boundaries. NRDs are charged with properly conserving and developing the state's natural resources, including management of surface water and ground water resources, the construction and operation of flood control structures, and the administration of land management plans to prevent soil erosion and sediment problems.

Each NRD is governed by a locally elected board or directors who serve four-year terms. NRDs have the authority to levy a local property tax to fund their programs, and they also receive state funds for certain programs. (See map on next page)



Organization of the Plan

A comprehensive plan is normally organized in three parts. The first is the “background analysis,” which presents the research, both quantitative and qualitative, necessary for the development of the plan’s goals, policies and action strategies. This research includes analysis of demographic, economic, land use, housing, transportation and public facilities, and utilities data. The careful assessment of past and present data allows for the projection of future population growth and future development needs.

The second part is the “goals, policies, and action strategies.” Goals and policies represent the foundation upon which planning components are designed and eventually implemented. The goals and policies identified in the comprehensive plan address each plan component of the plan itself. Action strategies identify specific implementation activities within a given time period.

The third part of the comprehensive plan is the “planning components,” which includes the plans for future growth in the areas of land use, housing, public facilities, infrastructure, transportation and community economic development. Also included in this part of the plan are proposed program development concepts to assist in the implementation of these planning components.

A typical comprehensive plan could include the following sections:

- Introduction – The Planning Process
- Planning Goals, Policies, and Action Strategies

-
- Population and Economic Profile
 - Land Use and Development
 - Public Facilities, Infrastructure, and Transportation
 - Housing Profile and Plan
 - Community/Economic Development Profile and Plan
 - Plan Implementation and Plan Maintenance

Several of the above sections are described in “The Comprehensive Plan Components” below.

Plan Adoption

In Nebraska, the village, city, or county planning commission is responsible for the preparation of a comprehensive plan. The commission must hold a public hearing prior to recommending approval and adoption of the plan by the jurisdiction’s governing body. The following are typical steps leading to the adoption of a comprehensive plan in a municipality or county:

1. The planning commission prepares the comprehensive plan.

If adequate staff support is not available to assist and to facilitate the work of the planning commission in preparing a comprehensive plan, the governing body of the jurisdiction may approve hiring a consultant to provide professional expertise for the process.

While preparation of the comprehensive plan is the responsibility of the planning commission, the process should include opportunities for citizens, public officials and agencies, public utilities, civic organizations, and educational institutions in the municipality or county to participate by voicing their opinions and preferences (Neb. Rev. Stat. § 19-901 for municipalities Neb. Rev. Stat. § 23-114.01 for counties).

2. When the planning commission agrees that the comprehensive plan is ready to forward to the governing body, a formal public hearing must be scheduled.

In accordance with Nebraska statutes pertaining to public meetings (Neb. Rev. Stat. §§ 84-1408 to 84-1414), the hearing should be given “reasonable advance publicized notice” (Neb. Rev. Stat. § 84-1411).

However, if a municipal or county planning commission is also concurrently proposing a new or revised zoning ordinance or regulations to be reviewed at the same hearing, the notice of the hearing must be advertised at least once in

a newspaper of general circulation in the jurisdiction at least 10 days prior to the hearing (Neb. Rev. Stat. §§ 19-904 and 19-905 for municipalities and Neb. Rev. Stat. § 23-164 for counties). (See “Chapter 7: Zoning” of this *Handbook*.)

Copies of the comprehensive plan should be made available for inspection by the public, and the place(s) where it may be reviewed should be noted in the public hearing notice.

3. The planning commission conducts its public hearing.

At least one copy of the plan should be made available at the hearing for examination by the public.

4. Based upon the public hearing, the planning commission may wish to make revision, changes, additions or deletions to the proposed comprehensive plan.
5. The planning commission acts on a motion from its members to forward the plan to the governing body of the jurisdiction with the recommendation that the governing body adopt the plan.

Steps #3, #4, and #5 may be, at the discretion of the planning commission, completed at the same meeting.

6. The planning commission sends a copy of its approved motion, including any accompanying recommendations and a copy of the minutes of the planning commission’s public hearing, to the governing body.
7. The governing body schedules a public hearing for the comprehensive plan.

In accordance with Nebraska statutes pertaining to public meetings (Neb. Rev. Stat. §§ 84-1408 to 1414), the hearing should be given “reasonable advance publicized notice” (Neb. Rev. Stat. § 84-1411).

If a municipal or county governing body is also reviewing a new or revised zoning ordinance or regulations along with the comprehensive plan, the notice of the hearing must be advertised at least once in a newspaper of general circulation in the jurisdiction at least 10 days prior to the hearing (*Neb. Rev. Stat.* §§ 19-904 and 19-905 for municipalities and *Neb. Rev. Stat.* § 23-164 for counties).

The public hearing on the proposed new or revised comprehensive plan typically takes place at the time of the first of the three required readings of the proposed action. (See, also, “Chapter 7: Zoning” of this *Handbook* for municipalities)

Municipalities adopt ordinances while counties adopt resolutions. The hearing on the comprehensive plan may be scheduled at a meeting along with other agenda items.

8. The governing body considers the adoption of the comprehensive plan and passes a resolution adopting the plan. (See, also, “Chapter 7: Zoning” of this *Handbook* for counties)

Steps #7 or #8 may be at the discretion of the governing body. However, for cities if they choose to adopt the comprehensive plan by ordinance instead of resolution, final action on a new or revised comprehensive plan cannot be taken until completion of a third reading on another day, or unless three-fourths (3/4) of the city council vote to suspend the statutory requirement that ordinances of a general or permanent nature must be read by title on three different days (*Neb. Rev. Stat.* § 16-405 and § 17-614).

9. The governing body places an official copy of the adopted comprehensive plan on file with the clerk of the jurisdiction.

Dissemination of the Plan

Copies of the comprehensive plan, in the development stage as well as in the preliminary draft and final document stages, should be made available to the public. Copies should be placed at the meeting place of the governing body, such as the village hall, city hall, or county courthouse, as well as at the local public library, schools, online on the community’s website, and any other place visited frequently by citizens. The goal in this dissemination of the document should be to encourage review and comment on the plan from as many citizens as possible. All other major subdivisions of local government wholly or partially within the planning jurisdiction should be given copies of the plan for review. This would include, but is not limited to, the local school board(s) and natural resources district(s).

Timeline

Typically, the timeline to complete and adopt a comprehensive plan is 12 to 18 months. However, how a community reacts to the planning process may lengthen that timeline. Delays in the adoption of comprehensive plans usually are result of situations or reasons beyond the municipality or county’s control.

That having been said, delays in the planning process can result in lost community interest and motivation, thus resulting in a comprehensive plan that is not well supported and, thus, has limited potential for implementation. Achieving tangible results on a reasonable and productive planning timeline enhances the

community's likelihood of endorsing the plan and eventually realizing its vision.

Comprehensive Plan Components

As mentioned above in the discussion about the organization of the comprehensive plan, several content components are commonly found in the plan document. These are described in more detail as follows:

Goals, Policies, and Action Strategies

A comprehensive plan is an essential tool to properly guide the development of a modern community. An important aspect of the planning process is the development of appropriate and specific planning goals, policies, and action strategies to provide local government officials direction in the administration and overall implementation of the comprehensive plan. The goals and policies are the most fundamental elements of the plan; they are the premises upon which all other elements of the plan are based.

Goals are broad statements, identifying desired future characteristics of the planning jurisdiction's primary components. Primary components typically include population, land use, housing, infrastructure, public facilities, transportation and circulation, urban design, community and economic development, and plan maintenance and implementation. Goals are long-term in nature and, in the case of those identified for a comprehensive plan, normally will be valid throughout the plan's intended useful life.

Policies help to further define the meaning of goals. Essentially, policies are specific statements that define achievements to be accomplished as steps toward fulfilling goals. Policies, which sometimes are referred to as objectives, are sub-parts of goals and usually are achievable in much shorter time periods.

Action strategies represent very specific activities to accomplish a particular policy or objective. In many cases, specific timelines are attached to action strategies. Action strategies are the most measurable component of a comprehensive plan.

A comprehensive plan for a community normally will articulate goals, policies, and action strategies for a wide range of subject areas. As an example, a community might adopt a goal for land use together with the policies and action strategies that define how the goal will be achieved:

a. Goal:

Maintain land use patterns and densities that conform to the needs and desires of the residents.

b. Policies:

Encourage land uses that are compatible to adjacent land uses during the planning and implementation of development activities by designating future land uses for locations that will accommodate the unique characteristics and requirements of each land use. Discourage and prohibit mixing of incompatible land uses.

c. Action strategies:

Approximately 120 acres of additional residential, commercial, and industrial land area will be needed for development within the next four years. This development should occur as follows:

- i. Industrial development should occur along the south side of the current Highway corridor. The future Highway expressway provides an opportunity to develop an industrial growth area to the northeast of the expressway.
- ii. Commercial development should occur along the future Highway expressway at the two interchanges. Professional office parks are suitable for the areas adjacent to the commercial development.
- iii. Residential development should occur in the northeast portion of the community, between the existing corporate limits and the future Highway expressway. Multifamily housing is recommended to buffer single family areas from commercial uses at the expressway interchanges.
- iv. Park areas should be located at the interchanges of the Highway expressway.

Population and Economic Profile

An analysis of past and current population trends in the planning jurisdiction of a community or county is useful and necessary for projecting the size and characteristics of the future population and for determining development needs and patterns that will adequately serve the future population. The size, age, income, location, and density characteristics of the population are important factors to consider in shaping the details of various development plans to meet the needs of the community. The typical comprehensive planning process includes trend analysis and projections for the population total, as well as age groups within that total, and for median household income in the jurisdiction.

The analysis and projection of population is central to all planning decisions. This analytical process assists in explaining important changes which have and will occur during a community's or county's planning period. Population trends and projections for the planning period are studied and forecast in this process, utilizing trend analysis methods, as well as considering community views and desires about the future. In this process of analysis and discussion, the planning commission should agree upon the effect of future population changes for the community or county, after which the land, public facilities, housing, jobs, etc., needed to accommodate those changes are ascertained.

Estimating future population size is critical to a planning process. Since projections are based on various assumptions about the future, they must be carefully derived and continually reevaluated due to the dynamic nature of a community's economic and social structure.

Analysis of current and projected median household income of the community or county is included as part of the planning process. The economic well-being of residents in the community or county is an indicator of present and future needs that should be considered in preparing the comprehensive plan.

Other economic indicators relate to employment opportunities, including analysis of the range of sectors of the economy such as manufacturing, non-manufacturing, trade, services, government, etc. in which jobs are available in the planning jurisdiction. The types of businesses located in the community or county, in terms of their respective strength and growth potential, also are considered when analyzing the effects the local economy will have upon the future of the community or county.

Land Use and Development

The portion of a comprehensive plan that focuses on land use and development typically includes a map and a description of existing land use development patterns in the community or county (see Illustration 6.1 at the end of this Chapter), but, most importantly, the plan identifies the locations of future land use development opportunities and recommends particular uses and development qualities for those locations. The descriptions and analyses of existing and future land use patterns usually are preceded by a discussion of the distinctive environmental and physical characteristics of the community or county.

The goals, policies, and action strategies associated with land use and development that are stated in the plan provide guidance for the preparation and administration of land use regulations,

specifically a zoning ordinance and subdivision regulations. These land use regulations, which are discussed in Chapters 7 and 8 of this *Handbook*, provide a means by which the goals of the plan can be accomplished.

Historically, the growth in American cities have tended to separate different land uses through zoning. However, mixing compatible, different uses has been shown to create more interesting and attractive communities. A development pattern that encourages a mix of land uses and activities has a variety of benefits:

- Promoting activity at various times of day, among various types of uses, increasing security, vitality, and the number of people using public spaces.
- Reducing the number of miles that people must travel daily by car, since homes are in close proximity to jobs and services.
- Opening opportunities to build a variety of housing types such as the development of housing above office and commercial establishments which can add vitality to business areas and increase the economic yield on properties.
- Finding that by mixing land uses, neighborhoods are more attractive to residents.
- Developing plans and land development policies that provide appropriate mixing of uses also provides greater flexibility for developers, and avoids unnecessary regulation.

Concerns often emanate from the relationship between different uses and their relative compatibility with each other. Historically these concerns were addressed using spacing between buildings and by congregating like uses together. One of the current ways these concerns have been addressed is through multiple-use districts. As land uses become more intense and uses become more integrated, compatibility methods focus less on spacing and congregating of similar uses, and more on performance-based methods that directly address issues such as noise, traffic, privacy, and aesthetics.

Future land uses should be planned in the community or county for locations which protect natural resources and which complement the existing built environment. The natural environment of the community or county provides both opportunities and constraints for existing and future development. As citizens strive to create a sustainable living environment, people must work and live in harmony with the natural

environment. This can occur by designing with nature, conserving unique features, protecting watersheds, and using sensitive development practices.

The land use portion of the comprehensive plan will have a map that indicates the locations for future land uses in the planning jurisdiction (see Illustration 6.2 at the end of this Chapter). The map will depict the locations for future public facilities, residential areas, parks and recreational areas, and commercial and industrial land uses. A community should consult with city/village engineer for most viable location of city infrastructure extensions which provide viable cost-effective areas for the community served development.

Any special development considerations or requirements (such as for identifiable neighborhoods or business areas) within the planning jurisdiction also should be identified and discussed separately in the plan. These analyses will assist the community or county in identifying areas having the greatest needs, as well as the potential for development and redevelopment, during the planning period. Each sub-area should be discussed regarding existing conditions, proposed general land uses, and planned public improvements.

Public Facilities, Parks and Open Space, Infrastructure, and Transportation

A comprehensive plan also includes discussion and analysis of existing conditions and planned future improvements to the community's or county's public facilities, public utilities, and transportation. These components of the community, which are customarily provided by the public sector, are essential to support private development, but they involve major capital investments and significant operating costs for the public sector. Thus, sound planning for such systems is a key responsibility of the planning commission and the governing body.

The capital improvements program (see Chapter 10 of this *Handbook*) is a budgeting process and plan that is used by the public sector to schedule and identify the sources of funding for public facilities, utilities, and transportation.

Public Facilities

Public facilities are provided to ensure the safety and well-being of all residents in the planning area. Public facilities provide citizens with social, cultural, educational, health care, law enforcement, fire protection, and recreational facilities and services to meet the needs of the area.

The locations of existing public facilities are typically depicted on a map in the comprehensive plan (see Illustration 6.3 at the end of this Chapter).

Parks and Open Space

Parks and open space are essential components of the built environment. Fresh air, sunlight, physical exercise, and psychological release are some of the principal health benefits that parks and open space accommodate and provide for people. Through location and design of open space, people can be brought together for socialization. On the other hand, parks and open space can be used effectively as buffers, transition zones, or barriers when it is desirable to provide separation between different land uses or neighborhoods in a community. Parks and open space are viewed by most people as valued amenities that add significantly to the quality of life in a community; thus, they are very important assets that nurture the social and economic development of the community or county.

Existing and proposed parks and open space may be depicted together with public facilities on a map in the comprehensive plan (see Illustration 6.3 at the end of this Chapter).

Infrastructure

Public infrastructure systems provide water, sanitary sewers, storm sewers, and solid waste disposal for residents and for commercial and industrial establishments in the planning jurisdiction. Adequate infrastructure systems are essential for the health, safety, and welfare of the people who live and work in a community. Community utility systems usually are depicted on a separate map in the comprehensive plan (see Illustration 6.4 at the end of this Chapter).

Transportation

Transportation considerations in the comprehensive plan include vehicular, rail, air, and pedestrian travel. These modes of travel provide the means of moving people and goods within, as well as to and from, the planning jurisdiction. The comprehensive plan includes consideration of the quality of the street and road system in the community or county, as well as provision of facilities that accommodate other modes of transportation. Airports, rail corridors, and hiking/biking trails are considered within the transportation component of the comprehensive plan.

Existing streets and proposed improvements to streets typically will be depicted on a separate map in the comprehensive plan (see Illustration 6.5 at the end of this Chapter).

Housing Profile and Plan

A comprehensive plan may have a separate component that focuses on housing for residents in the community or county. This part of the plan normally profiles, analyzes, and projects the needs and potential for housing in the community or county. It should be the goal of any city, village, or county to provide safe, decent, and affordable housing for all residents, regardless of race, social characteristics, or economic status.

Having quality housing stock available in a community or county should be considered a basic necessity. And the extent to which an adequate supply of safe and decent housing is available is a key factor in determining the social and economic well-being of a village, city, or county.

Housing Stock Inventory

The housing profile and plan includes an inventory of the existing housing stock. This is compiled by utilizing U.S. Census data, on-site field observation, and pertinent information obtained from the local unit of government.

Housing Conditions

The condition of housing normally is determined from field observation. A “windshield” survey allows for the ranking of the structural, visual, and surrounding neighborhood characteristics of a house or a multifamily structure. From this field inspection process, an overall ranking, such as “good,” “fair,” or “poor,” is given to each residential structure. The numbers and geographic locations of housing units in these categories are compiled. The field survey results are analyzed to delineate housing problems, needs, assets, and opportunities.

Estimated Housing Rehabilitation and Demolition Costs

The assessment of housing conditions allows for the estimation of housing costs for both moderate and substantial rehabilitation and for demolition or removal of dilapidated housing.

Other research activities associated with the housing profile include determination of housing occupancy/vacancy status, age of housing stock, and tenure by household.

Future Housing Demand Potential

Housing demand potential can be determined by totaling the housing units needed, as determined by three independent demand components:

-
1. Anticipated new households during the planning period, coupled with the replacement of at least 20 percent of the existing sub- standard housing stock and an allowance of affordable housing for up to 20 percent of the existing households of the community that can be assumed to be currently cost-burdened in their present housing situation;
 2. The housing vacancy demand deficiency, which is defined as the need to have at least 5 percent of the existing housing stock – that which is modern and acceptable to today’s housing shopper – currently vacant and available for either sale or rent; and
 3. “Pent-up” housing demand, which includes the future housing needs of the current households in a community or county that will desire and have the capacity to afford alternative housing during the designated planning period.

Housing Development Programs

Once an overall housing demand potential is defined, the next important step is delineating a housing development program. This program must include the identification of both owner and renter housing types for persons and families of all income and age categories.

Community/Economic Development Profile and Plan

This component of a comprehensive plan addresses strategies and procedures for community and economic development.

Community development is a term which encompasses such varied activities as neighborhood redevelopment, urban design, job training, downtown redevelopment, and historic preservation. Community development projects may include not only the enhancement of the physical environment, but also the betterment of human resources in the community. In smaller communities it may be advantageous to consider regional development with other communities.

Economic development addresses the topics of business retention and new business development. Projected annual population growth, such as determined in the comprehensive planning process, gives a community’s or county’s leadership and local economic development organizations a basis upon which to prepare and implement programs for job retention and creation.

Planning for Social Needs

Community and county comprehensive planning today typically involves a holistic approach to satisfying needs and reaching a

vision. Planning today includes recognizing the relationship between the physical and social needs of a community and identifying methods and services to strengthen families and meet the needs of special populations, including low to moderate income persons and families, as well as persons with disabilities.

The comprehensive planning components most associated with meeting the social needs of a community's citizenry include housing and public facilities and services for families and the elderly.

Plan Implementation and Plan Maintenance

Key to the successful continuation of planning activity in a community or county is a clear understanding of the implementation and maintenance mechanisms of the comprehensive plan. Normally contained with the comprehensive plan are recommendations for the maintenance and implementation procedures most appropriate for the community or county. Included should be a discussion of land use regulations appropriate and necessary for implementation of the plan, public and private capital investments necessary to implement the plan, and a process for annual review of the comprehensive plan and consideration of plan amendments.

Tools for Implementation

Land use regulations, specifically zoning and subdivision regulations, are two key tools for implementing comprehensive plans. Zoning is discussed in Chapter 7 and subdivision regulations are discussed in Chapter 8 of this *Handbook*.

The financial resources needed to implement the comprehensive plan must come not only from the public sector, but also from the private sector. The governing body of the planning jurisdiction should adopt a capital improvements program, which is a process and plan for identifying funding sources and allocating the necessary dollars for the facilities identified in the comprehensive plan that are primarily the responsibility of the public sector. Sometimes projects that have been traditionally funded entirely by the public sector now are joint public and private ventures that include funding from a variety of sources. The capital improvements program is discussed in Chapter 10 of this *Handbook*.

Review and Update of the Comprehensive Plan

The comprehensive plan may be amended or updated as the need arises. Amendments to the comprehensive plan shall be

considered at a public hearing before the planning commission submits recommendations to the governing body.

A “committed” planning commission is in constant pursuit of improving the community or county within which it functions, continually adapting to change within in the planning jurisdiction, and prudently recommending amendments to the comprehensive plan.

Public involvement is a desirable ingredient for effective periodic review of the comprehensive plan. This involvement should be obtained by scheduling public meetings that will ensure input from specific neighborhood areas and special interest groups.

The planning commission could organize an annual planning retreat to review the comprehensive plan. This retreat should be scheduled several months in advance and should include the involvement of local leaders, such as elected officials and people involved with business, industries, and human service agencies. Professional planners can assist with this review process, but it should include participation and input from all pertinent city staff, as well.

A foundation for the periodic review of the comprehensive plan should be an evaluation of the future land use plan. The review and determination of possible changes to the land use plan should be based upon proposed and anticipated development in the community or county. Any changes in the land use component of the plan will, in turn, require modifying the other components of the comprehensive plan, such as housing, infrastructure, and public facilities.

Updates may also be triggered by requests for land use changes or new development via zoning; For example: “Desired zone changes may trigger a review and update of the comprehensive plan. It can be okay to amend the comprehensive plan on a limited basis if the changes are consistent with the original intent and overall goals of the plan.” New uses which may had not been considered previously like AirBnB’s, Tinyhomes, or Utility scale solar power, etc.

It is important for local elected officials and planning commissioners to realize that the comprehensive planning process is an ongoing process. While the comprehensive plan document appears to be a fixed or inalterable road map for the community’s or county’s future, it is important for planning commissioners and elected officials realize that it is a guide, not a rigid straitjacket, and that it needs to be responsive to changes that may not have been predicted in the community or county. Scheduled periodic reviews and updates of the plan will avert the temptations by some

people to amend and alter the comprehensive plan incrementally at every turn of events or in response to every special interest that seeks changes.

Financial Assistance for Planning

Municipalities and counties in Nebraska may seek financial support for comprehensive planning and other planning activities through the federal Community Development Block Grant (CDBG) program, which is administered in Nebraska by the Nebraska Department of Economic Development. This program and the planning activities which may be funded through the program are described further in Chapter 13 of this *Handbook*.

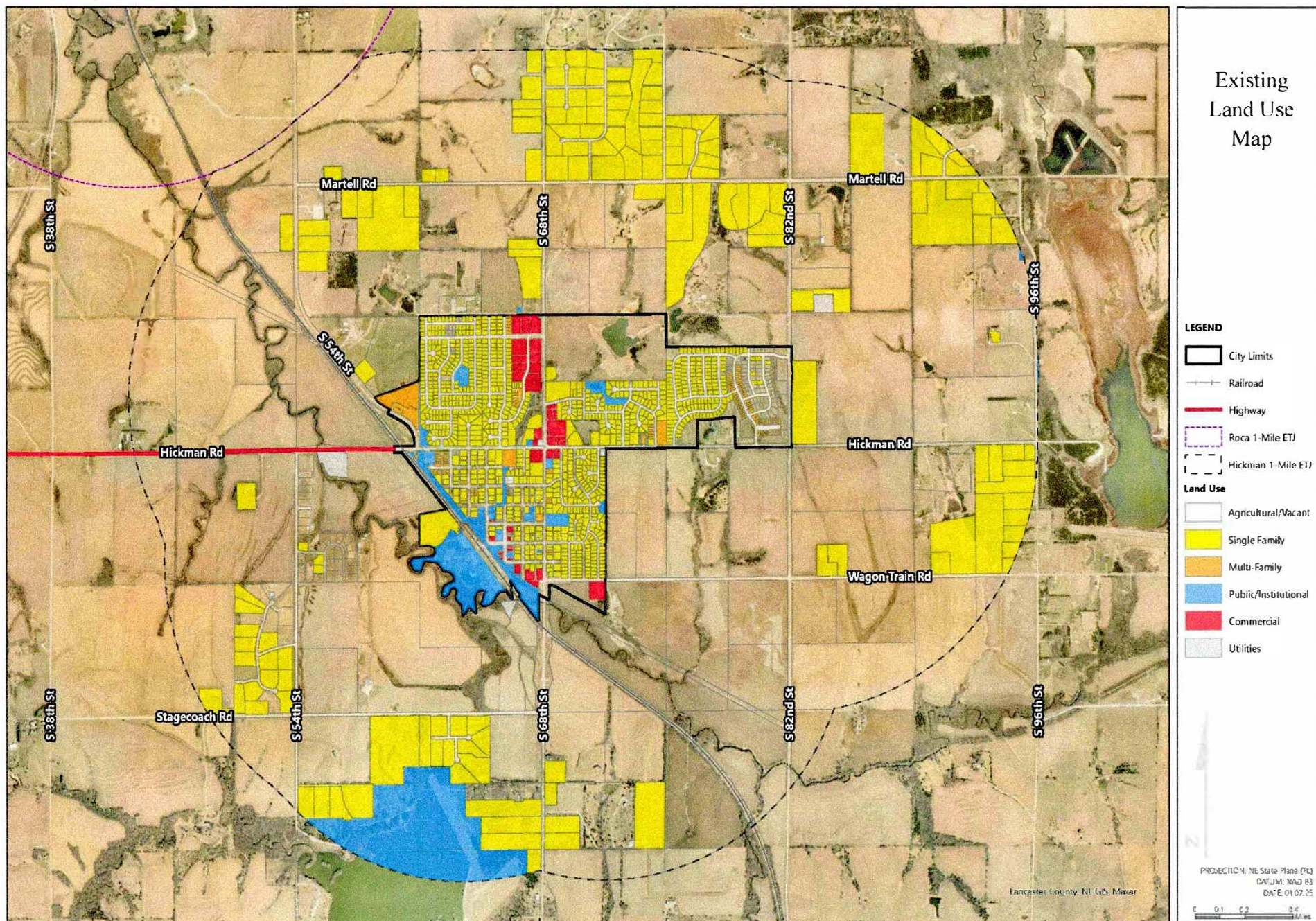


Illustration 6.1 – Existing Land Use Map

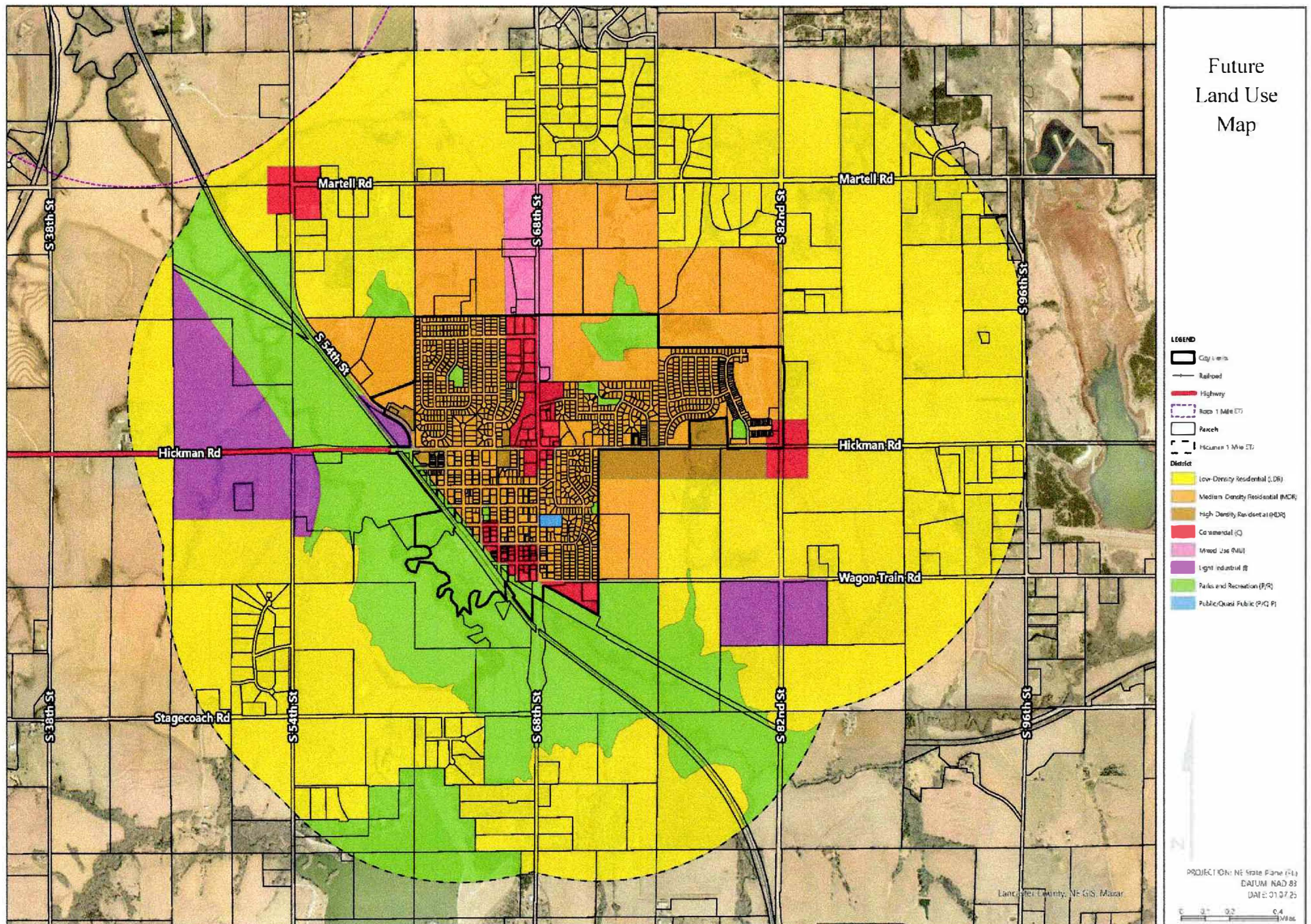


Illustration 6.2 – Future Land Use Map

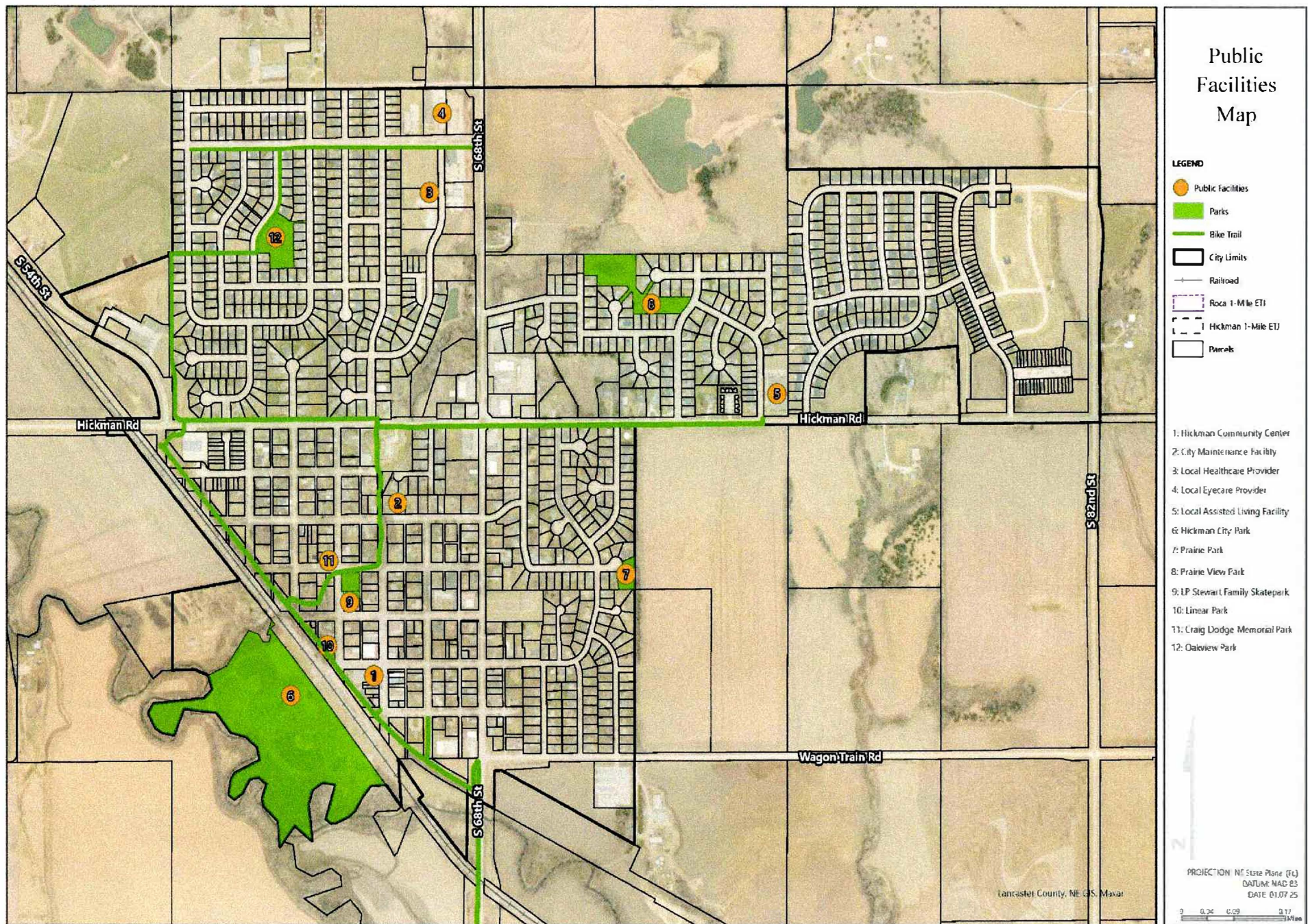
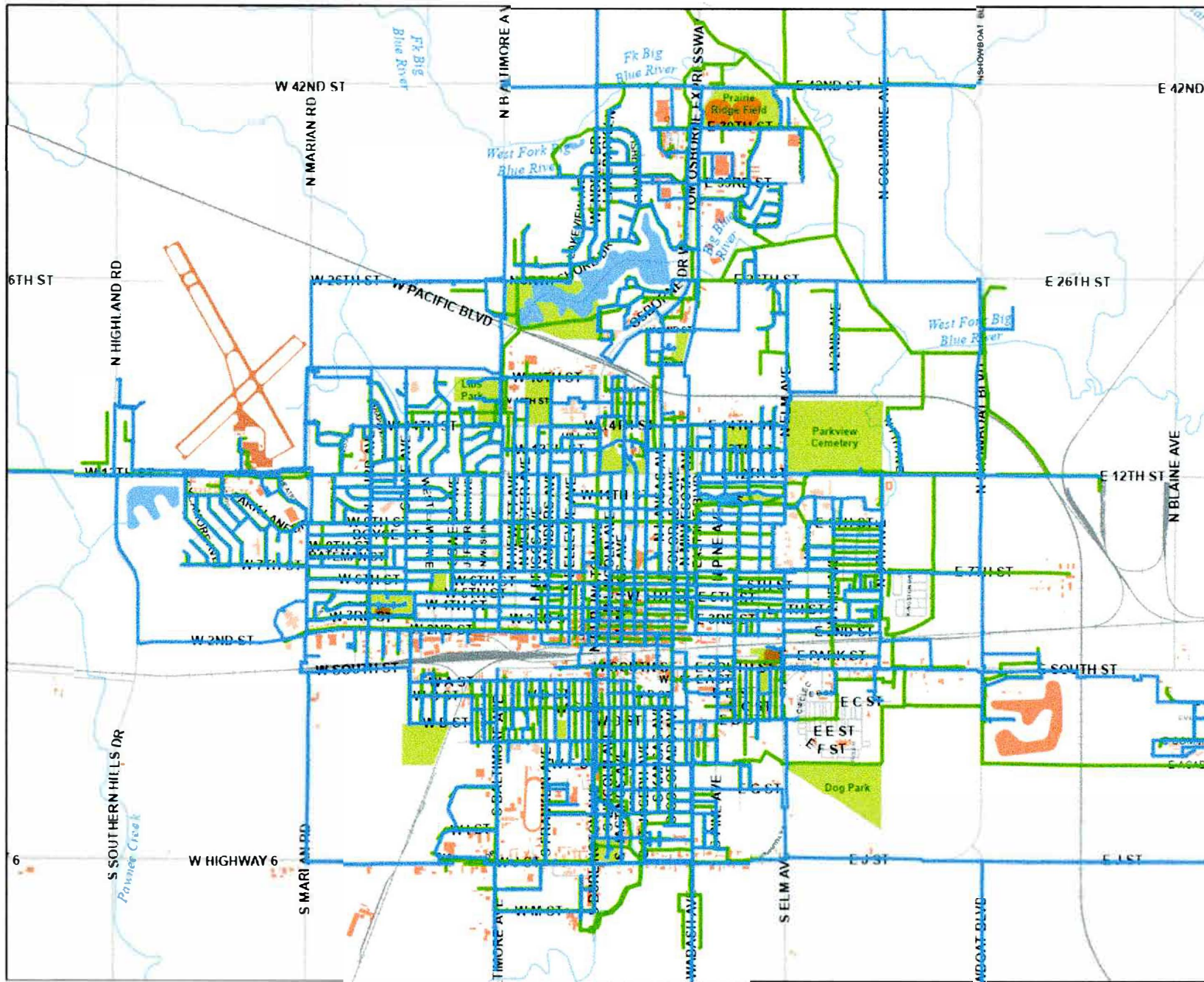


Illustration 6.3 – Public Facilities Map



Water and Sewer
Utility Map

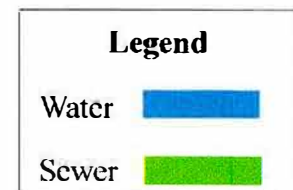


Illustration 6.4 – Water and Sewer Utility Map

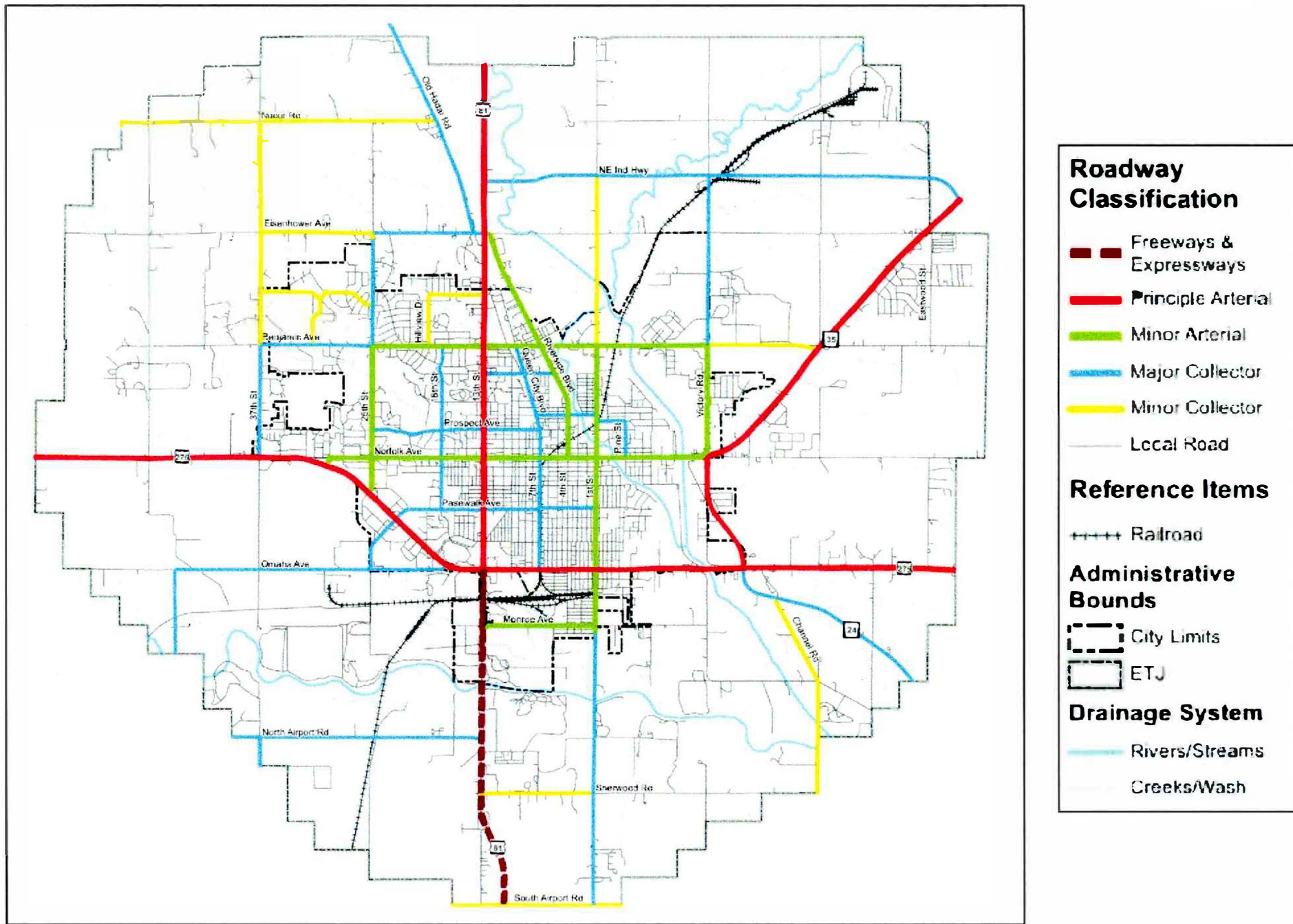


Illustration 6.5 – Roadway Classification Map

Part IV. – Plan Implementation

Chapter 7 – Zoning

What is Zoning?

Zoning has been referred to as “one of the most important, boring, subjects around.”* Yet, this classification system of land into different use categories is one of the most common methods used to “implement” comprehensive plans.

* Laurence C. Gerckens, AICP, former Professor of City Planning at Ohio State University.

Zoning is done by the adoption of an ordinance (for municipalities) or a resolution (regulation) for counties that divide land within the jurisdiction into districts in order to:

1. specify permitted, conditional, or special uses of land allowed in a particular area (district);
2. specify buildable area (height of buildings, setbacks, lot sizes, and densities); and
3. specify other accessory uses such as signs, parking, and other buildings.

Zoning in America

Many people think that the U. S. Supreme Court case of *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 475 S.Ct. 114, 71 L.Ed. 303 (1926) as the foundation for zoning in America. Actually, the application of zoning in America dates back to the late 1500’s from Spain, which was later followed by the charters England commissioned for the colonization in America.

The origins of zoning laws trace back to the late 19th century when cities grappled with urbanization and its challenges. Modern zoning dates to the 1870’s in Germany, but its critical period in the America was between 1916 and 1926. In 1916, New York City adopted the nation's first zoning ordinance. The legal battles which occurred during this time period eventually resulted in the Supreme Court's approval of zoning in *Village of Euclid* case which legitimized the “police power” used by communities to protect the health, safety, morals, and general welfare of its citizens. This “Euclidean zoning” established the legal foundation for comprehensive land use regulation.

Purpose and Objectives of Zoning

This protection of the health, safety, morals, and general welfare of communities is achieved by separating land uses into compatible groups and providing for development standards that preserve and protect the tax base.

Zoning is also the most common tool for implementing the comprehensive plan. The comprehensive plan is a prerequisite to the adoption of zoning in most states. As such, it is extremely important to write the ordinance or resolution to incorporate the goals and policies of the plan. For example, if the community wants to discourage development in flood prone areas to protect water quality and minimize property damage, a zoning district may be developed to implement this goal.

Over time, zoning laws are used to make the land use of the jurisdiction more reflect the vision outlined in the future land use map to achieve community goals.

Traditionally, the objectives of zoning have been to encourage orderly growth and development; provide adequate air, light, and open space to avoid hazards such as fire; reduce or eliminate traffic congestion or hazards; and protect the tax base.

The purposes of zoning are quite broadly defined, in Nebraska state law, notwithstanding there is no specific statute for municipalities. However, (*Neb. Rev. Stat. § 23-114.03*, for counties) specific purposes for promoting the health, safety, morals, convenience, order, prosperity, and welfare of the present and future inhabitants of Nebraska, such as:

1. developing both urban and nonurban areas;
2. lessening congestion in the streets or roads;
3. reducing the waste of excessive amounts of roads;
4. securing safety from fire and other dangers;
5. lessening or avoiding the hazards to persons and damage to property resulting from the accumulation or runoff of storm or flood waters;
6. providing adequate light and air;
7. preventing excessive concentration of population and excessive and wasteful scattering of population or settlement;
8. promoting such distribution of population, such classification of land uses, and such distribution of land development as will ensure adequate provisions for transportation, water flowage, water supply, drainage, sanitation, recreation, soil fertility,

-
- food supply, and other public requirements;
9. protecting the tax base;
 10. protecting property against blight and depreciation;
 11. securing economy in governmental expenditures;
 12. fostering the state's agriculture, recreation, and other industries;
 13. encouraging the most appropriate use of land in the county; and
 14. preserving, protecting, and enhancing historic buildings, places, and districts.

Zoning and Public Policy

Zoning should be considered from both a short-term and long-term perspective. It should be applied consistently and in conformance with the comprehensive plan. Zoning can create a stable and predictable investment climate for a community.

A community should carefully examine whether its designated zoning districts promote the community's vision. As a test, one should visualize each of the comprehensive plan's future land use plan areas in a fully developed sense. Does a fully developed area done in accordance with the regulations pertaining to that area depict the city or county in which you would want to live?

Finally, a community should carefully consider whether to zone all of the land for development, including agriculture, in its planning jurisdiction that is designated for future development on the community's future land use plan. A community should not zone land for development in advance of actual need and bona fide requests or it may face potential land use issues. Zoning can add value to land either in terms of the land's market value or in some cases its assessed value for tax purposes. Therefore, a reasonable course of action is to zone enough land to provide competition and to provide alternatives for locations. Consider keeping the remaining undeveloped or partially developed areas in low-density zones until a committed development proposal is presented to the jurisdiction. Further, if action is not taken to develop the proposal, the community may want to include a provision in its zoning ordinance or regulations that would "sunset" the proposal and void the re-zoning. This "use it or lose it" policy could be used to discourage land speculation.

Items Regulated by Zoning

The specific items that may be regulated by zoning in Nebraska are delineated by state law. The descriptions of those specific items that may be regulated by zoning are very similar for municipalities and counties.

Municipalities

The zoning ordinance that may be adopted by Nebraska cities of the first and second class and in villages (*Neb. Rev. Stat. § 19- 901*) is used to divide the land area of the municipality into any number of zoning districts without regard to those district's shapes and/or sizes. Within each zoning district, the ordinance may regulate and restrict:

1. the height, number of stories, and size of buildings and other structures,
2. the percentage of lots that may be occupied,
3. the size of yards, courts, and other open spaces,
4. the density of population, and
5. the location and use of building, structures, and land for trade, industry, residence, or other purposes.

For a city of the first class as described in subsection (3) of *Neb. Rev. Stat. § 19-5503*, such regulations shall comply with the Municipal Density and Missing Middle Housing Act.

The zoning ordinance also may restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land within the districts. Importantly, the requirements in the ordinance must be uniform for each class or kind of buildings throughout each district, but the requirements applicable to one district may differ from those applicable to other districts. (*Neb. Rev. Stat. and § 19- 902*)

Neb. Rev. Stat. § 19- 902 also provides the city council or village board of trustees shall not adopt or enforce any zoning ordinance or regulation which prohibits the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured home.

Counties

The zoning resolution that may be adopted by Nebraska counties generally provides the same items as those that may be regulated and restricted as are listed above for municipalities, including the provision regarding manufactured housing. (*Neb. Rev. Stat. § 23-*

114) However, the explicit listing of land uses that can be designated in county zoning districts is expanded in state law to include agriculture, forestry, recreation, and forestry uses. The determination of specific land use designations in county zoning districts must consider the factors relating to soil conservation, water supply conservation, surface water drainage and removal, and other uses in the unincorporated area of the county. If the zoning resolution affects the Niobrara scenic river corridor as defined in section *Neb. Rev. Stat. § 72-2006*, the Niobrara Council shall act on the measure as provided in *Neb. Rev. Stat. § 72-2010*.

As it was with municipalities, the power to regulate land use through zoning in counties is not totally without limits. Nebraska law (*Neb. Rev. Stat. § 23-114.03*) provides that only nonfarm buildings and land uses may be regulated. “Nonfarm” buildings are all buildings except those used for agricultural purposes on a farmstead of at least 20 acres which produces at least \$1,000 of farm products each year. However, each county has the authority to determine whether nonfarm buildings used as residences shall be subjected to the county’s zoning regulations and permit requirements.

Neb. Rev. Stat. § 23-174.10 provides that iIn any county which has adopted county zoning regulations, the county board, by resolution, may make regulations as may be necessary or expedient to promote the public health, safety, and welfare, including the following:

- (1) to prevent the introduction or spread of contagious, infectious, or malignant diseases;
- (2) to provide rules for the prevention, abatement, and removal of nuisances, including the pollution of air and water;
- (3) to make and prescribe regulations for the construction, location, and keeping in order of all slaughterhouses, stockyards, warehouses, sheds, stables, barns, commercial feedlots, dairies, junk and salvage yards, or other places where offensive matter is kept, or is likely to accumulate.

Such regulations shall be not inconsistent with the general laws of the state and shall apply to all of the county except within the limits of any incorporated city or village, and except within the unincorporated area where a city or village has been granted zoning jurisdiction and is exercising such jurisdiction.

Items Not Regulated by Zoning

Zoning does not specify building materials or the manner in which buildings are constructed. These items may be controlled through the adoption of a building code.

Zoning does not specify widths of streets, the sizes and locations of easements, or the construction of public improvements. These items may be controlled through subdivision regulations (see Chapter 8 of this *Handbook*).

The Rules of Zoning

The Creation of a Planning Commission Is a Necessary Prerequisite

Before a city council, or a village board of trustees, or a county board of commissioners or supervisors may enact a zoning ordinance or regulations, Nebraska statutes (*Neb. Rev. Stat. § 19-901* for municipalities and *Neb. Rev. Stat. § 23-114.01* for counties), a planning commission must be formed. As a further prerequisite to adopting a zoning ordinance or zoning regulations, the planning commission must prepare a comprehensive plan and recommend it to the governing body. Also, the planning commission must review any proposed zoning ordinance or regulations, or amendments thereto, and make recommendations to the governing body before such ordinance or regulations are enacted by the governing body.

Conformity with Comprehensive Plan

A zoning ordinance or zoning regulations adopted in a village, city, or county must be consistent with and in accordance with the comprehensive development plan in that jurisdiction (*Neb. Rev. Stat. § 19-903* for municipalities and *Neb. Rev. Stat. § 23-114.03* for counties). The State Supreme Court has not required that all zoning be exactly as shown on the land use plan; however, the Court has required communities to acknowledge the plan in order for rezoning to be valid.

Legislative Act

Only the village board of trustees or city council (*Neb. Rev. Stat. § 19-904*) the county board of commissioners or supervisors (*Neb. Rev. Stat. § 23-114*) can approve new provisions or changes in the zoning ordinance or zoning resolution. If a local governing body allows any other group or individual to take final actions affecting zoning of land in the jurisdiction, this likely would be considered an illegal granting of legislative authority.

Zoning as a Public Process

Zoning actions should be based on clear, publicly authorized, standards. Notice of amendments, public hearings, and variance procedures require notification and rights to protest or review by affected property owners and citizens.

Zoning and “Highest and Best Use”

“Highest and best use” is a phrase used in many development discussions. It should be clear, however, that the two terms – “highest” and “best” – in the phrase are not a single concept but two (2) distinct, yet compatible, concepts. While “highest” refers to an economic term determined by market forces, “best” is a value decided by government as an expression of the public’s system of values. That is, “best” refers to the fact that the public creates value for private property by using taxes and other public resources. Without streets, roads, law enforcement, schools, water, sewer, etc., the value of land would have only a fraction of its full “market” value. Therefore, the zoning of property in conformity with the plan should represent a balance between private property rights and the value of public investments.

Hierarchy of Regulation

Whenever a county’s zoning regulations require or impose higher standards than are required by any other statute or local ordinance, the higher standard of the county zoning regulation is to govern. Conversely, whenever any other statute or local ordinance or regulation requires or imposes higher standards than the county zoning regulations, the most restrictive requirements shall govern. (*Neb. Rev. Stat. § 23-170*)

Content of the Zoning Regulation

The organization of a zoning ordinance or resolution should be tailored to the jurisdiction, but to be complete, the ordinance or resolution must have two components:

1. a text that defines what is permitted or authorized as a conditional use, as well as any restrictions in the zoning districts and
2. a map that depicts the specific locations and shapes of the zoning districts in the jurisdiction.

The Zoning Text

The text of the zoning ordinance or zoning regulations should be organized to include the following general elements.

1. Title and Authority – Why is the ordinance being prepared? What are its objectives?
2. Definitions – Be careful not to put regulations in the definitions section (a sometimes difficult task). Also, use illustrations, as often a picture is worth 1,000 words.

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3. General Regulations – Adopt the official map. Describe the process for hearings, applications, notices, requirements affecting all or most districts (signs, fences, lighting, home occupations), and nonconforming uses. (Nonconforming uses are defined in Nebraska and will be discussed subsequently in this Chapter of the *Handbook*.)
 4. Districts – List all of the zoning districts, and for each district describe its intent. List the permitted, conditional, special, and accessory uses for each district, as well as the height and area regulations for each district. As an alternative, a land use matrix in a tabular format of districts and uses can also be used showing both permitted use and uses allowed by conditional use permits. (See Illustrations 7.2 to 7.9 at the end of this Chapter)
 5. Special Regulations – Special regulations may pertain to such items as signs, parking requirements, green space needs, and lot coverage.
 6. Board of Adjustment.
 7. Enforcement and Penalties.

The layout and numbering sequence of the ordinance or regulations should follow the same numbering or lettering system used in the city code or other county regulations. This provides continuity among the jurisdiction's ordinances or regulations and expedites codification.

The Zoning Map

The zoning map should be prepared as a companion item to the zoning ordinance or resolution, and both items should be made available to the public for review. The following checklist may be helpful in preparing a zoning map (See Illustration 7.1):

1. A good Base map is essential.
2. Adoption/amendment block.

The map should have a title block with an area where the chief official and clerk can note the date of adoption. Also, each time there is an annexation, rezoning, or subdivision, such change should be drawn on the map and noted in the adoption/amendment block. Each change should be dated.

3. Clarity.

Zoning districts should be clearly labeled or colored, and any alphanumeric zone abbreviations should be keyed to a legend on the map. Zoning district boundary lines should be clearly and completely drawn on the map to avoid confusion.

Often there is confusion regarding the zoning map and its relationship with (1) the map of existing land uses and (2) the

future land use map, both of which typically are included in the municipality or county's comprehensive plan. Neither the map of existing land uses, nor the future land use map, is a zoning map. The existing land use map depicts current actual use of the land, irrespective of the zoning of individual parcels. The future land use map depicts, in part, the long-range goals of the comprehensive plan and is intended as a general guide for designating the boundaries of the zones that are defined in the zoning ordinance or resolution.

Keys to Developing a Good Zoning Ordinance or Regulations

The following are three (3) key ingredients that will lead to the development or updating of a sound zoning ordinance or resolution:

1. Broad public involvement. – Elected officials need to support wide citizen participation in developing new or revised regulations.
2. An up-to-date comprehensive plan.

Both legally and practically speaking, zoning implements the plan, not vice versa. A careful assessment of the plan's goals and objectives are the foundation for effective zoning.

3. Technical assistance.

Because of the highly technical and legal nature of zoning, legal and professional planning assistance should be considered in the process.

State statutes spell out the minimum procedural requirements that municipalities and counties must follow in adopting or amending a zoning ordinance or resolution. Although governments can increase opportunities for public participation, the state statutes specify a minimum procedure for notice and public hearings involving both the planning commission and the elected governing body.

The procedures for adopting or amending a zoning ordinance in municipalities (*Neb. Rev. Stat.* §§ 19-904 and 19-905) and zoning resolutions in counties (*Neb. Rev. Stat.* § 23-164) are very similar, but there are a few important differences. The requirements and procedural steps are defined below, with differences between municipalities and counties noted.

Adopting or Amending the Zoning Ordinance or Regulations

Procedures for Counties and Municipalities

Legislative Body Must be Advised by Planning Commission

The legislative body of the municipality or county is required to receive advice (recommendation) from the planning commission before taking any definite action to adopt, amend, supplement, change, modify, or repeal the zoning ordinance or regulations.

Public Hearings Required

No action or change regarding the zoning ordinance can become effective until after separate public hearings are held by both the planning commission and the legislative body, at which citizens and parties directly affected have an opportunity to be heard.

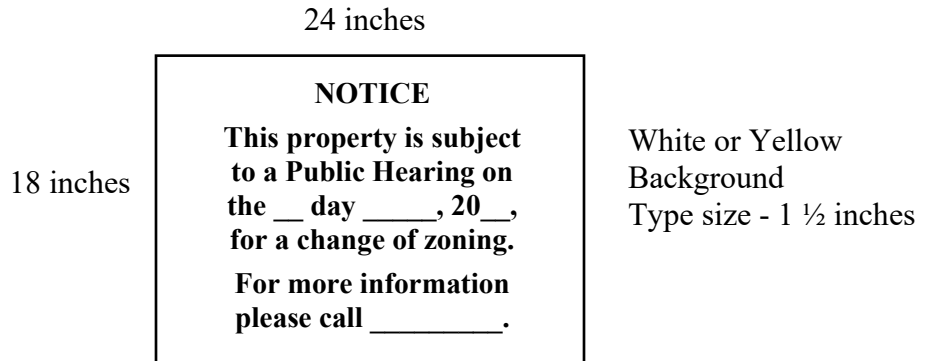
Notice of Public Hearings Required

Notice of the time and place of the hearings before the planning commission and the legislative body must be published in a newspaper of general circulation in the jurisdiction at least one (1) time and at least ten (10) days prior to such a hearing. (*Neb. Rev. Stat. § 19-904 and Neb. Rev. Stat. § 23-164*)

In municipalities, the provisions of section 19-904 relative to public hearings and official notice shall apply equally to all changes or amendments. In case of a protest against such change, signed by the owners of twenty percent (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent on the sides and in the rear thereof extending three hundred (300) feet therefrom, and of those directly opposite thereto extending three hundred (300) feet from the street frontage of such opposite lots, and such change is not in accordance with the comprehensive development plan, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the city council or village board of trustees of such municipality.

In addition to the publication of the notice as provided in *Neb. Rev. Stat. § 19-904*, a notice shall be posted in a conspicuous place on or near the property on which action is pending. Such notice shall not be less than eighteen (18) inches in height and twenty-four (24) inches in width with a white or yellow background and black letters not less than one and one-half (1½) inches in height. Such posted notice shall be so placed upon such premises that it is easily visible from the street nearest the same and shall be posted at least

ten (10) days prior to the date of such hearing. It shall be unlawful for anyone to remove, mutilate, destroy, or change such posted notice prior to such hearing. Any person so doing shall be deemed guilty of a misdemeanor punishable as provided in *Neb. Rev. Stat.* § 19-913.



If the record title owners of any lots included in such proposed change are nonresidents of the municipality, then a written notice of such hearing shall be mailed by certified mail to them addressed to their last-known addresses at least ten (10) days prior to such hearing. At the option of the city council or village board of trustees of the municipality, in place of the posted notice provided in this section, the owners or occupants of the real estate to be zoned or rezoned and all real estate located within three hundred feet of the real estate to be zoned or rezoned may be personally served with a written notice thereof at least ten (10) days prior to the date of the hearing, if they can be served with such notice within the county where such real estate is located. When such notice cannot be served personally upon such owners or occupants in the county where such real estate is located, a written notice of such hearing shall be mailed to such owners or occupants addressed to their last-known addresses at least ten days prior to such hearing. The provisions of this section in reference to notice shall not apply (1) in the event of a proposed change in such regulations, restrictions, or boundaries throughout the entire area of an existing zoning district or of such municipality, or (2) in the event additional or different types of zoning districts are proposed, whether or not such additional or different districts are made applicable to areas, or parts of areas, already within a zoning district of the municipality, but only the requirements of *Neb. Rev. Stat.* § 19-904 shall be applicable. (*Neb. Rev. Stat.* § 19-905)

In municipalities, considering the adoption or amendment of a zoning ordinance or the approval of the platting or replating of any development of real estate, such city or village shall:

- (1) notify the board of education of each school district in which the real estate, or some part thereof, to be affected by

such a proposal lies, of the next regular meeting of the planning commission at which such proposal is to be considered and shall submit a copy of the proposal to the board of education at least ten (10) days prior to such meeting; and

- (2) notify any military installation which is located within the corporate boundary limits or the extraterritorial zoning jurisdiction of the city or village if the city or village has received a written request for such notification from the military installation. The city or village shall deliver the notification to the military installation at least ten (10) days prior to the meeting of the planning commission at which the proposal is to be considered.

Also, cities of the first class shall provide written notice to the county board of the county in which the city's extraterritorial zoning jurisdiction is located when proposing to adopt or amend a zoning ordinance which affects the city's extraterritorial zoning jurisdiction within such county. The written notice of the proposed change to the zoning ordinance shall be sent to the county board or its designee at least thirty days prior to the final decision by the city. The county board may submit comments or recommendations regarding the change in the zoning ordinance at the public hearings on the proposed change or directly to the city within thirty days after receiving such notice. The city may make its final decision (i) upon the expiration of the thirty days following the notice or (ii) when the county board submits comments or recommendations, if any, to the city prior to the expiration of the thirty days following the notice. (*Neb. Rev. Stat.* § 16-901)

In counties, notice of the time and place of such hearing shall also be given in writing to the chairperson of any municipal, county, or joint planning commission in the State of Nebraska which has jurisdiction over land within three miles of the property affected by such action. In the absence of a planning commission, such notice shall be given to the clerks of units of local government in the State of Nebraska having jurisdiction over land within three miles of the property affected by such action being considered.

Hearings by Planning Commission and Legislative Body

The first required public hearing on a proposed zoning ordinance or zoning regulations takes place with the municipal or county planning commission.

Following action by the planning commission, another public hearing on the proposed action takes place at the first reading of the adoption or amendment in a meeting of the legislative body of

a municipality, after which the legislative body takes final action on the proposed adoption or amendment to the zoning ordinance. An ordinance of a permanent nature is required to be passed on three (3) readings on three (3) different days in municipalities unless waived by the suspension of the rules and passed by a three-fourths majority of the governing body (*Neb. Rev. Stat.* §16-404 and *Neb. Rev. Stat.* § 17-614). While multiple readings of proposed zoning regulations are not required in counties, a public hearing before the county board of commissioners or trustees is required.

Publication of the Zoning Ordinance and Regulations

Nebraska counties are required to publish zoning regulations or maps within fifteen days after adopting them (*Neb. Rev. Stat.* § 23-114.03). The regulations and maps may be published in book or pamphlet form or may be printed once in a general circulation newspaper that is published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county. The regulations also must be included in the minutes of the proceedings of the county board, and the zoning map or maps must be filed with the county clerk.

Municipalities also are required to publish the zoning ordinance within fifteen days after adoption (*Rev. Neb. Stat.* § 16-405 for cities of the first class and *Rev. Neb. Stat.* § 17-613 for cities of the second class and villages). The ordinance may be printed in a newspaper published in the municipality or in book or pamphlet form.

Special Zoning Districts, Tools, and Protections

Conditional Uses

Conditional uses are a separate class of uses that may be allowed in some zoning districts if certain conditions (e.g., location, setback, parking, screening) are met. These are not subject to a case-by-case review, as would a special use. In fact, State statutes authorize the governing body to allow the planning commission to act on some conditional uses without going to the governing body (*Neb. Rev. Stat.* § 19-929 for municipalities and *Neb. Rev. Stat.* § 23-114.01 for counties). This delegation of power to the planning commission is permissible only if the governing body has approved standards and procedures adopted by the commission for equitably and judiciously granting conditional uses. Conditional use permits are to be granted only if the proposed use is among the conditional uses listed in the zoning ordinance for the specific zoning district in which the property is located.

Overlay (Floating) Zones

An overlay zone is a special type of zoning district that adds to or changes zoning requirements that exist in underlying zoning districts.

Some overlay districts may not be depicted on the zoning map, because they are delineated only when specific project proposals are presented for specific locations in the jurisdiction. Thus, the term, “floating” district, is often used. The planned unit development (PUD) is the most familiar type of floating overlay district.

Other overlay zoning districts may be explicitly demarcated with a special graphic pattern or boundary on the zoning map to indicate an area in which the special requirements of the overlay district are added to the requirements of the underlying zoning districts. For example, a highway corridor district could be added along important roads to require specific traffic-related improvements to be added to the requirements that already are imposed by the underlying zoning districts located along the specified road.

Planned Unit Developments (PUDs)

The most frequently used of the overlay zones, the planned unit development (PUD) is intended to provide flexibility in locating land uses within the land area of a specific development project area. Frequently allowed only on multiple-acre parcels, the PUD can allow the community and developer to negotiate a unique zoning solution for a specified parcel.

Municipalities are permitted to include within their zoning ordinance provisions authorizing and regulating planned unit developments (*Neb. Rev. Stat. § 18-3301*). A PUD includes any development of a parcel of land or an aggregation of adjacent parcels to be developed into a single project which proposes density transfers, density increases, and mixing of land uses, or any combination thereof, based upon the application of site planning criteria. The intent of a PUD is to:

1. permit flexibility in land development;
2. encourage innovative land uses and variety in design, layout, and types of structures;
3. achieve economy and efficiency in land use, natural resources, energy, and the provision of public services and utilities;
4. encourage the preservation of useful open space; and

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5. provide improved housing, employment, or shopping opportunities.

Within a planned unit development, regulations relating to the use of land, including permitted uses, lot sizes, setbacks, height limits, required facilities, buffers, open spaces, roadway and parking design, and land-use density shall be determined in accordance with the planned unit development regulations specified in the zoning ordinance. The planned unit development regulations need not be uniform with regard to each type of land use.

The approval of planned unit developments, as authorized under a planned unit development ordinance, shall be generally similar to the procedures established for the approval of zone changes. In approving any planned unit development, a city or village may, either as a condition of the ordinance approving a planned unit development, by covenant, by separate agreement, or otherwise, impose reasonable conditions as deemed necessary to ensure that a planned unit development shall be compatible with adjacent uses of land, will not overburden public services and facilities, and will not be detrimental to the public health, safety, and welfare. Such conditions or agreements may provide for dedications of land for public purposes.

Except as provided in the following paragraph, a city of the second class or village located in a county that has adopted a comprehensive development plan which meets the requirements of Neb. Rev. Stat. § 23-114.02 and is enforcing subdivision regulations shall not finally approve a planned unit development upon property located outside of the corporate boundaries of the city or village until the plans for the planned unit development have been submitted to, reviewed, and approved by the county's planning commission pursuant to subsection (4) of Neb. Rev. Stat. § 17-1002.

A city of the second class or village located in whole or in part within the boundaries of a county having a population in excess of one hundred thousand (100,000) inhabitants but less than two hundred fifty thousand (250,000) inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census that has adopted a comprehensive development plan which meets the requirements of *Neb. Re. Stat.* § 23-114.02 and is enforcing subdivision regulations shall not finally approve a planned unit development upon property located outside of the corporate boundaries of the city or village until the plans for the planned unit development have been submitted to the county's planning department and public works department for review.

Transfer of Development Rights

Transfer of Development Rights (TDR) is a market-based mechanism used in urban planning to separate the development potential of a parcel of land from its physical location. This allows landowners to sell their rights to develop their land to developers who can use those rights in designated areas where development is encouraged. The primary goal of TDR is to protect environmentally sensitive areas, agricultural land, and open spaces while directing growth to areas that can accommodate it.

Check with your jurisdiction's attorney to see if TDR is available for the property or for the situation.

Performance Standards and Zoning

The use of measurable criteria is a type of zoning tool that attempts to quantify “good development.” The basic assumptions of performance standards and zoning include:

1. goals or mitigation of impacts can be achieved if a land use performs above or below some measurable level (e.g., “vehicular traffic is limited to not more than (x) cars per hour;” or “hours of activity are limited to 6:00 AM to 10:00 PM”);
2. the criteria will actually produce the desired results; and
3. measurable standards produce clear regulations and more efficient enforcement.

Noise Mitigation

Perhaps one of the easiest “performance standards” to enact and enforce, noise ordinances demonstrate some of the practical difficulties in performance zoning. Although it is possible to accurately measure sound, responding to citizen complaints poses enforcement problems in a number of ways. Proper abatement of noise problems requires investing in specialized equipment, training, and making available operators of the equipment to respond to complaints, and ensuring that the language of the ordinance is clear and enforceable.

Protection of Manufactured Homes and Requirements

As has been previously stated above, Nebraska statutes were amended effective January 1, 1997, to prohibit municipalities from discriminating against manufactured homes. (*Neb. Rev. Stat.* § 19-902) and *Neb. Rev. Stat.* § 23-114)

If such manufactured home bears an appropriate seal which indicates that it was constructed in accordance with the standards of the Uniform Standard Code for Manufactured Homes and

Recreational Vehicles, the Nebraska Uniform Standards for Modular Housing Units Act, or the United States Department of Housing and Urban Development. The city council or village board of trustees may require that a manufactured home be located and installed according to the same standards for foundation system, permanent utility connections, setback, and minimum square footage which would apply to a site built, single-family dwelling on the same lot. The city council or village board of trustees may also require that manufactured homes meet the following standards:

1. The home shall have no less than nine hundred square feet of floor area;
2. The home shall have no less than an eighteen-foot exterior width;
3. The roof shall be pitched with a minimum vertical rise of two and one-half inches for each twelve inches of horizontal run;
4. The exterior material shall be of a color, material, and scale comparable with those existing in residential site-built, single-family construction;
5. The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock; and
6. The home shall have wheels, axles, transporting lights, and removable towing apparatus removed.

Manufactured home shall mean (a) a factory-build structure which is to be used for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with national Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or (b) a modular housing unit as defined in *Neb. Rev. Stat. § 71-1557* bearing a seal in accordance with the Nebraska Uniform Standards for Modular Housing Units Act, as the previous cites may from time to time be amended.

Regulation of Sensitive Lands and Natural Environment

Throughout the 1960s and 1970s federal, state, and local governments were enacting a variety of regulations to protect certain natural resources and to minimize possible conflicting land use demands on others. Currently, many communities and counties are trying to find ways to deal with the following major issues:

1. Floodplains.

The floodway and floodway fringe have been identified by the Federal Emergency Management Agency (FEMA) or some of the natural resources districts (NRDs) in Nebraska. The Nebraska Department of Natural Resources (NDNR) in Lincoln has personnel who specialize in floodplain management. In conjunction with FEMA, they have prepared four model zoning regulations that would apply to virtually any city or county in the state (see “Chapter 9: Environmental Issues” in this *Handbook*).

2. Ground and surface water quality.

Due to a number of factors, the quality of ground and surface water has significantly deteriorated in parts of Nebraska. Records compiled by the State Health and Human Services System and the NDNR show that some ground water supplies are unsafe for human consumption. With continued restrictions in the federal Clean Water Act, cities and counties may need to band together with their respective NRDs to find and protect sufficient water supplies to meet the needs of commerce and residents. Wellhead protection zones could be applied to reduce impacts on vital water resources (see “Chapter 9: Environmental Issues” in this *Handbook*).

3. Prime agricultural lands.

As in other mid-western states, most Nebraska communities are located in the middle of productive farmland. Protecting prime agricultural lands can be protected by providing for minimum lot sizes, agricultural estate dwelling sites, etc. in the zoning regulations.

4. Wetlands.

The federal program protecting wetlands has, in the last few years, undergone difficult and uncertain periods of enforcement and interpretation (see “Chapter 9: Environmental Issues” in this *Handbook*).

■ Airport Zoning

The Airport Zoning Act (*Neb. Rev. Stat. §§ 3-301 to 3-333*) provides for controls aimed toward avoiding land use conflicts with airplane traffic generated by airports. The Airport Zoning Act is a broad enabling legislation empowering political subdivisions to enact zoning regulations to prevent airport hazards and to control land uses in the areas surrounding airports.

Airport Hazard and Airport Hazard Areas

An airport hazard is defined as any structure or tree or use of land that penetrates any approach, operation, transition, or turning zone. Airport hazard area means any area of land or water upon which an airport hazard might be established if not prevented as provided in the Act, but such area shall not extend in any direction a distance in excess of the limits provided for approach, operation, transition, and turning zones. (*Neb. Rev. Stat. § 3-301*)

Airport Zoning Commission

Prior to the initial zoning of any airport hazard area under the Airport Zoning Act, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefore. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. If a city or county planning commission or a joint or interjurisdictional planning commission already exists, it may be appointed as the airport zoning commission. (*Neb. Rev. Stat. § 3-308*)

Airport Zoning Regulations

No airport zoning regulations shall be adopted, amended, or changed under the Airport Zoning Act except by the action of the legislative body of the political subdivision in question, or the joint airport zoning board provided for in *Neb. Rev. Stat. § 3-304* after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least ten (10) days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which the airport hazard area is located.

Joint Airport Zoning Board

If an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside of the political subdivision's zoning jurisdiction, the political subdivision owning or controlling the airport and the political subdivision or political subdivisions within whose zoning jurisdiction the airport hazard area or areas are located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, by resolution approved by a

majority of the board, airport zoning regulations applicable to an airport hazard area as that vested by *Neb. Rev. Stat. § 3-303* in any political subdivision within whose zoning jurisdiction such area is located. Any airport zoning regulation, or any amendment thereto, adopted by a joint airport zoning board shall be filed with the official or administrative agency responsible for the enforcement of zoning regulations in each of the political subdivisions participating in the creation of the joint airport zoning board and shall be enforced as provided in *Neb. Rev. Stat. § 3-319*. If a joint airport zoning board is created pursuant to *Neb. Rev. Stat. § 3-304*, such board shall have two representatives appointed by each political subdivision participating in its creation as members thereof and also a chairperson elected by a majority of the members so appointed. The term of each member shall be four (4) years.

Airport Zoning – Nonconforming Uses

No airport zoning regulations adopted under the Airport Zoning Act shall require the removal, lowering, or other change or alteration of any existing structure or tree not conforming to the regulations when adopted or amended or otherwise interferes with the continuance of any nonconforming use, except as provided in *Neb. Rev. Stat. § 3-311*.

Airport Zoning – Permits or Variances

The political subdivision may enact airport zoning regulations which require a permit to be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed.

Board of Adjustment

The political subdivision may also create and appoint a board of adjustment, if one already exists, or if one does not exist create a new board of adjustment, to hear appeals, decide any special exceptions, and hear and decide specific variances. The board of adjustment shall consist of five (5) regular members, each to be appointed for a term of three years by the political subdivision or joint airport zoning board adopting the regulations. The board has the same general powers of a municipal board of adjustment with regard to appeals and the granting of variances. Appeals of a board's decision is to be filed as a petition in error with the district court having jurisdiction over the airport.

Eminent Domain

A political subdivision may acquire by purchase, grant, or condemnation air rights, aviation easements, or other interests in real property to effectuate the Airport Zoning Act (*Neb. Rev. Stat. § 3-331*). This eminent domain power is to be used when the political subdivision wishes to terminate a nonconforming structure or use when the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations or it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations.

Assistance from Department of Transportation

The Department of Transportation of the State of Nebraska is authorized to aid and assist political subdivisions in planning, developing, and carrying out the Airport Zoning Act to secure uniformity as far as possible.

Other Height Regulations

Structures are further regulated in the statutes (*Neb. Rev. Stat. §§ 3-401 to 3-409*) with regard to air navigation. Pursuant to these statutes, it is unlawful for any person to erect or maintain any structure within the State of Nebraska if the height of the structure exceeds 150 feet without first applying for and obtaining a permit from the Department of Transportation.

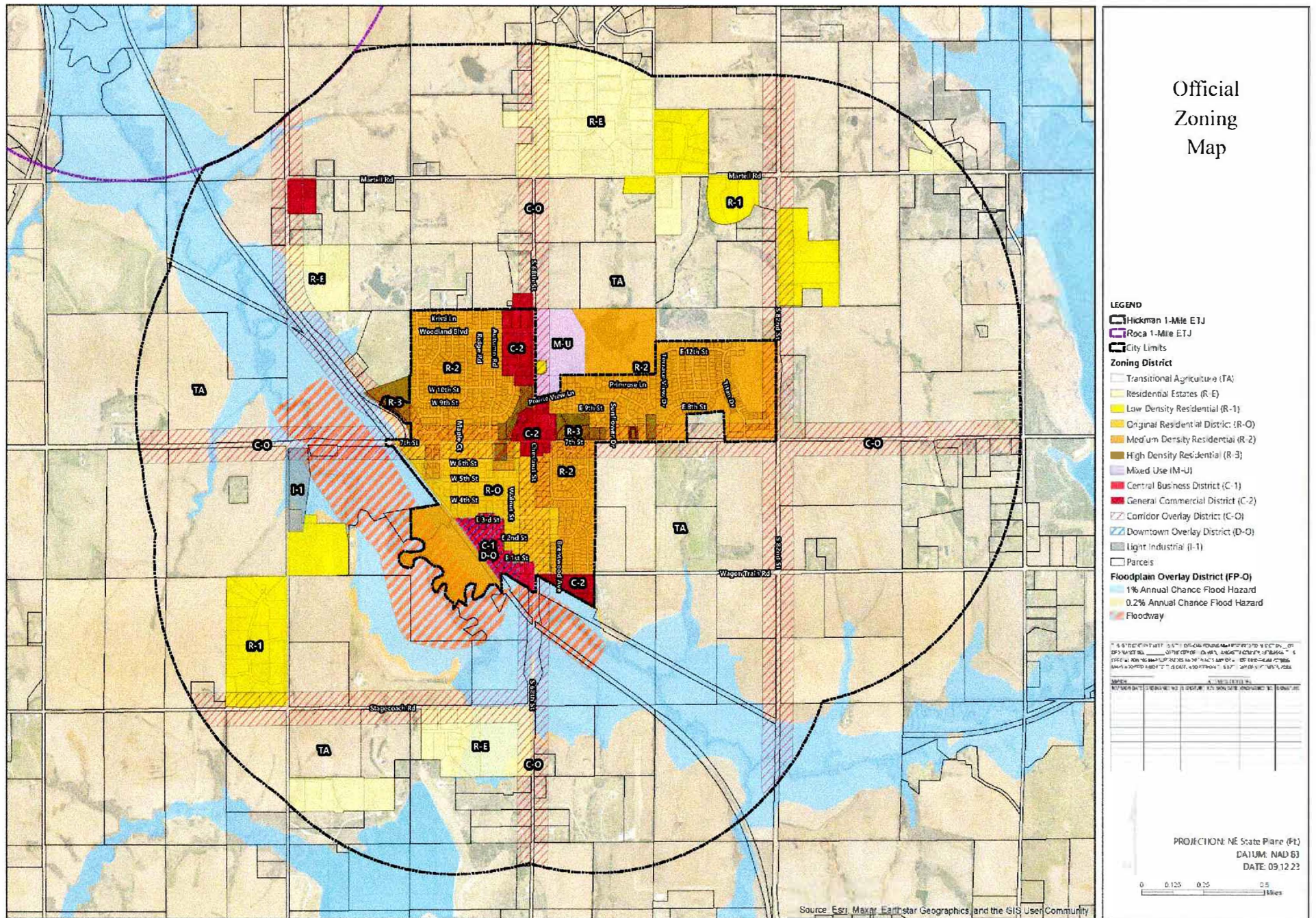


Illustration 7.1 – Official Zoning Map

Land Use Matrix

E = Exempt from Permits P = Permitted C = Conditional Use Permit T = Temporary A=Accessory building or use M-U' = Subject to an approved Mixed Use Development Plan “- “= not permitted *1 = Floodplain regulations shall be met		TA-1 = Transitional Agriculture R-E = Residential Estates R-1 = Low Density Residential R-2 = Medium Density Residential R-3 = High Density Residential RO = Original Residential District RM = Mobile Home Residential MU = Mixed Use C-1 = Central Business District C-2 = General Commercial I-1 = Light Industrial I-2 = Heavy Industrial												
Use Category	Use Type	TA-1	R-E	R-1	R-2	R-3	RO	R-M	M-U'	C-1	C-2	I-1	I-2	Additional Requirements
Agriculture & Horticulture Uses	Agricultural buildings for general ag. use	P	-	-	-	-	-	-	-	-	C	P	P	
	Agricultural operations, other than LFOs	E	-	-	-	-	-	-	-	-	C	P	P	
	Class I LFO	C	-	-	-	-	-	-	-	-	-	C	C	
	Class II LFO	C	-	-	-	-	-	-	-	-	-	C	C	
	Community Gardens	E	P	P	P	P	P	P	P	P	-	P	P	
	Crop Production	E	-	-	-	-	-	-	-	-	C	P	P	
	Livestock for 4-H purposes as a Secondary use	P	-	-	-	-	-	-	-	-	-	-	-	
	Livestock sales	C	-	-	-	-	-	-	-	-	C	P	P	
	Wineries/Vineyards	C	C	-	-	-	-	-	P	-	-	P	P	
Agricultural Sales & Service	Agricultural chemicals, fertilizer, anhydrous ammonia-storage & distribution for commercial use.	C	-	-	-	-	-	-	-	-	-	C	C	
	Agricultural chemicals, fertilizer, anhydrous ammonia-storage & distribution for personal use.	E	-	-	-	-	-	-	-	-	-	C	C	
	Agricultural implement & vehicle sales and service	C	-	-	-	-	-	-	-	-	-	P	P	
	Agricultural research farm	P	-	-	-	-	-	-	-	-	-	C	C	
	Agricultural processing	C	-	-	-	-	-	-	-	-	-	C	C	
	Agriculture feed mixing and blending, seed sales and grain handling operations	C	-	-	-	-	-	-	-	-	-	P	P	
	Equestrian centers and stables/Commercial stables	P	C	-	-	-	-	-	-	-	-	-	-	
	Horses and other non-commercial livestock on residential lots	P	P	P	-	-	-	-	-	-	-	-	-	
Residential Living	Dwelling, Cottage Court	-	-	-	C	P	P	-	P	-	-	-	-	See Section 11.18
	Dwelling, Courtyard Building	-	-	-	C	P	P	-	P	-	-	-	-	See Section 11.18
	Dwelling, Live-Work Unit	-	-	P	P	P	P	-	P	-	-	-	-	
	Dwelling, Special Types	C	C	C	C	C	C	-	P	-	-	-	-	See Section 11.24
	Dwelling, Triple Stacked	-	-	-	C	P	P	-	P	-	-	-	-	See Section 11.18
	Multi-family dwelling (max. of 4 units per building)	-	-	P	P	P	P	C	P	-	-	-	-	See Section 11.18
	Multi-family dwelling (more than 4 units per building)	-	-	-	C	P	P	C	P	-	-	-	-	See Section 11.18
	Condominiums (max. of 4 units)	-	-	P	P	P	P	-	P	-	-	-	-	See Section 11.18
	Condominiums (4 units or more)	-	-	-	C	P	P	-	P	-	-	-	-	See Section 11.18
	Mobile Home Dwelling	-	-	-	-	-	-	P	-	-	-	-	-	
	Mobile Home Dwelling as secondary dwelling	C	-	-	-	-	-	-	-	-	-	C	C	
	Seasonal dwelling or cabins	P	-	-	-	-	-	-	-	-	-	-	-	
	Single-family attached dwelling (max. of 4 units)	-	-	P	P	P	P	-	P	-	-	-	-	See Section 11.18
	Single-family attached dwelling (more than of 4 units)	-	-	-	C	P	P	-	P	-	-	-	-	See Section 11.18
	Single-family detached dwellings	P	P	P	P	P	P	-	P	-	-	-	-	
	Two-family/Duplex	-	-	P	P	P	P	-	P	-	-	-	-	
	Two Family Stacked	-	-	P	P	P	P	-	P	-	-	-	-	
	Upper story housing	-	-	-	-	-	-	-	P	P	P	-	-	

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Use Category	Use Type	TA-1	R-E	R-1	R-2	R-3	RO	RM	M-U¹	C-1	C-2	I-1	I-2	Additional Requirements
Residential/Commercial Institutions	Adult care homes	P	P	P	P	P	P	P	-	P	P	-	-	
	Assisted Living Facilities	P	P	P	P	P	C	C	C	C	-	-	-	
	Bed and Breakfast	P	P	C	C	-	-	-	-	-	-	-	-	See Section 11.14
	Convents	P	P	C	C	-	-	-	-	-	-	-	-	
	Emergency Residential Services/Shelters	P	P	P	P	P	P	P	P	P	C	-	-	
	Group Care Home	P	P	P	P	P	P	P	P	P	P	P	P	
	Group Home	P	P	P	P	P	P	P	P	P	-	P	P	
	Hospice	P	P	P	P	P	P	P	P	P	-	-	-	
	Life Care Facility	P	P	P	P	P	C	C	C	C	C	-	-	
	Monasteries	P	C	C	C	-	-	-	-	-	-	-	-	
	Nursing Homes	P	C	C	C	-	C	C	C	C	-	-	-	
	Retirement Homes	-	C	C	C	-	C	C	C	C	-	-	-	
	Transitional housing	P	P	P	P	P	P	P	P	P	P	P	P	
Community Services/Civic Uses	Animal shelters	P	-	-	-	-	C	C	P	C	C	P	P	
	Cemetery	P	C	C	-	-	-	-	-	-	-	-	-	
	Churches, synagogues, temples & similar	C	P	P	P	P	P	P	P	P	P	P	P	
	Church, Storefront	-	-	-	-	-	C	C	P	C	-	P	P	
	Community centers & buildings	C	C	C	C	C	P	P	P	P	P	P	P	
	Fraternal organization	C	C	C	C	C	P	P	P	P	P	P	P	
	Governmental offices and uses, incl: fire and rescue, law enforcement centers	P	P	P	P	P	P	P	P	P	P	P	P	
	Public libraries and museums	P	P	P	P	P	P	P	P	P	P	P	P	
	Philanthropic Organizations	C	C	C	C	C	P	P	P	P	P	P	P	
	Planetariums	C	-	-	-	-	-	-	P	P	-	-	-	
	Senior citizen centers	C	C	C	C	C	P	P	P	P	C	P	P	
Treatment, Rehabilitation, Incarceration Facilities	Community correction centers	C	-	-	-	-	-	-	-	C	-	C	C	
	Drug & alcohol rehabilitation centers	C	C	-	-	-	C	C	P	C	-	C	C	
	Halfway houses	P	P	P	P	P	P	P	P	P	P	P	P	
	Public Detention Center	C	-	-	-	-	-	-	-	C	C	P	P	
	Juvenile Detention Center	C	-	-	-	-	-	-	-	C	C	P	P	
	Private Prisons	C	-	-	-	-	-	-	-	C	C	P	P	
	Public Prisons	C	-	-	-	-	-	-	-	C	C	P	P	
Child-care, Public and Private Schools	Adult care home	P	P	P	P	P	P	P	P	C	-	-	-	
	Child care center	C	C	C	C	C	C	C	P	P	P	P	P	
	Child care home	P	P	P	P	P	P	P	P	P	P	P	P	
	Colleges and Universities	C	C	C	C	C	-	P	P	P	P	P	P	
	Family child care home I	P	P	P	P	P	P	P	P	P	P	-	-	
	Family child care home II	P	P	P	P	P	P	P	P	P	P	-	-	
	Preschools	C	P	P	P	P	P	C	P	P	P	-	-	
	Public and private schools (K-12)	C	C	C	C	C	P	P	P	P	P	P	P	
	Trade, career & technical schools	C	-	-	-	-	C	C	C	C	C	P	P	

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Use Category	Use Type	TA-1	R-E	R-1	R-2	R-3	RO	R-M	M-U¹	C-1	C-2	I-1	I-2	Additional Requirements
Public Parks and Open Space	Arboretums	P	P	P	P	P	P	P	P	P	P	P	P	
	Athletic fields	C	C	C	C	C	P	P	P	P	P	P	P	
	Campground	C	-	-	-	-	-	-	-	C	-	-	-	
	Nature centers	C	-	-	-	-	-	-	P	C	C	-	-	
	Parks, trails, picnic areas, & playgrounds	P	P	P	P	P	P	P	P	P	P	P	P	
	State parks	P	P	P	P	P	P	P	P	P	P	P	P	
	Public pools and/or water parks	P	P	P	P	P	P	P	P	P	P	-	-	
Public/Private Utilities And Communication Services	Natural gas exploration and pumping	C	-	-	-	-	-	-	-	C	C	C	C	
	Natural gas depots	C	-	-	-	-	-	-	-	C	C	C	C	
	Private Wells	P	P	P	-	-	-	-	-	-	-	-	-	See Section 11.23
	Wind Energy Conversion Sys. – Commercial/Utility Grade	C	-	-	-	-	-	-	-	-	C	C	C	See Section 11.07
	Public works facilities incl. storage/maintenance areas	P	P	P	P	P	P	P	P	P	P	P	P	
	Wireless telecommunication facilities sys. - new tower	C	C	C	-	-	C	C	C	C	C	C	C	See Section 11.02
	Wireless telecommunication facilities sys. - collocated	P	P	P	-	-	P	P	P	P	P	P	P	See Section 11.02
	Radio and tower transmitter (Shortwave and Ham operations) (no offices)	P	C	C	C	C	C	C	C	C	C	C	C	
	Data centers	C	-	-	-	-	-	-	-	-	-	C	C	
	Crypto mining	C	-	-	-	-	-	-	-	-	-	C	C	
Animal Care	Animal Shelter	P	-	-	-	-	-	-	-	P	P	P	P	
	Kennel boarding or training	P	-	-	-	-	-	-	-	P	P	P	P	
	Kennel, commercial	P	-	-	-	-	-	-	-	P	P	P	P	
	Kennel, private	P	-	-	-	-	-	-	-	P	P	P	P	
	Pet cemetery	C	-	-	-	-	-	-	-	-	-	-	-	
	Pet crematorium	C	-	-	-	-	-	-	-	C	C	P	P	
	Pet grooming, Pet training	C	-	-	-	-	P	P	P	P	P	P	P	
	Animal hospital	C	-	-	-	-	-	-	P	P	P	P	P	
Business and Household Services	Building maintenance & cleaning services	C	-	-	-	-	-	-	C	P	P	P	P	
	Copying, printing, mailing, & packaging services	C	-	-	-	-	-	-	P	P	P	P	P	
	Lawn, garden & yard maintenance services	C	-	-	-	-	-	-	P	P	P	P	P	
	Locksmiths and key duplication	C	-	-	-	-	-	-	P	P	P	P	P	
	Pest control services	C	-	-	-	-	-	-	-	P	P	P	P	
	Small appliances & household equipment repair	C	-	-	-	-	-	-	-	P	P	P	P	
	Well drilling/septic tank cleaning	C	-	-	-	-	-	-	-	P	P	P	P	
Financial Services	Banks	-	-	-	-	-	-	-	P	P	P	P	P	
	Automatic Teller Machine (ATM)	-	-	-	-	-	-	-	P	P	P	P	P	
	Brokerages	-	-	-	-	-	-	-	P	P	P	P	P	
	Credit Unions	-	-	-	-	-	-	-	P	P	P	P	P	
	Insurance offices	-	-	-	-	-	-	-	P	P	P	P	P	
	Financial advisory services	-	-	-	-	-	-	-	P	P	P	P	P	
	Specialty loan services	-	-	-	-	-	-	-	P	P	P	P	P	

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Use Category	Use Type	TA-1	R-E	R-1	R-2	R-3	RO	RM	M-U ¹	C-1	C-2	I-1	I-2	Additional Requirements
Food and Beverage Services	Banquet/reception facility	C	-	-	-	-	-	-	P	C	C	C	C	
	Brew-on Premises Store	-	-	-	-	-	-	-	P	P	P	P	P	
	Brewery	C	-	-	-	-	-	-	C	C	C	C	C	
	Craft Brewery (Commercial)	C	-	-	-	-	-	-	C	C	C	C	C	
	Catering service	C	-	-	-	-	-	-	C	C	C	P	P	
	Donut and pastry shops	-	-	-	-	-	-	-	P	P	P	P	P	
	Mobile Food Units	T	-	-	-	-	-	-	P	T	T	T	T	See Section 11.17
	Restaurants	C	-	-	-	-	-	-	P	P	P	P	P	
	Roadside produce stands	T	T	T	T	-	-	-	P	T	T	T	T	See Article 8
	Sidewalk Café	-	-	-	-	-	-	-	P	P	P	-	-	See Section 11.15
	Tavern or bar	-	-	-	-	-	-	-	P	P	P	C	C	
	Coffee houses, coffee shops	-	-	-	-	-	-	-	P	P	P	-	-	
	Brew pub	-	-	-	-	-	-	-	P	C	C	C	C	
	Micro-brewery (Commercial)	-	-	-	-	-	-	-	C	C	C	C	C	
	Coffee kiosks	C	-	-	-	-	-	-	P	P	P	P	P	
General Commercial	Antiques, collectables shop, and art galleries	C	-	-	-	-	-	-	P	P	P	P	P	
	Artisan production shop and studio, including pottery, painting, stain glass, etc.	C	-	-	-	-	-	-	P	P	P	P	P	
	Bridal sales & services	-	-	-	-	-	-	-	P	P	P	P	P	
	Custom Butchers and meat lockers	-	-	-	-	-	-	-	C	P	P	P	P	
	Clothing & accessories	-	-	-	-	-	-	-	P	P	P	P	P	
	Computer hardware/software sales	-	-	-	-	-	-	-	P	P	P	P	P	
	Dance studios & schools	-	-	-	-	-	-	-	P	P	P	P	P	
	Electronic/appliance sales & service	-	-	-	-	-	-	-	P	P	P	P	P	
	Equipment sales/storage/rental	-	-	-	-	-	-	-	P	P	P	P	P	
	Equipment repair services	-	-	-	-	-	-	-	P	P	P	P	P	
	Fabric and sewing supply stores	-	-	-	-	-	-	-	P	P	-	P	P	
	Farmer's Market	P	-	-	-	-	-	-	P	P	P	P	P	
	Firearms and ammunition sales	-	-	-	-	-	-	-	C	C	C	C	C	
	Florists	-	-	-	-	-	-	-	P	P	P	P	P	
	Food store (specialty) including bakeries, delicatessen, not a full-service grocery	-	-	-	-	-	-	-	P	P	P	P	P	
	Funeral homes and mortuaries, including crematoriums	-	-	-	-	-	-	-	P	P	P	P	P	
	Garden center, including lawn and garden equipment sales and service	P	-	-	-	-	-	-	P	P	P	P	P	
	Gift store	-	-	-	-	-	-	-	P	P	P	P	P	
	Grocery	-	-	-	-	-	-	-	P	P	P	P	P	
	Hardware store	-	-	-	-	-	-	-	P	P	C	P	P	
	Heating and cooling sales and services	-	-	-	-	-	-	-	P	P	P	P	P	
	Photographic equipment & supplies	-	-	-	-	-	-	-	P	P	P	P	P	
	Religious book, card and articles stores	-	-	-	-	-	-	-	P	P	P	P	P	
	Secondhand store, thrift or consignment store	-	-	-	-	-	-	-	P	P	P	P	P	
	Self-service laundry and laundromat	-	-	-	-	-	-	-	P	P	P	P	P	
	Tanning Studio	-	-	-	-	-	-	-	P	P	P	P	P	
	Taxidermy Services	-	-	-	-	-	-	-	P	P	P	P	P	

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Use Category	Use Type	TA-1	R-E	R-1	R-2	R-3	R-O	R-M	M-U¹	C-1	C-2	I-1	I-2	Additional Requirements
Special Commercial	Adult Entertainment	P	-	-	-	-	-	-	P	P	P	P	P	See Section 11.19
	Billiard halls	-	-	-	-	-	-	-	P	P	P	P	P	
	Commercial greenhouses	C	-	-	-	-	-	-	C	P	P	P	P	
	Business Center incl: co worker spaces	-	-	-	-	-	-	-	P	P	P	P	P	
	Concrete and cinder block sales	C	-	-	-	-	-	-	C	P	P	P	P	
	Convenience store	-	-	-	-	-	-	-	P	P	C	P	P	
	Fencing dealers	C	-	-	-	-	-	-	C	P	P	P	P	
	Fireworks stands	-	-	-	-	-	-	-	P	P	P	-	-	
	Gasoline filling stations, including Self-Service	-	-	-	-	-	-	-	P	P	C	P	P	
	Liquor stores/sales	-	-	-	-	-	-	-	P	P	P	P	P	
	Marijuana Dispensaries (Medical)	Not currently legal in Nebraska												
	Marijuana Dispensaries (Recreational)	Not currently legal in Nebraska												
	Monument sales	-	-	-	-	-	-	-	C	P	P	P	P	
	Motels and hotels	-	-	-	-	-	-	-	P	C	C	P	P	
	Nurseries, retail sales	P	-	-	-	-	-	-	C	P	P	P	P	
	Piercing Studio, Tattoo parlors	-	-	-	-	-	-	-	P	P	P	P	P	
	Vending Machines	-	-	-	-	-	A	A	A	A	A	A	A	
	Vending Machine, Reverse	-	-	-	-	-	A	A	A	A	A	A	A	
Medical Uses	Acupuncture offices	-	-	-	-	-	-	-	P	P	P	P	P	
	Dental offices incl. orthodontics	-	-	-	-	-	-	-	P	P	P	P	P	
	Massage therapy	-	-	-	-	-	-	-	P	P	P	P	P	
	Medical offices, incl: chiropractors	-	-	-	-	-	-	-	P	P	P	P	P	
	Optical sales & services	-	-	-	-	-	-	-	P	P	P	P	P	
	Rehabilitation facilities including out-patient services	-	-	-	-	-	-	-	P	P	P	P	P	
Office Uses	Accountant and investment counseling	-	-	-	-	-	-	-	P	P	P	P	P	
	Business offices	-	-	-	-	-	-	-	P	P	P	P	P	
	Consultant offices	-	-	-	-	-	-	-	P	P	P	P	P	
	Lawyer/Attorney offices	-	-	-	-	-	-	-	P	P	P	P	P	
	Photographic studios	-	-	-	-	-	-	-	P	P	P	P	P	
	Real Estate offices	-	-	-	-	-	-	-	P	P	P	P	P	
	Utility and telephone company offices	C	-	-	-	-	-	-	P	P	P	P	P	
Recreational Commercial	Bowling alley	-	-	-	-	-	-	-	P	P	P	P	P	
	Golf courses, public & private	P	P	-	-	-	-	-	C	-	P	P	P	
	Golf driving ranges	P	P	-	-	-	-	-	C	C	P	P	P	
	Gun clubs	C	-	-	-	-	-	-	C	C	C	C	C	
	Miniature golf courses	-	-	-	-	-	-	-	P	-	P	P	P	
	Paintball Course	C	C	-	-	-	-	-	-	-	C	C	C	
	Recreational facility, Indoor	C	C	-	-	-	-	-	P	C	C	C	C	
	Recreational facility, outdoor	C	C	-	-	-	-	-	P	C	C	C	C	
	Recreational vehicle (RV) Park	C	-	-	-	-	-	-	-	C	C	C	C	
	Amusement arcade	-	-	-	-	-	P	-	P	P	P	P	P	

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Use Category	Use Type	TA-1	R-E	R-1	R-2	R-3	RO	RM	M-U ¹	C-1	C-2	I-1	I-2	Additional Requirements
Auto Services/Commercial	Auto body repair	-	-	-	-	-	-	-	-	C	C	P	P	See Section 11.11
	Automotive/machinery repair shop	-	-	-	-	-	-	-	-	C	C	P	P	See Section 11.11
	Automobile/truck sales, rental & leasing	-	-	-	-	-	-	-	-	C	C	P	P	See Section 11.11
	Automobile/truck washes, self-services or automatic	-	-	-	-	-	-	-	-	-	C	P	P	See Section 11.11
	Motor home dealers	-	-	-	-	-	-	-	-	-	C	P	P	See Section 11.12
	Motorcycle dealers, incl. moped, scooters, ATV, and UTV	-	-	-	-	-	-	-	-	C	C	P	P	See Section 11.12
	Muffler sales & services	-	-	-	-	-	-	-	-	C	C	P	P	See Section 11.11
	Recreational vehicle sales & rentals	-	-	-	-	-	-	-	-	-	C	P	P	See Section 11.12
	Transmission repair shops	-	-	-	-	-	-	-	-	C	C	P	P	See Section 11.11
	Travel trailer dealers	-	-	-	-	-	-	-	-	-	C	P	P	See Section 11.12
	Vehicle Storage	-	-	-	-	-	-	-	-	-	C	P	P	
	Vehicle Storage, Long-term	-	-	-	-	-	-	-	-	-	C	P	P	
	Trailer, RV, & boat storage	-	-	-	-	-	-	-	-	-	C	P	P	
Warehousing and Storage	Fireworks storage	-	-	-	-	-	-	-	-	-	C	P	P	
	Mini warehousing & self-service storage	C	-	-	-	-	-	-	-	C	C	P	P	See Section 11.10
	Motor Freight Terminals	-	-	-	-	-	-	-	-	-	-	P	P	
	Outdoor Storage	C	-	-	-	-	-	-	-	P	P	P	P	
	Outdoor Storage Containers	-	-	-	-	-	-	-	-	-	-	P	P	
	Portable On-demand storage facilities	T	T	T	T	T	T	T	T	T	T	T	T	
	Warehouse and distribution	C	-	-	-	-	-	-	-	-	-	P	P	
	Warehousing (enclosed)	C	-	-	-	-	-	-	-	-	-	P	P	
	Warehousing (Open)	C	-	-	-	-	-	-	-	-	-	P	P	
	Wholesale business and storage	C	-	-	-	-	-	-	-	-	C	P	P	
Contractors, Contractor Yards, Storage, and Supply	Bulk materials or machinery storage (fully enclosed)	C	-	-	-	-	-	-	-	-	-	P	P	
	Carpet & rug cleaning plants	C	-	-	-	-	-	-	-	-	-	C	C	
	Construction batch plants	C	-	-	-	-	-	-	-	-	-	C	C	
	Construction yards incl. offices & equipment storage yards excl. heavy machinery	C	-	-	-	-	-	-	-	-	-	P	P	
	Trade shops incl: cabinet makers, masons and bricklayers, plumbers, electricians, carpenters, HVAC w/ limited outdoor storage	C	-	-	-	-	-	-	-	P	C	P	P	
Large Contracting/Materials Manufacturing	Asphalt contractors	-	-	-	-	-	-	-	-	-	-	C	C	
	Concrete block manufacturing	-	-	-	-	-	-	-	-	-	-	C	C	
	Concrete contractors	C	-	-	-	-	-	-	-	-	-	C	P	
	Concrete products	C	-	-	-	-	-	-	-	-	-	C	P	
	Excavating contractors	C	-	-	-	-	-	-	-	-	-	C	P	
	Heavy construction companies	C	-	-	-	-	-	-	-	-	-	C	P	
	Highway/street construction co.	C	-	-	-	-	-	-	-	-	-	C	P	
	Manufactured housing fabrication	C	-	-	-	-	-	-	-	-	-	C	P	
	Prefabricated buildings & components manufacturing	C	-	-	-	-	-	-	-	-	-	C	P	
	Wrecking & demolition contractors	C	-	-	-	-	-	-	-	-	-	C	P	

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Use Category	Use Type	TA-1	R-E	R-1	R-2	R-3	RO	RM	M-U¹	C-1	C-2	I-1	I-2	Additional Requirements
Food Processing	Bakery Products Manufacturing	-	-	-	-	-	-	-	P	C	C	P	P	
	Beverage Blending and Bottling (Except Breweries)	-	-	-	-	-	-	-	-	-	-	C	C	
	Coffee, Tea and Spice Processing and Packaging	-	-	-	-	-	-	-	P	P	P	P	P	
	Creamery and Dairy Operations	C	-	-	-	-	-	-	-	-	-	C	C	
	Dairy Products Manufacturing	C	-	-	-	-	-	-	-	-	-	C	C	
	Egg Processing Plants	C	-	-	-	-	-	-	-	-	-	C	C	
Mining and Excavation	Brick, firebrick and clay products manufacturing	C	-	-	-	-	-	-	-	-	-	C	C	See Section 11.16
	Monument & architectural stone manufacturing	C	-	-	-	-	-	-	-	-	-	C	C	
	Quarry	C	-	-	-	-	-	-	-	-	-	C	C	See Section 11.16
Metal Processing, Stamping	Culvert manufacturing	-	-	-	-	-	-	-	-	-	-	C	C	
	Welding	-	-	-	-	-	-	-	-	-	-	C	C	
	Wire Rope and Cable Manufacturing	-	-	-	-	-	-	-	-	-	-	C	C	
Waste Handling	Landfill, Construction Material	-	-	-	-	-	-	-	-	-	-	C	C	
	Landfill, Solid Waste	-	-	-	-	-	-	-	-	-	-	C	C	
	Recycling Center	C	-	-	-	-	-	-	-	C	C	C	C	
	Recycling Processing	C	-	-	-	-	-	-	-	-	-	C	C	
	Sanitary Transfer Station	C	-	-	-	-	-	-	-	-	-	C	C	
Wood Products Manufacturing	Basket & hamper (wood, reed, rattan, etc.) manufacturing	-	-	-	-	-	-	-	-	-	-	C	C	
	Millwork manufacturing	-	-	-	-	-	-	-	-	-	-	C	C	
	Electronics manufacturing	-	-	-	-	-	-	-	-	-	-	C	C	
	Machinery manufacturing	-	-	-	-	-	-	-	-	-	-	C	C	
	Musical instruments manufacturing	-	-	-	-	-	-	-	-	-	-	C	C	
	Tool, die, gauge and machine shops	-	-	-	-	-	-	-	-	-	-	C	C	
	Wind turbine manufacturing	-	-	-	-	-	-	-	-	-	-	C	C	
Large Contracting/Materials Manufacturing	Bio-Fuels Manufacturing, including Ethanol production	C	-	-	-	-	-	-	-	-	-	-	C	
	Grain Elevator and Storage Facilities	C	-	-	-	-	-	-	-	-	-	C	C	
	Salvage Operations	-	-	-	-	-	-	-	-	-	-	C	C	See Section 11.08
	Scrap or Salvage Yards	-	-	-	-	-	-	-	-	-	-	C	C	See Section 11.08
	Waste Recovery Facilities – Commercial, Industrial & Residential	-	-	-	-	-	-	-	-	-	-	C	C	See Section 11.08
	Wood Preserving Treatment	-	-	-	-	-	-	-	-	-	-	C	C	

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Use Category	Use Type	TA-1	R-E	R-1	R-2	R-3	R-O	R-M	M-U ¹	C-1	C-2	I-1	I-2	Additional Requirements	
Accessory Uses	Barns	P	P	P	-	-	-	-	-	-	-	-	-		
	Bins, silos, grain storage	P	-	-	-	-	-	-	-	-	-	-	-		
	Grain Bins used as gazebos or other accessory uses	P	P	P	P	P	P	P	P	P	P	P	P	See Section 4.11	
	Decks, gazebos, patios (elevated or on-grade)	P	P	P	P	P	P	P	P	P	P	P	P	See Section 4.11	
	Fences	P	P	P	P	P	P	P	P	P	P	P	P	See Section 11.03	
	Freestanding canopy	P	P	P	P	P	P	P	P	P	P	P	P	See Section 4.11	
	Fuel storage	P	-	-	-	-	-	-	-	-	-	P	P		
	Fuel tanks and dispensing equipment	P	-	-	-	-	-	-	P	P	P	P	P		
	Garages, Private	P	P	P	P	P	P	P	-	P	P	P	P	See Section 4.11	
	Garage, Storage	P	P	P	P	P	P	P	-	P	P	P	P	See Section 4.11	
	Carports	P	P	P	P	P	P	P	-	-	-	P	P	See Section 4.11	
	Greenhouses, Non-commercial	P	P	P	P	P	P	P	P	-	-	-	-		
	Home Occupations	P	P	P	P	P	P	P	-	-	-	-	-	See Section 11.01	
	Home based Businesses	P	P	P	P	P	P	P	-	-	-	-	-	See Section 11.01	
	Portable on-demand storage containers	T/P	T/P	T/P	T/P	T/P	T/P	T/P	T/P	T/P	T/P	T/P	T/P	See Section 4.23	
	Porch, unenclosed	P	P	P	P	P	P	P	P	P	P	P	P	See Section 4.11	
	Storage sheds	P	P	P	P	P	P	P	-	-	-	P	P	See Section 4.11	
	Storage building using multiple storage containers	-	-	-	-	-	-	-	-	-	-	P	P	See Section 4.23	
	Swimming pools	P	P	P	P	P	P	P	P	P	P	P	-	-	See Section 4.22
	Tennis and other sports courts/fields	P	P	P	P	P	P	P	P	P	P	P	P	P	See Section 4.11
	Solar energy systems for use on individual properties or buildings	P	P	P	P	P	P	P	P	P	P	P	P	P	See Section 11.09
	Wind Energy Conversion System	C	C	C	C	C	C	C	C	C	C	C	C	C	See Section 11.06

Chapter 8 – Subdivision Regulations

What is Subdivision?

Development of previously undeveloped land in counties or in the planning jurisdiction of cities or villages is controlled through subdivision regulations. The subdivision regulations control the way by which developers may divide land into blocks and lots that can be sold to individual property owners, as well as the way by which streets, sidewalks, utility systems, and other infrastructure must be laid out to adequately serve the area and to be developed to connect with any existing systems.

Nebraska statutes define the term “subdivision” as the “division of a lot, tract, or parcel of land into two or more lots, sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be a subdivision when the smallest parcel created is more than ten acres in area” (*Neb. Rev. Stat. § 19-921* for municipalities and *Neb. Rev. Stat. § 23-372* for counties).

Nebraska statutes enable counties and municipalities to enact ordinances that specify the manner, plan, and method by which real property may be subdivided, platted, or laid out, including a plan or system for the avenues, streets, or alleys to be laid out within or across the county or municipality and to require the owners of land to conform to such plans and other requirements of the ordinances (*Neb. Rev. Stat. § 19-916* for municipalities and *Neb. Rev. Stat. § 23-374* for counties).

While zoning focuses on the use of land, subdivision regulations are intended to:

1. consider the overall feasibility of developing land;
2. set standards for dividing land for purposes of sale or development;
3. insure that provisions are made to incorporate the land into the established or planned development of the area by providing adequate area for such needs as utilities, streets, and public facilities; and
4. establish costs, responsibilities, and timing of public improvements.

From the late 1700s when the Northwest Territories Act set up the section, township, and range system of today, the regulations and process of land transfer have been guided by a systematic survey process. Today Nebraska, as well as most other states, relies on the general outline set out in the 1928 U.S. Department of Commerce

Standard City Planning Enabling Act, which made subdivision regulation an integral part of the comprehensive planning process.

■ Purpose and Applicability of Subdivision Regulations

Subdivision regulations are an important means by which local governments and prospective home buyers can ensure that areas being developed are planned, designed, and built in accordance with acceptable standards to protect the health, safety, and welfare of citizens in the community and, more specifically, the residents in the newly developed area.

The owner of any land located within or contiguous to the corporate limits of a first or second class city or village must comply with the municipality's subdivision regulation in plating real estate (*Neb. Rev. Stat. § 19-916*). Similarly, the owner of land in the unincorporated area of a county, unless the land is in the extraterritorial jurisdiction of a municipality (discussed below), must obtain approval of the county board in plating real estate (*Neb. Rev. Stat. §§ 23-373 and 23-374*).

■ Relationship of Subdivision to the Comprehensive Plan

Subdivision occurring in a municipality's planning jurisdiction, which may include extraterritorial area, must be guided by the municipality's comprehensive plan and subdivision regulations. (*Neb. Rev. Stat. § 19-921*). Similarly, subdivision occurring in a county's planning jurisdiction must be guided by a county comprehensive plan and subdivision regulations (*Neb. Rev. Stat. § 23-376*).

Subdivision regulations are an important tool for implementing goals and policies of the jurisdiction's comprehensive plan. For example, subdivision regulations can be utilized to achieve the following types general and specific policies of the jurisdiction's comprehensive plan:

1. ensure an efficient road system by requiring sufficient access points throughout the development;
2. ensure that all land to be developed will have access to and can be served by the utilities and services that are available in the city or county;
3. create a secure and predictable real estate market to allow for development, sale, and taxing of property in a fair and equitable manner; and
4. protect sensitive environmental conditions (steep slopes, floodplains, etc.).

Subdivision in Extraterritorial Areas

Similar to the state statutes that grant municipalities the power to zone land in extraterritorial areas (see Chapter 7 of this *Handbook*), state statutes also enable cities of the first class to control the subdivision process up to two miles beyond their corporate boundaries (*Neb. Rev. Stat. § 16-902*) and cities of the second class and villages to control the subdivision process up to one mile beyond their corporate boundaries (*Neb. Rev. Stat. § 17-1002*).

In cities of the first and second class and villages that have extraterritorial jurisdiction, no owner of real property may subdivide or plat land outside of the city limits—but within the extraterritorial jurisdiction of the city – without first obtaining approval of the plat by the municipality. The subdivision regulations of the city or village that exercises extraterritorial jurisdiction over unincorporated areas of a county shall supersede the subdivision regulations of the county for the land located in the extraterritorial jurisdiction (*Neb. Rev. Stat. § 23-373*).

If the property to be subdivided is located in a municipality's extraterritorial jurisdiction but is located in a different county or counties than some or all portions of the municipality, it is still necessary for the property owner to obtain approval from the municipality.

Review and Comment by County Planning Commission

If the county in which the municipality is located has a comprehensive plan and is enforcing its own subdivision regulations, the county planning commission is to give concurrent review of any plat that is proposed in the municipality's extraterritorial jurisdiction and is to officially comment to the municipality on the design and improvements proposed in the plat. The county planning commission is to be given a period of at least four weeks to review and comment on the plat (*Neb. Rev Stat. § 16-902* for first class cities and *Neb. Rev. Stat. § 17-1002* for second class cities and villages).

General Organization and Contents of Subdivision Regulations

As with the zoning regulations, subdivision regulations should follow the chapter, section, subsection, and numbering system used in the jurisdiction's general code of regulations. As a general rule, it is also advisable to print the regulation as a complete separate document. Sections of the subdivision regulations document, however, should not be further separated from the

whole of the subdivision regulations document for public distribution because of the interrelationships that normally exist throughout the regulations.

Also, like zoning, subdivision regulations are generally organized with the following sections:

1. Title and Definition
2. Administration and Procedures
3. Contents of Plat
4. Design Standards
5. Required Improvements
6. Improvement Financing
7. Fees and Penalties

Jurisdictions may need to address various types of subdivision activity, ranging from small-scale lot splits to larger-scale subdivisions to plat vacations.

Subdivision Types

Small-scale Subdivisions

Lot Splits

The smallest-scale type of subdivision would involve splitting one lot into two smaller lots. This subdivision usually would involve no new right-of-way or other public/private easements and could be processed as an administrative subdivision.

Administrative Subdivisions

Where existing lots or blocks are further subdivided in a city or village, the legislative body may designate an employee of the city or village to approve such subdivisions without requiring approval by the legislative body (*Neb. Rev. Stat. § 19-916*). In these situations all required public improvements already must be installed, no new dedication of public rights-of-way or easements may be involved, and the subdivision must comply with the ordinance requirements concerning minimum areas and dimensions of lots and blocks. Because these subdivisions may be approved by a staff person, these are sometimes referred to as administrative subdivisions.

Minor Subdivisions

In their subdivision regulations, cities or villages also may designate certain smaller-scale subdivisions to be minor subdivisions, usually requiring only a final plat review by the planning commission.

Larger-scale Subdivisions

Sketch Plan

Sometimes a “sketch plan” is presented by a developer for review by staff and the planning commission prior to submitting a plat. The sketch plan or drawing is a concept plan that allows the developer to discuss ideas prior to paying for the professional services needed for platting.

Preliminary Plat

For larger-scale subdivisions, a preliminary plat is presented to demonstrate the feasibility and suitability of the proposed subdivision arrangement relative to the physical characteristics of the site and impacts of the development on public services (roads, utilities, etc.).

Final Plat

The final plat of a subdivision presents site survey information and engineering designs for site improvements, legal descriptions and land transfers for public use, and approved scheduling and financing of required improvements.

Contents of a Plat

Preliminary Plat Information

Preliminary analysis and design review are key objectives in the preliminary plat review. Therefore, the content of the preliminary plat should facilitate evaluating the proposal’s consistency with the city’s or county’s planning goals. A sample regulation dealing with the content requirements of a preliminary plat can be found in Appendix 3 of this *Handbook*.

Final Plat Information

As mentioned earlier, the final plat is the document that allows for the real estate market to function by creating a clear description of land for sale and transfer.

For municipalities, Nebraska state statutes specify that a subdivision plat shall consist of an accurate map designating the lots and blocks by numbers and streets, avenues, and other grounds by names or numbers. The plat shall contain a dedication of streets, alleys, and grounds for use by the public. The plat must contain a survey by a competent surveyor certifying that the lots, blocks, streets, avenues, alleys, parks, commons, and other grounds of the plat are accurately staked

off and marked. Once approved by the local municipality, the plat shall be filed with the county's Register of Deeds and Assessor. (*Neb. Rev. Stat. § 19-916.*)

The final plat also establishes the location, timing of and provisions for public improvements. A sample regulation addressing the contents of a final plat can be found in Appendix 4 of this *Handbook*.

Reviewing Subdivision Proposals

To ensure quality development and to forestall many potential future problems, consistent and complete local review of subdivisions by local governments is extremely important.

Checklists

Subdivision review checklists can be very useful in this process. Checklists should include all elements of the regulations that are provided to every applicant before they submit plats. A sketch plan review step can be used to save everyone time and money. Sample checklists for preliminary plats and final plats can be found in Appendices 5 and 6, respectively of this *Handbook*.

Requirement to Notify Board(s) of Education

Any municipality considering the platting or replating of any development of real estate must notify the board of education of each school district in which all or part of the real estate affected by the platting or replating lies (*Neb. Rev Stat. § 19-923*). The board(s) of education must be informed of the next regular meeting of the planning commission at which the proposal is to be considered, and a copy of the platting or replating must be submitted to the board(s) of education at least ten days prior to such meeting. This procedure is intended to provide for orderly school planning and development.

Subdivisions in Relation to Adjacent Municipalities

Once a formal plat is recorded with the county register of deeds, the plat acts as a deed to the municipality of all streets and public rights-of-way vesting title in the municipality. Once the plat of land outside the corporate limits is recorded, such property automatically becomes annexed within the corporate boundaries of the municipality if it is contiguous with the corporate limits. (*Neb. Rev Stat. § 19-916.*)

The planning commission and the governing body each must conduct separate public hearings on the two separate questions of (1) approval of the addition and (2) inclusion of the addition within the corporate boundaries of the municipality. The governing body must vote separately on the two questions. The time and place of the hearings must be published in a paper of general circulation at least ten days prior to the hearings (*Neb. Rev. Stat.* § 19-904).

Required Improvements

What do or should communities require developers to install and pay for? One of the most important policy questions local government needs to answer is: “How much of the cost of growth will new subdivisions pay?” The degree to which a community participates in financing subdivision improvements and the level of design quality required in new developments are at the very heart of long range community planning.

Typical improvements required of developers are described in Appendix 7 of this *Handbook*.

Improvement Financing

Finally, how will required improvements be paid for and scheduled for construction? Three basic approaches are commonly used:

1. The developer builds and pays for all required improvements before the sale of lots (often a sizable up-front cost on large development projects);
2. A bond or other financial instrument is required of the developer to guarantee the improvements will be built; and/or improvement or benefit district financing is used (public funds are generated to pay for improvements and repayment of the bonds is taxed to all lots in the improvement district).

Typical improvement financing stipulations for subdivisions are included in Appendix 8 of this *Handbook*.

Vacation of Plats and Replating

Plats or additions to municipalities that have been previously processed and approved may be vacated or changed when such changes are deemed by the municipality to be advantageous and in its best interest (*Neb. Rev. Stat.* § 19-917).

The owner or all the owners of lots or lands in a plat or addition to the municipality may petition the municipality to vacate all or part

of the plat or addition. If the municipality agrees to vacate all or part of the plat or addition, the ordinance vacating the plat shall specify what, if any, public streets, alleys, or other public land shall be retained by the municipality.

Otherwise, such streets and public land shall, upon such vacation, revert to the owner or owners of lots or lands abutting the same in proportion to the respective ownership of such lots or lands. The land reverting to such owner or owners shall be replated and numbered by the city or county surveyor, and the ownership shall be recorded in the office of the county register of deeds.

Correction of Corporate Limits

State statutes provide a procedure by which a city of the first or second class or village may correct plating errors (*Neb. Rev. Stat.* §§ 19-2201 to 19-2204).

When a plat has been recorded with the county register of deeds for more than ten years, but there is an error in the plating, the city council or village board of trustees may correct the corporate limits by passing a resolution adopted by a two-thirds vote of all members. The statutes also require that inhabitants of the affected area must have been subject to taxation in the jurisdiction and have had the right to vote in all elections for a period of 10 or more years.

The resolution is to describe the part of the city or village in general terms and to direct the proper officers of the city or village to apply to the district court for a correction of the corporate limits. The district court is to provide notice to the affected property owners and, upon receipt of proper evidence, will correct the improperly annexed or platted area.

Subdivision Issues

Most subdivision ordinances have requirements for the design and layout of lots, rights-of-way, public easements, and other necessary infrastructure. Many subdivision regulations require the developers to install all the necessary infrastructure, including the streets and utilities. Landowners oftentimes cannot or do not want to comply with these requirements and will attempt an “end run” around the subdivision ordinance or resolution through the Nebraska statutory process known as “subdivision validation.”

Nebraska statutes allow counties and municipalities to require compliance with subdivision ordinances or resolutions, except when the smallest parcel created is more than ten acres in area (*Neb. Rev. Stat.* § 19-921 for municipalities and *Neb. Rev. Stat.* §

23-372 for counties). Situations arise where a deed may have been recorded with the county register of deeds which separates a parcel less than ten acres from a larger parcel without complying with the municipality or county's subdivision regulations.

Nebraska statutes contain a provision in which such an illegal subdivision, resulting in an illegal conveyance, may be validated (*Neb. Rev. Stat. § 76-2,110*). Under this mechanism, if a deed purporting to subdivide real estate is recorded without complying with subdivision approval by the county or municipality, any party claiming an interest in the conveyance may file an affidavit asserting that written notice of the defect has been received by the county or municipality which has subdivision approval jurisdiction over the real estate.

The county or municipality has 120 days from the filing of such affidavit to record an objection with the county register of deeds. If the objection is not recorded, the conveyance is validated. If a county or municipality desires to object, the objection should be in the form of a resolution adopted after public hearing. Even if such a conveyance is validated, the subdivider may still be required to pay a penalty set forth in the subdivision ordinance. Further, the statute does not excuse compliance with applicable zoning or subdivision regulations other than for the purposes of validating the deed. Many times, local governments with subdivision approval will be confronted with such a situation where a property owner simply desires to avoid the requirements of the subdivision ordinance. It is a dangerous precedent to set to allow property owners to avoid compliance with the subdivision ordinance through the mechanism described in this statute.

It is clear under Nebraska state law that subdivision validation does not excuse violation of the subdivision ordinance, but only validates any deed that was executed, delivered, and recorded in violation of the subdivision ordinance.

Local governments should be cautioned against permitting landowners to use the subdivision validation process, except in very rare circumstances. It is good practice for the appropriate official(s) in a local government exercising subdivision authority to scrutinize the legal notices of transfers of property ownership that are listed in the local newspaper in detail to note cases which may involve this type of subdivision validation. Such validation should be permitted to occur only where there exists a compelling reason other than the landowner's desire to avoid compliance with the subdivision regulation.

Chapter 9 – Environmental Issues

Introduction

Environmental factors must be considered in every planning and zoning decision. Because certain uses of land will produce undesirable environmental impacts, it is important in land use planning to consider a broad range of these possible impacts, including surface and ground water contamination, air pollution (dust, odor, smoke, fumes, etc.), noise pollution, litter pollution, light pollution, and others. Also, forces in the natural environment will impose certain effects, such as flooding, upon land areas and therefore limit the appropriate uses of those areas.

Much too often, environmental issues have been treated as though the impacts are only temporary. But, as someone once said astutely, a slowly dripping faucet will eventually fill a barrel and even a lake. Prevention, protection, and restoration are critical aspects of environmental planning and natural resources management.

While it is important in land use planning to take advantage of existing assets and opportunities, it is also important to consider how sensible optimization of today's opportunities and good stewardship of irreplaceable natural resources will help us realize a much better and sustainable future world.

In the broad range of environmental issues that impact all local areas in the nation, numerous laws, regulations, and programs have been enacted at the state and federal levels of government to protect environmental qualities. These laws, regulations, and programs often directly influence land use planning and decision making in counties and municipalities. This chapter reviews some of the key laws, regulations, and programs—enacted and administered primarily at the federal and state levels of government—that county and municipal planning commissioners and elected officials need to be aware of as they proceed with land use planning in their local jurisdictions.

Even if these environmental laws and regulations may not directly affect a particular zoning-related decision in a locality, it is useful if the planning commission, building inspector, or zoning administrator informs the landowner of pertinent environmental laws or regulations prior to construction of a proposed facility.

Regulatory Framework for Environmental Protection

Protection of environmental quality is a multidimensional challenge in terms of the factors that need to be addressed, as well

as the institutional framework required to adequately guard against environmental degradation.

Governmental Roles

Local Roles

Protection of the environment is dependent, in part, upon local initiatives and regulations, such as land use planning and zoning, which are key means through which municipalities and counties can protect natural resources and vulnerable land areas within their planning and zoning jurisdictions.

State and Federal Roles

Since environmental issues and problems typically extend beyond the jurisdictional boundaries of local governments, state and federal regulations have been adopted to protect the environmental qualities that are important to the survival of humans, wildlife, and natural systems, regardless of the community or county in which they may exist or reside. Numerous federal and state laws have been enacted to protect public water supplies, to conserve the soil, and to protect farmland, wetlands, wildlife, and floodplains.

Environmental protection laws and programs administered by state agencies in Nebraska typically can be categorized as:

1. federally mandated (programs that are required by the federal government but do not require additional state legislation to adopt);
2. state legislation, federally mandated (state legislation that is adopted in response to federal requirements); or
3. state legislation, not federally mandated (state legislation that is not federally mandated).

The federal government provides funding to the state to support administration of many of the federally mandated programs. The discussion in this chapter includes environmental regulations and programs in all three of these categories.

State Agency Roles in Protecting Environmental Quality

Two (2) state agencies in Nebraska have key roles in issue areas affecting environmental quality: the Nebraska Department Water, Environment, and Energy (NDWEE), and the Nebraska Department of Health and Human Services (NDHHS) – Licensing & Regulations. These two agencies and their roles are described briefly here in the context of three (3) environmental issue areas:

1. water, air, and land quality;

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2. drinking water quality; and
 3. floodplain management.

Water, Air, and Land Quality

In Nebraska the authority to establish and enforce rules and regulations that set standards of water, air, and land quality in the state is granted by state statutes to the Nebraska Department of Water, Environment, and Energy and the Environmental Quality Council. The roles of the Department and the Council are defined in the Environmental Protection Act (*Neb. Rev. Stat.* §§ 81-1501 to 81- 1533).

The Environmental Quality Council is essentially an oversight and policy body for the NDWEE. The Council consists of seventeen (17) members appointed by the governor with confirmation by the legislature. Members serve terms of four years. The Council consists of one representative from each of the following industries, interest areas, or constituencies: (1) Agricultural Crop Production, (2) Ag Processing Industry, (3) Automotive/Petroleum Industry, (4) a Biologist, (5) Chemical Industry, (6) City Government, (7) Conservation, (8) County Government, (9) Food Products Manufacturing, (10) Heavy Industry, (11) Labor, (12) Livestock Industry, (13) Minority Populations, (14) Municipal Government, (15) a Physician, (16) Power Generating Industry, and (17) a Professional Engineer.

A general statement of Nebraska's public policy toward natural resources is contained, as follows, in Nebraska's Environmental Protection Act (*Neb. Rev. Stat.* § 81-1501):

“Whereas the water, land, and air of this state are among its most precious resources and the pollution thereof becomes a menace to the health and welfare of each person, and the public in general, in this state and whereas pollution of these resources in this state is likewise a concern in adjoining states, the public policy of this state is hereby declared to be:

- (1) To conserve the water in this state and to protect and improve the quality of water for human consumption, wildlife, fish and other aquatic life, industry, recreation, and other productive, beneficial uses;
- (2) To achieve and maintain such a reasonable degree of purity of the natural atmosphere of this state that human beings and all other animals and plants which are indigenous to this state will flourish in approximately the same balance as they have in recent history and to adopt and promulgate laws, rules, and regulations and enforce uniformly the same in such a manner as to give meaningful

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- (3) recognition to the protection of each element of the environment, air, water, and land;
 - (4) To cooperate with other states and the federal government to accomplish the objectives set forth in the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act; and
 - (5) To protect human health through environmental Enforcement.”

The responsibility for carrying out administrative and enforcement roles delegated to the state by federal environmental legislation is assigned by state statute to the NDWEE. The Department has the power and duty “to act as the state water pollution, air pollution, and solid waste pollution control agency for all purposes of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq. ” (*Neb. Rev. Stat.* § 81-1504).

In order to carry out the purposes of the Environmental Protection Act, the Environmental Quality Council is designated by state statute (*Neb. Rev. Stat.* § 81-1505) to adopt and promulgate rules and regulations which set standards for adopting:

- the classifications of waters and water quality standards;
- effluent limitations and prohibitions;
- limiting toxic pollutant standards and limitations;
- pretreatment standards and treating waste water;
- disposing of domestic and industrial liquid wastes;
- controlling mineral exploration holes and mineral production and injection wells;
- livestock waste control standards;
- issuing permits under the National Pollutant Discharge Elimination System created by the Clean Water Act;
- controlling air pollution;
- hazardous waste management;
- regulations governing discharges or emissions of oil or other hazardous material; and
- regulations governing composting and composting sites.

The NDWEE is given the power and duty, among others, “To encourage local units of government to handle air, land, and water

pollution problems within their respective jurisdictions and on a cooperative basis and to provide technical and consultative assistance therefor ” (*Neb. Rev. Stat.* § 81-1504 (18)).

Drinking Water Quality

Drinking water standards for public water supply systems in Nebraska are established and enforced by the NDWEE in accordance with the Nebraska Safe Drinking Water Act (*Neb. Rev. Stat.* §§ 71- 5301 to 71-5313).

Floodplain Management

The Nebraska Department of Water, Environment, and Energy is the official state agency with soil and water conservation, flood prevention, watershed protection, and flood control. In the area of floodplain management, the NDWEE is responsible for a nonstructural program of floodplain management, the state coordination of the National Flood Insurance Program, field surveys, technical assistance, and topographic mapping. The NDWEE administers Nebraska’s floodplain management statutes (*Neb. Rev. Stat.* §§ 31- 1001 to 31- 1023).

The Nebraska Department of Water, Environment, and Energy Quality can be contacted at:

Nebraska Department of Water, Environment, and Energy
245 Fallbrook Blvd., Suite 100
Lincoln, NE 68521
Phone: 402-471-2186
Web site: <https://dwee.nebraska.gov/>

One of the basic expectations of Americans living in communities across the nation is that drinking water provided through community water systems will not be harmful to their health. Drinking water safety has been assured largely through the federal Safe Drinking Water Act, which was adopted by Congress in 1974. The Act was strengthened by Congress in 1986 because there were serious concerns about the growing number of hazards threatening the safety of the nation’s drinking water. The law focuses on all waters actually or potentially designed for drinking use, whether from above ground or underground sources.

Amendments in 1986 provided a means, other than treatment, for community water systems to address problems or emerging problems of contamination. The amended Act requires that states develop preventive measures to protect public water supply wells from human-caused ground water contamination.

In Nebraska, provisions of the federal Act are made operational through the Nebraska Safe Drinking Water Act (*Neb. Rev. Stat.*

§§ 71-5301 to 71-5313). The Nebraska Safe Drinking Water Act applies to public water systems that have at least 15 service connections or systems that regularly serve at least 25 people daily at least 60 days per year. The regulations pertaining to the Nebraska Safe Drinking Water Act are found in the Nebraska Administrative Code, Title 179, Chapter 2, “Regulations Governing Public Water Supply Systems” (179 NAC 2). The Nebraska Department of Environmental Quality estimates that about 75 percent of Nebraska’s population uses a public water supply as a primary drinking water source and that about 80 percent of community public water supply systems in Nebraska serve 1,000 or fewer people.

The drinking water standards and treatment techniques that are described in Title 179 are based upon either acute health effects over a short length of time of exposure or chronic health effects over a long length of time of exposure. The maximum contamination levels (MCLs) for various contaminants in community water systems are specified in Title 179, Chapter 2. Standards that are based upon acute health effects focus on nitrates, turbidity of the water, microbiological (coliform bacteria), and chlorine dioxide contaminants. Standards that are based upon chronic health effects focus on inorganic chemicals (except nitrates); organic chemicals; and radioactive contaminants.

Drinking Water Quality for Community Water Systems

Monitoring and analytical requirements for public water supply systems also are spelled out in Title 179, Chapter 3. For coliform monitoring, owners of public water supply systems must regularly submit water samples either to the NDWEE laboratory or a laboratory approved by the Department. The number of samples required to be submitted each month depends upon the population density of the community and the characteristics of the water distribution system.

More specifically related to land use planning, Title 179, Chapter 7 contains guidelines for water system design, including plans and specifications, siting, design, and construction provisions.

Title 179 NAC, Ch 7 § 007.03 contains the following information and specifications:

“Every well, infiltration line or spring serving or intended to provide water for a public water system, to the greatest extent possible, shall be located, constructed, or modified in such a

manner that neither underground nor surface contamination by any biological, chemical or radioactive substance or by the physical property of any substance from any cesspool, privy, septic tank, sub-surface tile system, sewer, drain, pit below ground surface, abandoned or decommissioned well, animal or avian wastes, or any other possible source of pollution can adversely affect such water supply. The minimum recommended horizontal distances in feet separating the well, infiltration gallery or spring from potential sources of contamination are as described in the following table. The Department will consider location, of wells and springs at closer proximity than the minimum distances below. Approval for such location may be given when circumstances require such location, but only if, in the opinion of the Director, the engineer demonstrates that such location will not constitute a pollution hazard to the supply. The examples are not meant to be all inclusive. When locating a ground water source, the owner of a public water system shall consider all potential sources of contamination and anything which may affect the ability of the source to produce an adequate supply of safe water on a continuous basis. When surface runoff or underground movement from potential sources of contamination may adversely affect the quality of water from such supplies, the distance separating these potential sources of contamination and the well, infiltration gallery, or spring should be greater than that listed in the following schedule shown below:

CATEGORY	DISTANCE Feet
Water Well	1,000
Sewage Lagoon	1,000
Feedlot or Feedlot Runoff	1,000
Underground disposal system (septic system, cesspool, etc.)	500
Corral	500
Pit Toilet/Vault Toilet	500
Wastewater Holding Tanks	500
Sanitary Landfill/Dump	500
Chemical or Petroleum Product Storage	500
Sewage Treatment Plant	500
Sewage Wet Well	500
Sanitary Sewer Connection	100
Sanitary Sewer Manhole	100
Sanitary Sewer Line	50

The Safe Drinking Water Act also applies to privately-owned water systems serving multiple users in such places as mobile home parks, as well as water companies and non-community systems, such as factories, schools, and campgrounds that have their own water supplies. Compliance is the responsibility of the owner/operator of these non-municipal systems.

The regulations implementing the federal Safe Drinking Water Act can be found in the Code of Federal Regulations, Title 40, Parts 141, 142, and 143, as the same may be from time to time be amended.

In its role of monitoring contaminant levels in public water supply systems, the NDWEE may require expeditious action by water suppliers to address contamination due to nitrates in excess of 10 parts per million (ppm) in the water. Corrective action may involve bringing in a low-nitrate water source or treating the existing supply for nitrate. Another option is implementation of a wellhead protection program (see discussion below) to systems that have more than 10 ppm of nitrate in their water. Drinking water must remain below 15 ppm nitrate to use this option, and bottled water must be provided to infants and nursing or pregnant women. As long as nitrate levels remain below 15 ppm and no other contaminants are detected above health standards, this strategy can be used indefinitely or until nitrate levels drop below 10 ppm. This allows the public water supplier to avoid costly measures such as drilling new wells, installing new and re-routed mains, or building water treatment facilities. If nitrate levels rise above 15 ppm, the wellhead protection option is no longer available.

In the past, state revolving funds were only available for wastewater treatment and drinking water. With the 1996 amendments, up to 10% of state revolving funds can be earmarked for wellhead protection expenses, such as land acquisition around wells incurred by communities.

Wellhead Protection

Plentiful, good-quality water is very valuable. Maintenance of a plentiful supply of high-quality public drinking water can be best achieved by protecting the water source. Protection of the source of water is much less expensive than treating poor-quality or contaminated water or finding new sources of clean water.

When the drinking water source is ground water, the recharge area of the wells must be protected. When the source of drinking water is surface water, the watershed must be protected. Most of the public drinking water supplies in Nebraska use ground water as a source.

Nebraska Wellhead Protection Program

In 1986 the U.S. Environmental Protection Agency (EPA) mandated the creation of state wellhead protection programs. In 1989 Nebraska submitted its plan for wellhead protection to EPA, and the plan was approved in 1991.

The current wellhead protection program in Nebraska is defined in the Wellhead Protection Area Act (*Neb. Rev. Stat. §§ 46-1501 to 46-1509*), which became operative on July 15, 1998. The program addresses the actions that local entities (cities, villages, rural water districts, natural resources districts, private owners) operating public water supply systems may implement to protect public water supply wells, including delineation of wellhead protection areas, performing contaminant source inventories, and implementing management techniques to protect ground water in these areas. A wellhead protection area is defined as the surface and subsurface area surrounding a water well or well field that supplies a public water system through which contaminants are reasonably likely to move toward and reach the water well or well field.

Participation in the program is voluntary. NDWEE administers this program and provides technical assistance to any entity wishing to designate a wellhead protection area and adopt controls pursuant to the Wellhead Protection Area Act.

Delineation of Wellhead Protection Area

Requirements of an entity that wishes to designate a wellhead protection area and adopt controls are spelled out in state law (*Neb. Rev. Stat. § 46-1504*) as follows:

1. Designate the boundaries of the wellhead protection area following the procedure in section 46-1505. The wellhead protection area shall be based on all reasonably available hydrogeologic information on ground water flow, recharge, and discharge and other related information necessary to adequately determine the wellhead protection area for the purposes stated in this section (See Illustration 9.1 at the end of this Chapter);
2. Identify within each proposed wellhead protection area all potential sources of contaminants which may have any adverse effect on the health of persons;
3. Describe a program that contains, as appropriate, technical assistance, financial assistance, implementation of controls, education, training, and demonstration projects to protect the water supply within the wellhead protection area from such contaminants;
4. Include contingency plans for the location and provision of alternate drinking water supplies for each affected public water supply system in the event of water well or well field contamination by such contaminants; and

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5. Propose the controls necessary to provide protection from contaminants which may have any adverse effect on the health of persons served by the public water supply system of each participating controlling entity.

Notice Requirement and Public Comment

The controlling entity shall publicize proposed boundaries for the wellhead protection area and the proposed controls and shall provide time for public comment at one or more regularly scheduled public meetings of the governing board of the controlling entity. Notice of the time for public comment shall be published in conjunction with notice of such regularly scheduled meeting. A description of the proposed boundaries and the text of the proposed controls shall be available at the office of the controlling entity for thirty days before such meeting. Persons shall be given the opportunity to speak on the proposed designation and the proposed controls or to submit written testimony for consideration by the controlling entity. (*Neb. Rev. Stat. § 46-1505*)

Within sixty days after the last time for public comment under *Neb. Rev. Stat. § 46-1505*, the controlling entity shall make a final designation of the boundaries of the wellhead protection area and the controls necessary to protect the water in the wellhead protection area and shall submit them to the NDWEE director for approval or disapproval. Such approval shall be based on whether the boundaries of the wellhead protection area are reasonably defined, the controls are reasonably related to the purpose of ground water protection in the area, and such approval is in the public interest. The director shall act on the proposed designation of boundaries and proposed controls within ninety days after the date the proposals are received by him or her. If the director approves the proposed boundaries and controls, he or she shall notify the controlling entity, but the boundaries and controls shall not be deemed effective until the controlling entity has adopted such boundaries and controls by ordinance or resolution. If the director does not act on either the original or revised proposed designation of boundaries and proposed controls within ninety days after submission by the controlling entity, the proposed designation of boundaries and proposed controls shall be deemed approved by the director. (*Neb. Rev. Stat. § 46-1506*)

Contaminant Source Inventory

The next step is to conduct an inventory of potential sources of contamination in the delineated area which may have any adverse effect on the health of persons should be. Conducting an inventory is the next step. Gas stations, feedlots, industries, abandoned

wells, and septic tanks, are examples of contaminant sources. Knowing where potential contaminant sources are located in relation to the different time-of-travel zones helps to predict future problems and to define management needs. NDWEE supports the use of volunteers for performing a contaminant source inventory. NDWEE has a guidebook designed to help communities do their contaminant source inventories without special training. A contaminant source inventory may allow a community to obtain waivers from water testing required by NDWEE and avoid or postpone nitrate treatment or installation of new or deeper wells.

Contaminant Source Management

A third requirement is to develop a program that includes, as appropriate to the specific place, technical assistance, financial assistance, implementation of controls, education, training, and demonstration projects to protect the water supply within the wellhead protection area from contaminants.

Contingency Planning

The next step is prepare contingency plans for the location and provision of alternate drinking water supplies in the event of well or well field contamination by such contaminants.. The contingency plan

Controls for Protection from Contaminants

The final step is to propose the controls that are necessary to provide protection from contaminants which may have adverse effects on the uses of the public water supply system of each participating controlling entity.

Any wellhead protection area established before July 15, 1998, by resolution or ordinance of the controlling entity need not be reestablished under the Wellhead Protection Area Act unless controls are proposed. If such controls are proposed, the controls and the boundaries of the wellhead protection area are subject to the requirements of *Neb. Rev. Stat. §§ 46-1504 to 46-1506*. Any wellhead protection area purported to have been established before July 15, 1998, other than by official action of a controlling entity shall be null and void beginning nine calendar months after July 15, 1998, unless reestablished by ordinance or resolution of the controlling entity. (*Neb. Rev. Stat. § 46-1507*)

The Environmental Quality Council shall adopt and promulgate rules and regulations to carry out the Wellhead Protection Area Act. (*Neb. Rev. Stat. § 46-1509*)

Loans and Grants Available for Wellhead Protection

Nebraska's Drinking Water State Revolving Loan Fund Act (*Neb. Rev. Stat. §§ 71-5314 to 71-5327*), originally enacted by the Legislature in 1997, provides for low-interest loans to buy land or conservation easements around public water supply system wells, including wellhead protection area land. This enables the public water supply system to control the land uses next to the well(s) and in the immediate zone of recharge to the ground water used as drinking water. The Drinking Water State Revolving Loan Fund is also available for loans for new wells and public water supply systems or upgrades to existing public water supply systems. NDWEE and the Nebraska Investment Finance Authority can provide more information about the Fund.

Wellhead protection activities could also be supported by grants available from the Nebraska Environmental Trust and the U. S. Environmental Protection Agency Clean Water Act. NDWEE can provide more information about these grant opportunities.

Many natural resources districts offer special benefits for wellhead protection area lands, such as increased cost-share for soil and water conservation practices, soil and water monitoring, or well abandonment. The federal Conservation Reserve Program (CRP), which is administered by the Farm Service Agency of the U.S. Department of Agriculture, can provide financial compensation to owners of certain wellhead protection area lands who take their land out of row-crop production.

Wellhead Protection Through Zoning

A municipality with water supply wells within its zoning jurisdiction (including its extraterritorial zoning jurisdiction) can effectively reinforce the intent of a wellhead protection area through its direct control of land uses, through zoning, around its wells. Zoning districts that prohibit the types of land uses that will generate ground water contaminants can be established in the ground water protection area(s) of the community. Communities with water supply wells outside of their zoning jurisdiction cannot directly control land use around their wells unless they own the land; however, if the county has adopted a comprehensive plan and has a zoning ordinance, it may be possible to work with county officials to manage contaminant sources through county zoning. While zoning is a useful tool for wellhead protection, simply changing the uses of land in the area of water supply wells to non-contaminating uses does not guarantee a clean or safe ground water supply in the near future. Because decades of human activity on the land may have seriously and extensively degraded ground

water quality, significant improvement in water quality may not occur until many years following changes in land use.

Extended Jurisdiction of Municipalities for Waterworks

Nebraska law provides that cities of the second class and villages may go beyond their territorial limits to acquire property necessary for a water supply (*Neb. Rev. Stat. § 17-535*). Further, the statutes stipulate that “(t)he jurisdiction of such city or village, to prevent any pollution or injury to the stream or source of water for the supply of such waterworks, shall extend fifteen miles beyond its corporate limits” (*Neb. Rev. Stat. § 17-536*). Presumably, the authority of the city or village could be applied only to land directly affecting the community water supply, such as a designated wellhead protection area; however, the broad authority apparently given to cities and villages in this statute has not yet been interpreted in the court system.

Private Water Wells for Domestic Use

In many parts of rural Nebraska drinking water is supplied to homes by private domestic wells, rather than by community water systems. Since September 9, 1993, all domestic wells in the state are required to be installed by a licensed water well contractor, and the well must be registered with the NDWEE.

Nebraska standards for private domestic water well construction, pump installation, and water well decommissioning are administered by the NDWEE. The standards are contained in Chapter 12 of Title 178, Nebraska Administrative Code.

Sandpoint Wells

Nebraska standards explicitly prohibit the use of a driven sandpoint well to supply water for human consumption (178 NAC 12; 004.01). Historically, sandpoint wells were commonly used in Nebraska in areas where the water table is close to the earth’s surface. Because water drawn from sandpoint wells is much more susceptible to contamination due to various pollutants entering the water supply from the earth’s surface, they have been prohibited as water sources for human consumption. Domestic wells must be cased with water-tight casing.

Decommissioning Illegal Wells

State cost-sharing assistance is available for decommissioning (i.e., abandoning) illegal wells, including domestic wells installed on or after September 9, 1993, that do not meet domestic well construction standards. The state financial assistance is done through the NRD’s. Because of the importance of protecting water

quality, nearly every NRD offers an attractive incentive to assist well owners with the cost of decommissioning. Payment rates vary by NRD, but typically these programs will pay for 60 to 75% of the costs, reducing the expenses of the well owner to under \$100. To apply for well decommissioning cost-share assistance, well owners must first contact the appropriate NRD for an information

Septic System Regulations

and application packet that gives guidelines, forms, and instructions. No cost-share payments can be made unless all procedures are followed.

The NDWEE, in its most recent “Rules and Regulations for the Design, Operation, and Maintenance of On-Site Wastewater Treatment Systems” (Title 124, Chapter 2, Nebraska Administrative Code), describes two procedures the NDWEE uses for approving and regulating on-site wastewater treatment systems (including septic systems).

Standard septic systems not meeting the NDWEE setback requirements must obtain a NDWEE permit prior to septic system installation. Current setback requirements for on-site wastewater systems that include absorption, infiltrative, or evaporative fields are (distance from the edge of the field): 50 feet from surface water – including streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, springs, canal systems, drainage systems, etc., 100 feet from private wells; 100 feet from public non-community wells; 500 feet from a public community water well; and 1,000 feet from a public community well or the community’s wellhead protection area boundary if the on-site wastewater system handles more than 1,000 gallons per day of wastewater flow.

Subdivisions With On-Site Wastewater Systems

All subdivisions in Nebraska with lot sizes less than three acres and where on-site wastewater systems are proposed must be reviewed and approved by the NDWEE prior to construction (124 NAC, Chapter 4). Subdivisions may include dwellings and/or establishments. “Establishments” are buildings, structures, houses, or places which generate wastewater flows greater than 1,000 gallons per day, generate non-domestic wastewater, or serve as restaurants or food preparation facilities. The NDWEE will approve or deny the use of on-site wastewater treatment systems for the subdivision, based upon information that must be submitted to meet the design requirements of Title 124.

Inspections of Septic System Installations

The NDWEE septic system program operates on the honor system; NDWEE does not automatically inspect all septic system installations but does respond to complaints.

Rural Water Supply Systems

No new independent rural water districts may be formed in Nebraska; any new rural water systems must be managed by the local NRD. Existing rural water districts may expand their boundaries if landowners wish to be included within the district. Existing rural water districts may supply water to communities outside the district boundaries if they have sufficient water supply capacity.

Point Source Pollution

Persons discharging pollutants from a point source into any waters of the United States or of the state must first obtain a National Pollutant Discharge Elimination System (NPDES) permit. The NPDES is the national system for the issuance, reissuance, modification, suspension, revocation, monitoring, and enforcing of permits pursuant to sections of the federal Clean Water Act and includes any state program that has been approved by the administrator of the U.S. Environmental Protection Agency. In Nebraska the state program is defined in the Nebraska Administrative Code, “Title 119 – Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System” (119 NAC). Waste dischargers must treat their waste to EPA standards in order to receive a permit.

Activities and sources requiring a NPDES permit include, but are not limited to, disposal of sewage sludge resulting from the operation of a treatment works, discharges from livestock waste facilities, industrial process effluent, and storm water discharges from municipal storm sewer systems.

Federal regulations regarding wastewater treatment cover pretreatment of industrial wastewater, limitations on the level of pollutants in wastewater discharged into waterways, and management of solid materials removed from wastewater (sludge) during the treatment process. Pretreatment must remove toxic and hazardous pollutants from wastewater which could either pass through or interfere with a community treatment plant.

Federal regulations for pretreatment of industrial wastewater are in the Code of Federal Regulations.

In Nebraska the regulations for point source pollution control are administered by the Permits and Compliance Section of the NDWEE. In addition to Title 119 mentioned above, relevant rules and regulations are also contained in the following titles of the Nebraska Administrative Code: “Title 121 – Effluent Guidelines and Standards” (121 NAC); “Title 127 – Rules and Regulations Governing the Nebraska Pretreatment Program” (127 NAC); and “Title 130 – Rules and Regulations Pertaining to Livestock Waste Control” (130 NAC), which is discussed in the following paragraphs.

Livestock Waste Control

Livestock waste control facilities are required if a livestock operation of any size threatens to violate surface water or ground water standards. In Nebraska, installation of livestock waste control facilities may be required under authority of the state’s Environmental Protection Act (*Neb. Rev. Stat. §§ 81-1504 and 81-1505*) and the state’s Livestock Waste Management Act (*Neb. Rev. Stat. §§ 54-2401 to 54-2414*), which was first enacted in 1998 to address concerns about the construction of large livestock confinement operations. The intent of the Livestock Waste Management Act is to prevent water pollution through better regulation of livestock waste control facilities. Under the authority of these statutes, the NDWEE administers rules and regulations for livestock waste control, “Title 130 – Rules and Regulations Pertaining to Livestock Waste Control” (130 NAC).

Livestock waste control facilities are any structure or combination of structures utilized to control livestock waste until it can be used, recycled, or disposed of in an environmentally acceptable manner. Such structures include, but are not limited to, diversion terraces, holding ponds, settling basins, liquid manure storage pits, lagoons, and other such devices utilized to control livestock wastes. The owner or operator of a livestock operation or proposed operation of 300 animal units or larger must contact and request the NDWEE to inspect and determine if the operation requires a waste control facility.

The term “animal unit” (AU) used in these regulations is a measure accepted by the U.S. Environmental Protection Agency (EPA) as the equivalent of one “beef cow,” indicating, largely, the comparative effluent impacts of wastes from animals. The AU is used to indicate the size and waste production of a livestock feeding operation. Nebraska’s Livestock Waste Management Act (*Neb. Rev. Stat §§ 54-2401 to 54-2414*) adopts the EPA-accepted equivalencies of one animal unit as follows: 1 slaughter and feeder cow; 0.5 horse; 0.7 mature dairy cow; 2.5 swine weighing 55

pounds or more; 25 weaned pigs weighing less than 55 pounds; 10 sheep; 100 chickens; 50 turkeys; or 5 ducks.

The Livestock Waste Management Act establishes a classification system for livestock waste control facilities based on the maximum number of animal units for which the facility is designed. The three classifications are as follows: small – less than 300 AU's; medium – 300 – 999 AU's ; and large 1,000 or more AU's for beef cattle (different levels of dairy, swine, sheep).

If the livestock operation does require a waste control facility, the owner or operator must apply for a construction and operating permit to the NDWEE. Once the facility is constructed, the operator must obtain a state operating permit. A National Pollutant Discharge Elimination System (NPDES) permit must be obtained if the facility will discharge into waters of the state.

AFO and CAFO Categories

Under the Livestock Waste Management Act and the [Title 130 -Livestock Waste Control Regulations](#), animal feeding operations (AFO) are classified as small, medium or large, according to the number of animals in any of the species confined.

The table below lists the AFO sizes by species.

Species	Large AFO (No. of head)	Medium AFO (No. of head)	Small AFO
Cattle/Veal Calves	1,000	300 - 999	Small AFOs are those operations with less than the number of animals at a Medium AFO
Dairy Cows (mature)	700	200 - 699	
Swine ≥55 lbs.	2,500	750 - 2,499	
Swine < 55 lbs.	10,000	3,000 - 9,999	
Sheep/Lambs	10,000	3,000 - 9,999	

The Livestock Waste Management Act stipulates that within five days after receipt of an application for a livestock waste control facility, the natural resources district(s) and the county board(s) of the county(ies) in which the facility is to be located shall be notified by the NDWEE that the application has been received. The NRD(s) and county board(s) have thirty (30) days to comment to the NDWEE about any conditions at the site of the proposed facility that should be considered in determining the appropriateness of issuing the permit.

NDWEE within sixty (60) days, (A) issue a proposed decision on the application for a construction and operating permit or major modification and (B) issue a notice providing an opportunity for any interested person to submit written comments on such proposed decision within thirty days after the first day of publication of such notice. The notice shall be published in a daily or weekly newspaper or other publication with general circulation in the area of the existing or proposed animal feeding operation, and a copy of the notice shall be provided to the applicant; and within one hundred ten days approve or deny the application and transmit its findings and conclusions to the applicant. (*Neb. Rev. Stat.* § 54-2425)

A livestock waste control facility may not be located within 100 feet of a water well used for domestic purposes or within 1,000 feet of a public drinking water supply well, unless the applicant provides evidence that the facility will not result in ground water contamination and the NDWEE concurs (130 NAC 9).

While the NDWEE is responsible for enforcement of these regulations, local planning commissions, building inspectors, and zoning administrators may wish to remind the owners and builders of these facilities that such requirements exist. Also, local officials may wish to directly reference these state requirements in the text of their local zoning ordinance.

The Nebraska Administrative Code is subject to change either by the agency involved or by Legislative direction. It is always good practice to review your zoning regulations along with the NAC when reviewing an application.

Agricultural Chemical Containment

In zoning districts allowing businesses or operators that sell or handle agricultural chemicals in bulk amounts, state regulations are under the authority of Nebraska's Environmental Protection Act (*Neb. Rev. Stat.* §§ 81-1501 to 81-1533), which may require the installation of secondary containment and loadout facilities to prevent contamination of ground water by accidental spillage. The requirements affect both commercial and private facilities. Requirements for such facilities are found in "Title 198 – Rules and Regulations Pertaining to Agricultural Chemical Containment" (198 NAC), administered by the NDWEE.

Bulk fertilizer or pesticide is defined as liquid fertilizer or pesticide held in individual containers of undivided capacity greater than 55 gallons.

Anhydrous ammonia, dry fertilizers or pesticides, and manure storage and handling facilities, are exempt from Title 198 requirements.

Title 198 requires that construction plans for secondary containment facilities and loadout facilities must be certified by a Nebraska registered engineer or that a generic or standardized design developed by the industry must be used (198 NAC 7). Such construction plans need to be kept up to date and on file at the facility or the nearest office location for the facility. While the NDWEE is responsible for enforcement of these regulations, local planning commissions, building inspectors, and zoning administrators may wish to remind the owners and builders of these facilities that such requirements exist.

Secondary Containment Facilities

A secondary containment facility is a device or structure designed, constructed, and maintained to hold or confine a release of a liquid pesticide or liquid fertilizer from a storage facility. The walls and base of the secondary containment facility must be watertight, must be compatible with the pesticide or fertilizer being stored within the facility, and must be capable of holding the maximum discharge from the largest container that is served by the containment facility.

Secondary containment structures are required when the total storage capacity of bulk pesticide storage exceeds 500 gallons. Secondary containment is required for bulk fertilizer storage when the storage capacity of a single tank exceeds 2,000 gallons, or when the capacity of two or more tanks at one location exceeds 3,000 gallons, or when the storage capacity of a tank 500 gallons or larger exceeds 25 percent of its volume anytime from November 1 through March 15.

A secondary containment facility shall not be located within 100 feet of a water well used for domestic purposes (198 NAC 4).

Loadout Facilities

A loadout facility is a location, other than the field of application, used for the loading, unloading, handling, or mixing of pesticides or fertilizers, or a location used for the rinsing or washing of delivery or application equipment, which is designed, constructed, and maintained to hold or confine a release of a liquid pesticide or liquid fertilizer. Such a facility needs to be designed and constructed to contain fertilizer, pesticides and associated contaminated material spilled or deposited during mixing, loading, unloading, draining, rinsing, and washing. The facility must be constructed of concrete, asphalt, or other impermeable material

and sized to contain a minimum of 1,800 gallons or 1.5 times the largest container, whichever is smaller. The facility must be built to withstand the weight of vehicles which will be on the loadout facility and must have curbs or other means to prevent a release from the facility. The surface area of the facility shall slope to a collection point or sump that allows spilled or deposited material to be easily recovered. Sanitary and storm sewer drains cannot be located within the loadout facility unless specifically approved by the NDWEE.

A load-out facility is required when pesticide quantities total more than 500 gallons and when fertilizer quantities exceed a total of 5,000 gallons, or when a custom applicator uses pesticides from original containers exceeding a capacity of three gallons, or when a custom applicator uses pesticide or fertilizer mixtures in individual quantities exceeding 100 gallons, or when bulk pesticides or fertilizers are loaded or unloaded from a rail car. Any mixing or loading and unloading of bulk pesticides and fertilizers, and draining, rinsing, and washing of applicator and transportation equipment must be performed within a load-out facility, except when these activities are performed at the application site as part of the normal application.

A loadout facility shall not be located within 100 feet of a water well used for domestic purposes (198 NAC 4).

Regulation of Chemigation

Chemigation is defined as any process whereby chemicals are applied to land or crops in or with water through an on-farm irrigation distribution system. In recognition of an increasing use of chemigation in Nebraska, the Legislature originally enacted in the Nebraska Chemigation Act in 1986. (*Neb. Rev. Stat.* §§ 46-1101 to 46- 1148).

The Nebraska Chemigation Act notes that, “although chemigation provides a viable alternative to other means of chemical application, if an irrigation distribution system is not properly equipped or if a chemical is not used with proper precautions, there exists a potential to contaminate the water” (*Neb. Rev. Stat.* § 46-1102). The Nebraska Chemigation Act is intended to act as a safeguard for the quality of Nebraska’s ground water resources. (*Neb. Rev. Stat.* § 46-1102)

The provisions of the Nebraska Chemigation Act are administered by the NDWEE and Nebraska’s natural resources districts. On the authority of the Act, additional rules and regulations have been established as part of the Nebraska Administrative Code: “Title

195 – Rules and Regulations Pertaining to Chemigation” (195 NAC).

These regulations require that individuals applying chemicals through irrigation systems must be certified by the state to do so. Also, the irrigation systems that are used for chemigation must have check valves installed that prevent a mixture of water and chemicals from draining or siphoning back into the irrigation water source.

While the Nebraska Department of Environmental Quality and the local natural resources district are responsible for enforcement of these regulations, local planning commissions, building inspectors, and zoning administrators may wish to remind the persons who may be engaged in chemigation, if they are not aware, that such requirements exist. It is in the interest of all persons that the quality of the state’s water resources be protected.

Nonpoint Source Pollution

Nonpoint source pollutants are contaminants that have no single identifiable point of origin. Both ground water and surface waters can be polluted by nonpoint sources. Nonpoint source pollutants include such materials as grease and oil from streets and parking lots; lawn fertilizers; pesticides; chemicals from agricultural and industrial sites; soil from agricultural and construction sites; and oil, fuel, and antifreeze leaking from junk cars. These pollutants are typically carried over and through the ground by rainfall and snow melt. These relatively uncontrolled sources of pollution may contribute more to water quality degradation than point sources. Rivers, lakes, and wetlands can be seriously damaged from nonpoint source pollution.

Nonpoint source pollution is difficult to regulate because it originates from a variety of sources that are often the result of the ordinary and necessary things that we do, such as farming and building houses. The control of nonpoint source pollution has been left to the state by the U.S. Environmental Protection Agency. The national nonpoint source program is a part of the federal Clean Water Act.

Nonpoint source contamination of ground water in Nebraska (as well as issues surrounding ground water supply) can be addressed by the designation of ground water management areas under the plan adopted under authority of each NRD (*Neb. Rev. Stat. § 709*). To date, the nonpoint source contaminant of greatest concern in Nebraska has been nitrates, resulting mainly from widespread use of nitrogen fertilizers on irrigated and non-irrigated cropland. In areas where such pollution is occurring or likely to occur, ground

water management areas can be designated, whether by the local NRD, or by the NDWEE.

Once a ground water management area is designated, the NRD has the authority to implement a variety of requirements. Common requirements in the ground water management areas include certification of agricultural producers by their attendance at various educational events, banning fall fertilization, soil and water sampling for nitrogen carryover credit, and annual reporting of fertilization, irrigation, and crop yields. Nebraska statutes designate the NRDs as the preferred implementers of nonpoint source ground water programs; however, if an NRD cannot or will not address this type of pollution in its jurisdiction, the NDWEE can designate and implement a ground water management area. To date, this has not occurred.

Rules and regulations relating to designation of ground water management areas in Nebraska are contained in “Title 196 – Rules and Regulations Pertaining to Special Protection Areas” (196 NAC), administered by the NDWEE.

Wetlands Protection

Wetlands are marshes, swamps, bogs, bottom land, ditches, and other similar wet areas where the water table is at or near the surface of the land or where the land is covered by shallow water. Wetlands can be coastal or inland, saltwater or freshwater.

Wetlands are considered a valuable environmental resource because they are essential to improve water quality and to reduce flood and storm damage. They are essential habitats for fish, waterfowl, migratory birds, plant life, and other wildlife. They have been found to remove nutrients and to process chemical and organic wastes. They remove sediment, produce oxygen, filter pollution, aid in erosion control, and are valuable for ground water recharge.

Federal Laws Pertaining to Wetlands Protection

Two federal laws that deal with wetland protection are section 404 of the Clean Water Act and the Swampbuster provisions of the Food Security Act of 1985.

Section 404 of the Clean Water Act

The U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers administer section 404 of the Clean Water Act to protect surface water from damage caused by filling or excavation.

Under section 404, EPA and the U.S. Army Corps of Engineers require a permit to control the release and deposition of dredged or fill materials into most wetlands. A permit is needed for almost any type of activity that affects or could affect wetlands, such as dumping or building on or near a wetland. Anyone who violates section 404, either by not getting a permit or by disregarding the conditions of a permit, may have to pay to restore the affected area and may be subject to fines and/or a jail sentence.

Regulations implementing section 404 of the Clean Water Act are in the Code of Federal Regulations.

According to EPA, wetland maps may be ordered by calling 1-800- USA-MAPS.

Swampbuster Provisions of the Food Security Act

The Swampbuster provisions of the federal Food Security Act of 1985 state that any person who in any crop year beginning after November 28, 1990, converts a wetland by draining, dredging, filling, leveling, or any other means for the purpose of making the production of an agricultural commodity possible on such converted wetland shall be ineligible for federal farm program benefits.

Protection of Nebraska Wetlands

Under authority of Nebraska's Environmental Protection Act (*Neb. Rev. Stat.* §§ 81-1501 to 81-1533), the NDWEE has developed "Water Quality Standards for Wetlands," chapter 8 of "Title 117 – Nebraska Surface Water Quality Standards" (117 NAC 8). The NDWEE is charged with the responsibility of enforcing the standards.

As stated in Nebraska's Environmental Protection Act, key rationale of the water quality standards specified in Title 117 are "to conserve the water in this state and to protect and improve the quality of water for human consumption, wildlife, fish and other aquatic life, industry, recreation and other productive, beneficial uses." (*Neb. Rev. Stat.* § 81-1501(1))

The wetland classifications, beneficial uses, and water quality criteria contained in chapter 8 of Title 117 are tailored to reflect the unique characteristics of wetlands in Nebraska. The classifications, uses, and criteria are summarized as follows:

Wetlands Classifications

Wetlands in Nebraska are classified into two categories based on hydrological characteristics which affect the attainable beneficial uses:

1. Surface-water overflow wetlands.

These are wetlands which exhibit a surface water connection to an adjacent stream or lake on a regular or periodic basis.

2. Isolated wetlands.

These are wetlands which have no regular or periodic surface water connection to an adjacent stream or lake. The source of water for these wetlands may be either ground water or surface runoff.

Beneficial Uses

Four categories of beneficial uses of wetlands have been defined in Title 117, and these relevant beneficial uses are assigned to the Wetlands within the state. When multiple uses are assigned to the same wetland, all assigned uses will be protected. As defined in Title 117, the four categories of beneficial uses of wetlands are:

1. Aquatic life.

Wetlands assigned this beneficial use provide, or could provide, habitat capable of supporting aquatic biota (such as fish, macroinvertebrates, amphibians, and hydrophytic vegetation) on a regular or periodic basis. Water quality criteria (maximum levels of various pollutants) are established in Title 117 to protect aquatic life.

2. Wildlife.

Wetlands assigned this beneficial use provide, or could provide, habitat capable of supporting wildlife (such as furbearers, waterfowl, shorebirds, migratory birds, and reptiles) on a regular or periodic basis. Since wildlife utilizing wetlands rely on aquatic biota in many cases for food and habitat, the general criteria and toxic criteria listed for the protection of aquatic life (item 1 preceding) also are applied to the protection of wildlife.

3. Agricultural water supply.

Wetlands assigned this beneficial use are used or have the potential to be used for general agricultural purposes (such as irrigation and livestock watering) without treatment.

Standards for conductivity, nitrates, and selenium are specified.

4. Aesthetics.

This use applies to all wetlands of the state. To be aesthetically acceptable, wetlands are to be free from human-induced pollution which causes: (1) noxious odors; (2) floating, suspended, colloidal, or settleable materials

that produce objectionable films, colors, turbidity, or deposits; and (3) the occurrence of undesirable or nuisance aquatic life (such as algal blooms). Wetlands shall also be free of junk, refuse, and discarded dead animals.

Wetland Replacement

Wetland mitigation is used to replace the function of lost wetland areas. Each acre of wetland filled is normally allowed to be replaced by one-and-one-half acres of wetland through the mitigation process.

Protection of Water Quality Related to Projects in Navigable Waters

Any proposed activity or project requiring a federal license or permit which may result in a discharge into navigable waters in Nebraska must be reviewed by the NDWEE and be granted certification by NDWEE pursuant to section 401 of the federal Clean Water Act. The NDWEE makes a determination about the impact of a proposed activity or project on water quality as defined in “Title 117 – Nebraska Surface Water Quality Standards” (117 NAC). If the proposed activity or project violates the state’s water quality standards, water quality certification will be denied or conditions for compliance with the standards will be issued with the certification.

The procedures to be followed by the NDWEE in this certification process are spelled out in “Title 120 – CWA § 401 Certification: Procedures Pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. § 1251 Et Seq., for Certification by the Department of Activities Requiring a Federal License or Permit Which May Result in a Discharge,” as the same may from time to time be amended (120 NAC).

Projects in navigable waters requiring permits from the U.S. Army Corps of Engineers under section 404 of the federal Clean Water Act are among those that may require certification pursuant to section 401 of the Clean Water Act. Activities for which a section 404 permit must be obtained include stream channel straightening, placing structures such as dams in stream channels, dredging ponds or lakes, and using tile to drain a wetland.

Erosion and Sediment Control

Soil conservation preserves the value and productivity of the land, reduces erosion and sediment damage, and keeps air, streams, and lakes free from sediment and from becoming murky or muddy. Soil loss results from the action of wind and water on exposed or fragile soil. Most conservation practices reduce the exposure of soil to these forces and are accomplished voluntarily by

landowners. These practices include structural measures, such as sediment retention basins, silt fencing, grade stabilization structures, terraces, and non-structural practices such as using cover crops, vegetative filter strips, crop residue management, windbreaks, mulching, and contour farming.

Nebraska's Erosion and Sediment Control Act (*Neb. Rev. Stat.* §§ 2-4601 to 2-4613) addresses damage caused by erosion and sediment deposition. The Act addresses damages caused by erosion and sediment for non-farmland sites in excess of two acres in size, and for all farmland. Nebraska's natural resources districts (NRDs) administer this Act.

(1) Each NRD district shall, with the approval of the NDWEE director, adopt a district program for implementation of the state erosion and sediment control program. Each district's program shall include the:

- (a) Soil-loss tolerance levels for the various types of soils in the district. The soil-loss tolerance levels shall be adopted and promulgated as rules and regulations and may be more but not less stringent than those adopted by the director. It is the intent of the Legislature that no land within the state be assigned a soil-loss tolerance level that cannot reasonably be applied to such land;

- (b) Recommended erosion or sediment control practices and soil and water conservation practices which are suitable for controlling erosion and sedimentation within the district; and

- (c) Programs, procedures, and methods the district plans to adopt and employ to implement the state erosion and sediment control program. Each district may subsequently amend or modify the program as necessary, subject to the approval of the director.

(2) The director with the advice and recommendation of the Natural Resources Commission shall review each district's program and all amendments thereto and shall approve the program or amendments if the director determines that the district's program is reasonable, attainable, and in conformance with the state erosion and sediment control program.

NRD erosion controls are enforced on a complaint basis. Erosion complaints may be filed in writing by a neighbor or by a representative of a political subdivision whose roads or other public facilities are being damaged by sediment. Erosion complaints also may be filed by any state or local water quality agency official, and by NRD staff, if erosion is causing water pollution. If the NRD determines that the erosion has exceeded NRD limits, the landowner or operator is required to implement

erosion control practices. A natural resources district can require conservation practices to be implemented on either farmland or non-farmland if neighboring land is damaged in the absence of using these practices. In some cases, NRDs will offer cost-share assistance to help a landowner satisfy required conservation practice implementation. The federal Natural Resources Conservation Service determines the amount of soil loss and identifies the proper conservation practices for bringing the soil loss down to a tolerable level.

The NDWEE requires land developers with construction sites that will cause soil to be disturbed in an area greater than five acres in size to obtain a National Pollutant Discharge Elimination System (NPDES) permit. The permit requires developers to have an erosion and sediment control plan prior to disturbing any land. This plan must then be implemented by the developer.

Communities and counties can modify their zoning regulations, including subdivision regulations and building permitting requirements, to require developers to comply with NRD construction runoff requirements. Example regulations for erosion control can be found in Appendix 9 of this *Handbook*.

Buffer Strips

Buffer strips are strips of vegetation near streams or lakes used to intercept or trap field sediment, organics, pesticides, and other potential pollutants before they reach surface water. Nebraska enacted its original Buffer Strip Act (*Neb. Rev. Stat. §§ 2-5101 to 2-5111*) in 1998. The buffer strip program has significant potential for protecting water quality in the state's streams and rivers.

Landowners may apply to their local NRD for buffer strip cost-share financial assistance. Fees from pesticide registrations are used to provide state cost-sharing financial assistance for buffer strip installation.

Conservation and Preservation Easements

Nebraska's conservation and Preservation Easements Act (*Neb. Rev. Stat. §§ 76-2,111 to 76-2,118*) allows for the establishment of conservation and preservation easements which typically will restrict the use and development of the land that is subject to the easement.

Conservation Easements

Under this Act, a conservation easement is a right imposed in an instrument executed by an owner imposing a limitation upon the rights of the owner for the purpose of retaining or protecting the

property in its natural, scenic, or open condition, assuring its availability for agricultural, horticultural, forest, recreational, wildlife habitat, or open space use.

Preservation Easements

A preservation easement is very similar to a conservation easement in that it is intended to preserve the historical, architectural, archeological, or cultural aspects of real property.

Procedures for Creating Conservation or Preservation Easements

Conservation or preservation easements can be held by a governmental body, such as a natural resources district or other political subdivision, or by charitable corporations or trusts whose purposes are to further conservation or preservation purposes.

To create such a conservation or preservation easement, a written instrument must be filed with the county register of deeds against the property which will be subject to the easement. Granting such an easement is not effective unless it is accepted by the holder of the easement.

Notwithstanding the fact that such conservation and preservation easements are “private land use regulations” with which local governments usually do not concern themselves, the statutes require that any such conservation or preservation easement be approved by the local governing body after receiving recommendations from the planning commission having jurisdiction over the property. A municipal governing body or county board, depending on which has zoning jurisdiction over the property, may deny approval of such an easement if it is inconsistent with:

- (a) the comprehensive plan;
- (b) any national, state, regional, or local program furthering conservation or preservation; or any known proposal by a governmental body for the use of the land (*Neb. Rev. Stat. § 76-2,112 (3)*).

A conservation or preservation easement may be released, but the release must be approved by the governmental body which approved the easement initially (*Neb. Rev. Stat. § 76-2,113*). The easement is to “run with the land” and is to be perpetual unless otherwise restricted in the instrument creating it. The county assessor is to assess the real property with due regard to the restricted uses caused by the easement (*Neb. Rev. Stat. § 76-2,116*).

Floodplain Management

Experience has proven that flooding is difficult to control to prevent damage to life and property. Clearly, an approach is needed that does not participate in the belief that nature's most powerful forces (time, water, and gravity) can be reliably harnessed. Rather than incur high costs and inevitable failure at controlling the floods, wise zoning with adequate development standards can instead be used to ensure that new development anticipates and has limited susceptibility to the flooding that can occur.

National Flood Insurance Program (NFIP)

Following several decades of federal government response to flood disasters being generally limited to constructing flood-control works such as dams and levees and providing disaster relief to flood victims, the U.S. Congress in 1968 originally passed the National Flood Insurance Act. This Act created the National Flood Insurance Program (NFIP), which provides an insurance alternative to disaster assistance. The intent of the NFIP, through its requirement that communities adopt floodplain management ordinances, also was to reduce future flood damage. The NFIP is administered by the Federal Insurance Administration (FIA) and the Mitigation Directorate, components of the Federal Emergency Management Agency (FEMA), an independent federal agency. Property and casualty insurance companies are allowed to write and service the Standard Flood Insurance Policy in their own names, but the federal government retains responsibility for underwriting losses.

The FIA can make flood insurance available only in those areas where the appropriate public body (e.g., village board, city council, or county board of commissioners or supervisors) has adopted adequate floodplain management regulations for its flood-prone areas. The rationale for this is that only the community as a whole can effectively and adequately practice flood hazard mitigation to reduce future flood losses. Therefore, participation in the NFIP is on a community basis, rather than on an individual basis. Careful local management of development in the floodplains results in construction practices that can reduce flood losses and the high costs associated with flood disasters to all levels of government.

Flood Hazard Maps

In support of the NFIP, FEMA has undertaken an effort to identify and map flood hazard areas. Flood hazard areas are identified on

at least three types of maps: Flood Hazard Boundary Maps (FHBMs), Flood Insurance Rate Maps (FIRMs), and Flood Boundary and Floodway Maps (FBFMs). One of the areas commonly delineated on the maps is the Special Flood Hazard Area (SFHA), which is defined as an area of land that would be inundated by a flood having a one-percent chance of occurring in any given year (also referred to as the base or 100-year flood). The NFIP specifies that development may take place within the SFHA, but that it must comply with local floodplain management ordinances, which, in turn, must meet the minimum federal requirements.

In many Nebraska counties FHBMs have been prepared, which generally identify flood hazard areas along streams and tributaries without identifying the boundary of the floodway within the flood hazard area. Generally, within communities, maps have been drawn to identify the floodway and floodplain and other zones to identify the flood insurance premium rates (see Illustration 9.2 at the end of this Chapter).

Phases of Community Participation in the NFIP

There are two general levels of a community's participation in the NFIP: (1) the Emergency Phase and (2) the Regular Phase.

Emergency Phase

The Emergency Phase of the NFIP is the initial phase of a community's participation and was designed to provide a limited amount of insurance at less than actuarial rates. A community participating in the Emergency Phase either does not have an identified and mapped flood hazard or has been provided with a Flood Hazard Boundary Map (FHBM), and the community is required to adopt limited floodplain management requirements to control future use of its floodplains. The FHBM is based on approximate data and identifies, in general, the SFHAs with a community.

Regular Phase

A community participating in the Regular Phase of the NFIP is usually provided with a Flood Insurance Rate Map (FIRM) and a detailed engineering study, termed a Flood Insurance Study (FIS). In this phase of the NFIP, more comprehensive floodplain management requirements are imposed on the community in exchange for higher amounts of flood insurance coverage. A FIRM usually is issued following completion of the FIS, which is conducted in connection with the community's conversion to the Regular Phase of the NFIP. The FIRM will show base flood elevations and insurance risk zones in addition to floodplain

boundaries. The FIRM may also show a delineation of the regulatory floodway (the stream channel plus that portion of the overbanks that must be kept free from encroachment in order to discharge the one-percent annual chance flood without increasing flood levels by more than one foot).

State Guidelines and Minimum Standards for Floodplain Management

The Nebraska NDWEE is Nebraska's floodplain management agency. The NDWEE administers Nebraska's "Flood Plain Management" statutes (*Neb. Rev. Stat.* §§ 31-1001 to 31-1023) and provides state coordination of the National Flood Insurance Program.

The NDWEE has delineated guidelines and minimum standards (Title 455, Nebraska Administrative Code) for adoption in Nebraska community and county floodplain management programs that will qualify the communities and counties for flood insurance under the National Flood Insurance Program. The NDWEE standards for structures, obstructions, and substantial improvements in floodplains for the base (100-year) flood (455 NAC, Chapter 1, Section 004):

The following minimum standards shall apply when an obstruction is to be located or substantially improved within the floodplain of a base flood. In the event of a conflict between the following minimum standards and those in Section 005, the minimum standards in Section 005 (floodway) shall govern.

Floodplain (Subsections of 455 NAC, Chapter 1, Section 004)

004.01 No new construction, substantial improvements, or other obstruction (including fill) shall be permitted unless it is demonstrated that the cumulative effect of the proposed new construction, when combined with all other existing and anticipated new construction or substantial improvement, will not increase the water surface elevation of the base flood more than one foot at any location.

004.02 To the extent otherwise permitted by the minimum standards in this Chapter, all new obstructions and substantial improvements shall (i) be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the obstruction, (ii) be constructed with materials and utility equipment resistant to flood damage, (iii) be constructed by methods and practices that minimize flood and flood related damages, and (iv) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so

as to prevent water from entering or accumulating within the components during conditions of flooding.

004.03 All public utilities and facilities, such as sewer, gas, electrical, and water systems shall be located and constructed to minimize or eliminate flood damage to such utilities and facilities.

004.04 New and replacement water systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

004.05 New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.

004.06 On-site waste disposal systems shall be designed to avoid impairment to them or contamination from them during flooding.

004.07 All new construction and substantial improvements of residential structures shall have the lowest floor (including basement) elevated to or above one foot above the base flood level.

004.08 All new construction and substantial improvements of non-residential structures shall (i) have the lowest floor (including basement) elevated to or above one foot above the base flood level or, (ii) together with attendant utility and sanitary facilities be designed so that below the level one foot above the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Floodproofing measures shall be consistent with the flooding characteristics of the drainway or watercourse. A registered professional engineer or architect shall certify that the floodproofing methods to be utilized are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces, sewage backups and other factors associated with the base flood.

004.09 Appurtenant structures used exclusively for storage of motor vehicles, and storage of other items readily removable in the event of a flood warning may have their lowest floor below one foot above the base flood elevation provided the structure is capable of withstanding hydrostatic and hydrodynamic forces caused by the base flood and provided that no utilities are installed in the structure except elevated or flood proofed electrical fixtures. If the structure is converted to another use, it

must be brought into full compliance with the minimum standards governing such use.

004.10 For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are usable solely for parking vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall not be higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

004.11 All manufactured homes to be placed or substantially improved on sites: (i) outside of a manufactured home park or subdivision (ii) in a new manufactured home park or subdivision; (iii) in an expansion to an existing manufactured home park or subdivision; or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as the result of a flood, shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above one foot above the base flood elevation, and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

004.12 Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the provisions of subsection 004.11 shall be elevated so that either: (i) the lowest floor of the manufactured home is at or above one foot above the base flood elevation or (ii) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade; and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

004.13 Recreational vehicles shall either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) be fully licensed and ready for highway use, or (iii) meet the permit requirements and the

elevation and anchoring requirements for “manufactured homes” of this Chapter. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

004.14 A watercourse or drainway shall not be altered or relocated in any way which in the event of a base flood or more frequent flood will alter the flood carrying characteristics of the watercourse or drainway to the detriment of upstream, downstream, or adjacent locations. The county, city, village or state agency responsible for any alteration or relocation of a watercourse or drainway or for approving any such alteration or relocation shall notify the Department of Natural Resources and adjacent communities prior to commencing or approving such activity.

004.15 The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited. Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

Floodway (Subsections of 455 NAC, Chapter 1, Section 005)

005.01 No new construction, substantial improvements, or other obstruction (including fill) shall be permitted within the floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed new construction would not result in any increase in water surface elevations along the floodway profile during the occurrence of the base flood.

005.02 New structures for human habitation shall be prohibited. New structures intended for other types of human occupancy on a regular basis shall also be prohibited unless the functions of the structure are water dependent and cannot reasonably be fulfilled at an alternate location outside the floodway.

Standard Nebraska Floodplain Ordinances or Resolutions

To facilitate the adoption of appropriate floodplain management regulations by local municipal and county governments in Nebraska, the NDWEE, in cooperation with the Kansas City office of FEMA, has prepared four sample ordinances or resolutions to match four typical circumstances of a local governmental

jurisdiction relative to the NFIP. The four samples, copies of which can be obtained from the NDWEE, are as follows:

1. “Meeting the Minimum Requirement of the Nebraska Minimum Standards for Floodplain Management Programs and Title 44 of the Code of Federal Regulations, Chapter 1, Part 60.3(a).” This is used by communities or counties desiring to participate in the NFIP without FEMA-identified floodplains.
2. “Meeting the Minimum Requirements of the Nebraska Minimum Standards for Floodplain Management Programs and Title 44, Code of Federal Regulations, Chapter 1, Part 60.3(b).” This is used by communities or counties which have been identified as flood prone, but which have not received detailed Flood Insurance Study information concerning 100-year flood elevations or delineation of floodway and floodway fringe areas.
3. “Meeting the Minimum Requirements of the Nebraska Minimum Standards for Floodplain Management Programs and Title 44, Code of Federal Regulations, Chapter 1, Part 60.3(c).” This is used by communities or counties that are participating in the Regular Phase of the NFIP. As an amendment to an existing zoning ordinance, this sample creates an overlay district in which review procedures and a special permit are required for development in the Special Flood Hazard Area, where performance standards are imposed for new construction or substantially improved buildings. Existing zoning is not changed by this overlay zone.
4. “Meeting the Minimum Requirements of the Nebraska Minimum Standards for Floodplain Management Programs and Title 44, Code of Federal Regulations, Chapter 1, Part 60.3(d).” This is used by communities or counties that are participating in the Regular Phase of the NFIP. As an amendment to an existing zoning ordinance, this sample includes standards for development in floodplain areas and creates two overlay districts: (1) a floodway and (2) a flood fringe. Like the sample described above (60.3[c]), review procedures and a special permit are required for development in the Special Flood Hazard Area, where performance standards are imposed for new construction or substantially improved buildings. Existing zoning is not changed by these overlay zones.

Requirement to Adopt Floodplain Management Regulations

State statutes specify that when a local government is provided sufficient data and maps with which to reasonably locate within its

zoning jurisdiction any portion of the floodplain for the base flood of a watercourse, the local government is responsible for adopting floodplain management regulations (such as the above-described samples provided by the NDWEE). The statutes specify that having a planning commission in place or a comprehensive plan adopted are not preconditions to this action (*Neb. Rev. Stat.* § 31-1019).

If a local government does not adopt floodplain management regulations within one year after flood hazard data and maps have been provided to it, the NDNR may, upon petition of at least 10 percent of the owners of land located within the floodplain, or upon written request of the board of directors of the natural resources district in which the land is located, adopt for the area floodplain regulations that meet minimum FEMA requirements (*Neb. Rev. Stat.* § 31- 1020).

FEMA does not review individual floodplain building permits or variances granted in local jurisdictions to determine whether they comply with FEMA floodplain standards; the responsibility for issuing such permits and enforcing locally-adopted floodplain regulations lies with the local governments. However, counties and communities that participate in the National Flood Insurance Program must file a biennial report with FEMA identifying the number of building permits and variances issued within the last two years for land in the floodplain. FEMA can use this information to decide whether further investigation is needed in determining whether the county or municipality is in compliance with NFIP requirements.

The NDWEE has negotiated a cooperative agreement with FEMA, whereby the NDWEE will periodically visit municipalities and counties participating in the NFIP and will provide updated information and review local progress.

Due to specialized knowledge that is sometimes helpful for reviewing building permit applications in floodplain areas, some counties and municipalities make arrangements with consultants or with their local NRD to assist with such reviews.

Flood Mitigation Assistance Program

FEMA also administers the Flood Mitigation Assistance (FMA) program through which communities can obtain planning grants to help with the costs associated with developing a flood mitigation plan. The NDWEE provides assistance to communities for completing the plans funded through this program. After the community adopts the plan and it is approved by FEMA, the community can then apply to any public or private organization

which has money available for the types of projects identified in the plan.

In addition to funding planning grants, the FMA program also has an annual project fund allotment which can be used to partially fund “nonstructural” flood mitigation projects, including such measures as relocation, elevation of structures, buyouts, etc. However, this does not mean that other types of projects should be excluded from the plan. Bank stabilization, major structural solutions (levees, flood walls, reservoirs, etc.), bridge embankments, debris removal, or any other corrective actions for conditions which the local citizens view as contributing to their flood problems should be identified. An integral part of the planning process is to match the types of flood problems with a wide range of federal, state, or local agencies which have the potential to fund the identified projects.

FMA planning and project grants are offered with 75 percent federal assistance. The remaining 25 percent must come from a non-federal source, and no more than half of the 25 percent local matching may come from in-kind contributions.

Community Rating System

The Community Rating System (CRS) is a program within the National Flood Insurance Program that recognizes jurisdictions for going above and beyond the minimum NFIP floodplain management requirements. The CRS provides incentives for jurisdictions to reduce their vulnerability to floods while reducing the cost of flood insurance premiums for all policy holders in that jurisdiction. The CRS is similar to community fire insurance ratings, and it is administered by the same risk management corporation.

Each community in the NFIP automatically qualifies for a CRS rating of “10,” or no discount. There is an established number of points that can be earned for each activity that is determined to reduce flood damages and increase education. Flood insurance premium rates are adjusted to reflect the extent and quality of these community activities. Examples of eligible activities include: mitigating flood damage to existing buildings, managing development in areas not mapped by the NFIP, maintaining floodplain areas as open space, protecting new buildings beyond the minimum NFIP protection level, aiding insurance agents in obtaining flood data, and helping residents obtain flood insurance. For every 500 points a community earns, the CRS rating for that jurisdiction drops by one. For each one-point drop in the CRS number, each flood insurance premium in that community drops by five percent. Although the premium reduction may seem small

for an individual property owner, there is potential for substantial savings overall when considering the effect throughout an entire community. This is especially true if the community is able to continue lowering its ratings.

Because Nebraska's floodplain regulations exceed the federal minimum standards, communities in good standing in the NFIP already qualify for CRS points. In addition, statewide dam safety requirements qualify for CRS points. Thus, communities may already qualify for at least a five percent CRS reduction based on actions they and the state already have taken or on activities they currently are pursuing.

Stream Obstructions

In all Nebraska counties, the county board is authorized to keep all natural watercourses clear and free of obstructions (*Neb. Rev. Stat.* § 31-202.01). Whenever any natural watercourse in a county is filled with trees, silt, or debris in such a manner as to cause damage by flooding of adjacent land, any five or more landowners owning land abutting on the watercourse can request the county to clear the stream of obstructions. The county can require the landowners benefiting from the clearance to pay their proportionate share of the stream clearing costs (*Neb. Rev. Stat.* §§ 31-202.02 and 31- 202.03).

Air Quality

Generally, the quality of air across the entire state of Nebraska is very good. However, air quality concerns at the national level stimulated enactment of the federal Clean Air Act in 1970 to protect public health by regulating air pollution. The Clean Air Act amendments of 1990 give the U.S. Environmental Protection Agency (EPA) the authority to set national outdoor air quality standards to protect people's health and the environment from air pollutants.

Most provisions of the Clean Air Act will not affect small communities, but there may be instances when impacts occur. Specifically, some businesses that previously were not required to obtain permits to operate now need to apply for permits to ensure that equipment is installed and operated properly to protect the air.

In Nebraska NDWEE has the responsibility to ensure that the state is meeting the requirements of the federal Clean Air Act. Under the authority of the state's Environmental Protection Act (*Neb. Rev. Stat.* §§ 81-1504 and 81- 1505), the Nebraska NDWEE administers rules and regulations for air quality, "Title 129 – Nebraska Air Quality Regulations" (129 NAC).

Operating Permits for Sources of Hazardous Air Pollutants

Two types of operating permits (Class I and Class II) are issued by NDWEE for sources of air pollutants.

Class I Operating Permits

Class I operating permits are required for any Part 70 source as provided in 40 CFR § 70.3(a) and 70.3(b). Any major source or emissions unit required to obtain a Class I permit based on potential emissions with actual emissions below major source levels may request that potential to emit be limited to below the major source threshold, and may apply for a Class II permit, as a synthetic minor, which provides practically enforceable limits to potential emissions. major sources of hazardous air pollutants. Source categories exempted under 40 CFR § 70.3(b)(4) will be exempted from obtaining a Class I permit.

Class II Operating Permits

- A Class II permit is required for sources that meet any of the following criteria: 001.03A Any source or emissions unit that is not a Part 70 source with actual emissions above the following: Fifty (50) tpy or more of PM₁₀ emissions;
- Fifty (50) tpy or more of SO₂ or SO₃, or any combination of the two;
- Fifty (50) tpy or more of oxides of nitrogen (calculated as NO₂);
- Fifty (50) tpy or more of volatile organic compounds (VOC);
- Fifty (50) tpy or more of carbon monoxide;
- Two and one-half (2.5) tpy or more of lead;
- Five (5) tpy or more of any hazardous air pollutant or an aggregate of twelve and one-half (12.5) tpy or more of any hazardous air pollutants.

Construction Permits

Any proposed facility that may have the potential of discharging pollutants into the atmosphere above the specified thresholds must be approved through issuance of a construction permit from the Nebraska NDWEE before construction commences (129 NAC 3). An application for a Class I or Class II permit to operate the facility must be submitted within 12 months of commencing operation of the facility.

Public Notice and Comment

All Class I and Class II operating permit proceedings, including initial permit issuance, significant modifications, renewals, and – unless otherwise provided – all construction permits, include opportunities for public involvement. Public notice, an opportunity for comment and a hearing, if requested, are included in the process that NDWEE follows in issuing the permits. Specific requirements for public participation are spelled out in Title 129 (NAC 129 10).

Odors and Open-Air Burning

Control of objectionable odors is not a responsibility of the NDWEE; however, local governments may enact nuisance laws to regulate odors. Also, county and city fire officials may issue permits for open-air burning.

Asbestos

Asbestos is a general term for a number of naturally occurring fibrous mineral silicates. Asbestos has high thermal stability, excellent tensile strength, resistance to chemical attack, and good thermal and electrical resistance. Because of these qualities, asbestos was used for many years as insulation (electrical and thermal), roofing and flooring, and as reinforcing additions to cements, mortars, and other coatings.

Asbestos tends to break into a dust of microscopic fibers when disturbed, and because of their size and shape, these fibers can remain suspended in the air for long periods of time and can easily penetrate body tissues when inhaled. Asbestos is now known to cause asbestosis, lung cancer, and other cancers. Discovery of these adverse health effects of asbestos brought about federal regulation of its use. Manufacture and use of asbestos is now prohibited in the United States.

Probably the largest single source of asbestos in the indoor air that people breathe is insulation, since it had been used in building construction over a period of some fifty years.

In accordance with the federal Clean Air Act, the U.S. Environmental Protection Agency established the National Emissions Standards for Hazardous Air Pollutants (NESHAP) to protect the public health. One of the hazardous air pollutants for which standards were developed in the early 1970s was asbestos (40 CFR part 61, subpart M). A revised NESHAP regulation was issued by EPA in 1990.

Asbestos NESHAP regulations protect the public by minimizing the release of asbestos fibers during activities involving the processing, handling, and disposal of asbestos-containing material. They specify work, waste disposal, and record keeping practices to be followed during demolition and renovation of all structures, installations, and buildings (excluding residential buildings having four or fewer dwelling units). In addition, NESHAP regulations require building owners and/or contractors to notify the applicable state office – NDWEE – before any demolitions or renovations of buildings that will disturb a certain threshold amount of asbestos.

The federal Asbestos Hazard Emergency Response Act (AHERA), signed into law in 1986, required all schools in the United States to identify asbestos-containing material in the school buildings and to develop management plans that address how to control those materials. As a part of these requirements, EPA requires schools to appoint an asbestos manager to be responsible for asbestos-related activities, including implementation of the management plan and compliance with federal asbestos regulations.

■ Municipal Solid Waste Management

Municipal solid waste is a non-hazardous waste resulting from industrial, commercial, domestic, and other activities. Solid waste that is not recycled must be disposed, and land filling is still the most common disposal method.

In the United States today there is a realization that the rapidly rising volume of solid waste deposited by society threatens the capacity of existing and future landfills, but also there is concern about unknown quantities of potentially toxic and hazardous materials being buried and posing a constant threat to the ground water supply. Some of the disposal methods that are used in landfills allow waste to remain basically inert for decades, if not centuries, without decomposition. Concerns about both the increasing volume of solid wastes and the environmental impacts of landfills have led to enactment of federal and state legislation and regulations.

Federal Solid Waste Legislation

Congress took a multifaceted approach toward solving problems associated with solid waste through enactment of the Resource Conservation and Recovery Act (RCRA) of 1976. A major objective of RCRA is an increase in reclamation and reuse practices. In addition to solid waste, the legislation also addresses

liquid and contained gaseous wastes, semi-solid wastes, sludges, and hazardous wastes.

Nebraska Solid Waste Legislation

In 1992 the Nebraska Legislature enacted the Integrated Solid Waste Management Act (*Neb. Rev. Stat. §§ 13-2001 to 13-2043*), which reflects many of the goals of the federal RCRA. “Integrated solid waste management” is defined in the Nebraska law as “solid waste management which is focused on planned development of programs and facilities that reduce waste toxicity and volume, recycle marketable materials, and provide for safe disposal of residuals” (*Neb. Rev. Stat. § 13-2011*). Nebraska’s Integrated Solid Waste Management Act encourages alternative methods of managing solid waste that reduce the reliance upon the use of landfills. The Act establishes state policy on integrated waste management in terms of a hierarchical order of waste management approaches, as follows, in descending order of preference: (a) volume reduction at the source; (b) recycling, reuse, and vegetative waste composting; (c) disposal in landfill; (d) incineration with energy resource recovery; and (e) incineration for volume reduction (*Neb. Rev. Stat. § 13-2018*).

Required Municipal and County Integrated Solid Waste Management Plans

Nebraska’s Integrated Solid Waste Management Act required on or before October 1, 1994, that each county and municipality in the state should have filed an integrated solid waste management plan with the Nebraska NDWEE. (*Neb. Rev. Stat. § 13-2031*).

The plan is to demonstrate the jurisdiction’s capacity to accommodate the solid waste generated within the jurisdiction for the twenty years following October 1, 1994, as well as wastes generated outside the jurisdiction and disposed of within the jurisdiction. If a county or municipality is unable to demonstrate capacity for waste generated outside its jurisdictional area, it may restrict access to its facilities and systems for such solid waste (*Neb. Rev. Stat. § 13-2032*).

The plan also is to provide for a local waste reduction and recycling program. The Act specifies that, if technically and economically feasible, the volume of materials disposed of in landfills of a jurisdiction as of July 1, 1994, shall be reduced by 25% as of July 1, 1996, by 40% as of July 1, 1999, and by 50% as of July 1, 2002. In developing reduction and recycling programs, the following wastes are to be given first priority:

- (a) yard waste (grass and leaves);

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- (b) unregulated hazardous wastes, except household hazardous wastes, which are exempt from the regulations under Nebraska's Environmental Protection Act (*Neb. Rev. Stat.* §§ 81-1501 to 81-1533);
 - (c) discarded tires;
 - (d) waste oil;
 - (e) lead-acid batteries; and
 - (f) discarded household appliances.

The plan is to provide a methodology for implementing a program of separation of wastes, including, but not limited to, glass, plastic, paper, and metal. The Act specifies that the local integrated solid waste management plan must be updated when required by the NDWEE for compliance with federal and state laws and regulations. Also, the local plan may be updated at any time, subject to NDWEE approval, to reflect local needs and conditions.

All of Nebraska's 93 counties and 99% of Nebraska's 528 municipalities (147 cities and 381 villages) have submitted integrated solid waste management plans to the NDWEE.

Regulation of Solid Waste Disposal Areas and Processing Facilities

Federal Legislation and Regulations for Disposal Areas and Facilities

The federal Resource Conservation and Recovery Act of 1976 includes authorization of federal regulations pertaining to solid waste disposal facilities in "Title II – Solid Waste Disposal." Within Title II, criteria for sanitary landfills are authorized in section 4004 of "Subtitle D – State or Regional Solid Waste Plans."

Under this authorization, the U.S. Environmental Protection Agency has established minimum national criteria for municipal solid waste landfills to ensure the protection of human health and the environment. These criteria are contained in Title 40 of the Code of Federal Regulations (40 CFR 257 and 258).

Nebraska Legislation and Regulations for Disposal Areas and Facilities

Nebraska's Integrated Solid Waste Management Act stipulates that after October 1, 1993, no person is to dump or deposit any solid waste at any place other than a landfill approved by the Nebraska NDWEE, unless the NDWEE has granted a permit which allows depositing of solid waste at another facility (*Neb. Rev. Stat.* § 13-2033). However, a person is not in violation of this statute if (a) solid waste generated by the person is disposed of on the person's own property, (b) the property is outside the corporate

limits of a municipality, and (c) the NDWEE has determined that the county has not provided integrated solid waste management facilities for its residents.

Under the authorization provided in Nebraska's Integrated Solid Waste Management Act and Nebraska's Environmental Protection Act, the Nebraska NDWEE has issued regulations to carry out the provisions of the Acts relating to solid waste disposal. These regulations are contained in "Title 132 – Integrated Solid Waste Management Regulations" (132 NAC). Also, as authorized by Nebraska's Environmental Protection Act, the Nebraska NDWEE has issued regulations pertaining to hazardous solid waste; these regulations are contained in "Title 128, Chapter 6 – Identification and Listing of Hazardous Waste; Rulemaking" (128 NAC).

Solid Waste Disposal Area Defined

Nebraska state statutes define a solid waste disposal area as "an area used for the disposal of solid waste from more than one residential premises or from one or more recreational, commercial, industrial, manufacturing, or governmental operations" (*Neb. Rev. Stat. § 13-1701*).

A more detailed definition is presented in "Title 132 – Integrated Solid Waste Management Regulations" (132 NAC), which describes a solid waste disposal area as "a discrete area of land or excavation which receives solid waste and includes all contiguous land and structures, within the surveyed legal description of the permitted area, other appurtenances and improvements on the land used for the disposal of solid wastes or improvements necessary to carry out the disposal of solid wastes. Solid waste disposal areas shall include, but not be limited to the following disposal areas: municipal solid waste disposal areas, construction and demolition disposal areas, fossil fuel combustion ash disposal areas, industrial disposal areas, delisted hazardous waste disposal areas and land application units for repeated disposal or treatment of special wastes." (132 NAC 1). There are 23 municipal landfills in Nebraska with operating permits issued by the NDWEE.

Solid Waste Processing Facility Defined

Nebraska state statutes define a solid waste processing facility as "an incinerator or a compost plant that receives material, other than yard waste, in quantities greater than 1,000 cubic yards annually" (*Neb. Rev. Stat. § 13-1701*).

"Title 132 – Integrated Solid Waste Management Regulations" (132 NAC 1) defines a solid waste processing facility as "any facility where solid wastes are processed, and shall include, but not

be limited to solid waste compost sites, materials recovery facilities, recycling centers, and solid waste transfer stations.” There are 36 transfer stations, three (3) materials recovery facilities, and seven (7) solid waste compost sites in Nebraska with operating permits issued by the NDWEE.

Siting of Solid Waste Disposal Areas and Processing Facilities

The siting of solid waste disposal areas and processing facilities in Nebraska is regulated by the Nebraska NDWEE, as authorized by *Neb. Rev. Stat. §§ 13-1701 to 13-1714* and by the Integrated Solid Waste Management Act (*Neb. Rev. Stat. §§ 13-2001 to 13-2043*). The permitting process and siting criteria are summarized below.

The Permitting Process

Before establishing a solid waste disposal area or processing facility, companies or individuals are required to obtain a permit from the Nebraska NDWEE (*Neb. Rev. Stat. §§ 13-1701 to 13-1714*). However, before submitting the application for the disposal area or processing facility to the NDWEE, an applicant must submit a request for siting approval to a city council, village board of trustees, or county board of commissioners or supervisors which has jurisdiction over the proposed site. The applicant must submit information and evidence to the local governmental unit to demonstrate compliance with the statutory provisions.

The Nebraska statutes outline the notice requirements and public hearing procedures for such siting approval. Final action must be taken by the city council, village board, or county board within 180 days after the filing of the request for site approval (*Neb. Rev. Stat. § 13-1707*). If the application is approved by the local government, construction must commence within two calendar years or the approval is nullified (*Neb. Rev. Stat. § 13-1708*).

The statutes also provide that if the siting application is denied, the applicant may contest the decision in district court of the county in which the proposed site is located (*Neb. Rev. Stat. § 13-1712*).

A siting application approved by the city council, village board, or county board may be challenged in district court by a third party, unless the district court determines that the challenge is duplicitous or frivolous (*Neb. Rev. Stat. §§ 13-1713 and 13-1714*).

Siting Criteria

In the review process described above, Nebraska state statutes (*Neb. Rev. Stat. § 13-1703*) stipulate that the unit of local government should grant siting approval only if the area or facility meets all of the following criteria:

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1. The area or facility is necessary to accommodate the solid waste management needs from the area that the facility is intended to serve;
 2. The area or facility is designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected;
 3. The area or facility is located to minimize incompatibility with the character of the surrounding area and to minimize the effect on value of the surrounding property. The city council, village board, or county board is to consider the recommendation of the appropriate planning commission regarding the application; The plan of operations for the area or facility is designed to minimize the danger to the surrounding area from accidents;
 4. The traffic patterns to and from the area are designed to minimize the impact on existing traffic flows; and

Information regarding previous operating experience of the applicant, its subsidiaries, or parent corporation, are made available to the political subdivision (If the applicant, parent company, subsidiary, or any officer or board member of such entities have been convicted of a felony within ten years prior to the date of the application, approval is not to be granted.).

If a county, municipality, or any combination of two or more municipalities or counties acting together under the Interlocal Cooperation Act (*Neb. Rev. Stat.* §§ 13-801 to 13-827), or a natural resources district acting alone or together with one or more counties and municipalities under the Interlocal Cooperation Act, is to be the owner of the facility, the siting approval requirements in *Neb. Rev. Stat.* §§ 13-1701 to 13-1714 do not apply. To qualify for this exemption, the facility must be located in a county where the unincorporated areas are among the areas to be served by the facility, or the facility must be located in the county of the municipality that is to be served by the facility if the facility will not serve the unincorporated areas of the county. However, the applicant still must show that the siting, operational, and traffic criteria listed above (*Neb. Rev. Stat.* § 13-1703) have been considered. Also, public notice and public hearing requirements must be followed (*Neb. Rev. Stat.* § 13-2035).

Nebraska's Environmental Protection Act affirms that state laws and regulations for siting and permitting landfills do not usurp the legal right of a local governing body to develop and enforce local ordinances, codes, or rules and regulations on solid waste disposal equal to or more stringent than the provisions of state laws, in order to protect the public health and welfare and the environment. Also,

the provisions of state laws and regulations must not relieve the person owning or operating a disposal area from responsibility for securing proper zoning permits or complying with all applicable local ordinances, codes, or rules and regulations not in conflict with the provisions of state laws (*Neb. Rev. Stat.* § 81-1516).

Subsequent to local government review and approval of an application for new solid waste disposal areas (landfills) or expansions of existing disposal areas, the Nebraska NDWEE reviews the application. The NDWEE utilizes several locational criteria that are spelled out in “Title 132 – Integrated Solid Waste Management Regulations” (132 NAC). These criteria specify that the proposed disposal area must:

- not have a detrimental effect on the waters of the state;
- not be located within 1,000 feet from the nearest edge of an existing right-of-way of any state, interstate, or federal highway unless the active area is screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the highway;
- not be located within 10,000 feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston-type aircraft (due to the potential for a bird hazard to aircraft);
- not be located in a 100-year flood plain;
- not be located in wetlands;
- not be located in areas with unstable land;
- not be located within 200 feet of a fault; and
- not be located in a seismic impact zone.

Solid waste disposal areas not meeting these locational criteria were to have been closed by October 1, 1993.

In addition to the locational criteria described above, “Title 132 – Integrated Solid Waste Management Regulations” contains criteria for the design, operation, closure, and post-closure of solid waste disposal areas that are used by the NDWEE when evaluating applications for permits.

Hazardous Solid Wastes

Hazardous waste is found in all areas of commerce and industry. Wastes are considered hazardous if they pose a potential danger to human health and/or the environment when not properly treated, stored, transported, disposed of, or otherwise managed. Potential dangers include explosions, fires, corrosive destruction of

materials, chemical reactions, and/or health-impairing exposure to toxic chemicals.

Hazardous wastes are generated by many businesses commonly found in communities everywhere, such as vehicle repair shops, auto body repair shops, and dry cleaning establishments. Hazardous wastes may include solvents, corrosives, and materials containing metals (such as chrome, cadmium, and lead). The U.S. Environmental Protection Agency has developed a list of several hundred hazardous wastes based upon the characteristics of ignitability, corrosivity, reactivity, and toxicity as determined by the toxic characteristic leaching procedure (TCLP) test.

Federal Hazardous Waste Legislation and Regulations

As part of the federal Resource Conservation and Recovery Act (RCRA) of 1976, provisions were included to assure that hazardous waste is properly managed, from the point of its generation to its ultimate disposal or destruction – “from cradle to grave.” The RCRA authorization of the development of federal regulations pertaining to hazardous solid waste is spelled out in “Subtitle C – Hazardous Solid Waste Management,” which is contained within “Title II – Solid Waste Disposal” of the Act.

Under this authorization, the U.S. Environmental Protection Agency has issued hazardous solid waste regulations in the Code of Federal Regulations (40 CFR parts 260 to 272), as the same are from time to time amended.

Nebraska Hazardous Waste Legislation and Regulations

In Nebraska, the state’s Environmental Protection Act authorizes the Nebraska NDWEE to develop regulations for hazardous waste management that comply with the federal RCRA (*Neb. Rev. Stat.* § 81-1505(13)). The regulations developed by the NDWEE have been issued as “Title 128 – Rules and Regulations Governing Hazardous Waste Management in Nebraska” (128 NAC).

The NDWEE reviews and approves permit applications for proposed treatment, storage, and disposal facilities for hazardous solid waste. The NDWEE also performs compliance inspections and enforcement actions to ensure the rules and regulations governing hazardous solid wastes are followed, as well as conducts comprehensive ground water monitoring evaluations.

Categories of Hazardous Waste Generators

Based upon definitions found in the federal RCRA, there currently are three categories of hazardous waste generators for which three separate sets of regulations have been issued in “Title 128 – Rules and Regulations Governing Hazardous Waste Management in

Nebraska.” The categories are as follows:

1. Large quantity generators (LQGs).

These are facilities that generate more than 2,200 pounds (approximately five 55-gallon drums of material) per month of any hazardous waste or more than 2.2 pounds of an “acute” hazardous waste. Acute hazardous waste pose added threats to human health and the environment. (128 NAC (10))

2. Small quantity generators (SQGs).

These are facilities that generate fewer than 2,200 pounds per month of hazardous waste but more than 220 pounds (approximately one-half of a 55-gallon drum of material) per month. (128 NAC (9))

3. Conditionally exempt small quantity generators (CESQGs).

These are facilities that generate fewer than 220 pounds of any hazardous waste per month. These facilities are conditionally exempt from the hazardous waste regulations and may generally dispose of their waste in accordance with the state’s regular solid waste requirements. (128 NAC (8))

At this time, various hazardous wastes which may exhibit some of the dangers described in the above paragraphs, but which are generated by individual households, are not subject to the federal or state hazardous waste regulations.

Accumulation of Junk on Private Property

Nebraska’s Environmental Protection Act states that it is unlawful for any property owner to allow the accumulation of junk on property that is not purely agricultural in character to the extent that such accumulation is a potential hazard to health (*Neb. Rev. Stat. § 81-1523*). Junk is defined in the Act as “old scrap, copper, brass, iron, steel, rope, rags, batteries, paper, trash, rubber debris, waste, dismantled or wrecked automobiles, or parts thereof, and other old or scrap ferrous or nonferrous material” (*Neb. Rev. Stat. § 81-1502 (18)*).

The department of health of a city or the NDWEE has the power to investigate all complaints of violations of *Neb. Rev. Stat. § 81-1523*, described above. If the city’s department of health or the NDWEE finds that the property owner has allowed an unlawful accumulation of junk, notice to remove the accumulation within 30 days shall be sent by certified or registered mail to the property owner (*Neb. Rev. Stat. § 81-1524*). If the junk is not removed as directed, the property owner will be guilty of a Class I V misdemeanor (*Neb. Rev. Stat. § 81-1525*).

Underground Storage Tanks

There are many underground storage tanks throughout Nebraska that have existed for many years. Many of these tanks now might be leaking, and many more may be expected to leak in the future. These can cause fires or explosions that threaten people's safety and can contaminate nearby ground water and cause problems with drinking water quality.

The federal Resource Conservation and Recovery Act regulates the installation, maintenance, monitoring, and closure of both new and existing underground storage tanks. The regulations also give specific instructions for the proper way to deal with leaks and spills, including corrective action. An underground storage tank is one or any combination of tanks, including underground piping connected to the tank, that has at least 10 percent of the volume underground. The underground storage tank regulations are contained in the Code of Federal Regulations, Title 40, Part 280.

In Nebraska the federal regulations are implemented through the State Fire Marshal's Office. Certain underground storage tanks that store petroleum or hazardous substances must be registered and inspected by this office. A registration form for federally regulated tanks may be obtained by contacting the State Fire Marshal's Fuels Division. Heating oil tanks over 1,100 gallons, which are exempt under the Federal Notification requirements, require a different registration form to be completed (download the Underground Storage Tank Registration Form for Heating Oil Tanks Over 1,100 Gallons form). In addition, farm, residential and small heating oil (under 1,100 gallons) require a one-time registration form (download the One Time Registration Underground Storage Tanks form).

Tank and Closure Information

An application for Permit to Install Underground Storage Tanks and/or Piping must be submitted to and approved by the Fire Marshal's office prior to the installation. An applicant can download the Application for Permit to Install Underground Storage Tanks form from the Fire Marshal's website. <https://sfm.nebraska.gov/forms>

An application for Permit to Permanently Close Underground Storage Tanks and/or Piping must be submitted to and approved by this office prior to the closure. An applicant can download the Application for Permit to Permanently Close Underground Storage Tanks and/or Piping form from the Fire Marshal's website. <https://sfm.nebraska.gov/forms>

Contractors must be licensed by the State Fire Marshal's Office to close and install underground storage tanks. To obtain a license a company must submit a notarized application and maintain a minimum of \$500,000 of general liability insurance which includes coverage relating to the closure and/or installation of underground storage tanks. Download the Application for License Underground Storage Tank Contractor form. Licensed contractors must also employ at least one certified individual to supervise the closure and/or installation.

Noise Pollution

As with other forms of pollution, noise pollution is made by humans. Noise - unwanted sound – is perhaps most noticeable in urban areas and may not be a big problem in most parts of Nebraska. Nonetheless, noise can be harmful to one's health. There are many misconceptions about the effects of noise on hearing and other aspects of health. For example, in addition to hearing loss, there is some evidence that workers exposed to high levels of noise have a higher incidence of cardiovascular disease, ear-nose-and- throat disorders, and equilibrium disorders than do workers exposed to lower levels of noise. Individuals subjected to high noise levels for extended periods also appear to run a high risk of psychological distress.

In this country, states and local governments have the primary responsibility for setting and enforcing limits on environmental noise which in their view are necessary to protect public health and welfare.

Specifically, states or local governments may use a variety of mechanisms to maintain levels of environmental noise, such as enactment of nuisance laws; operational limits on particular products (such as speed or load limits or prohibitions of use in specified areas or during specified hours); quantitative limits on environmental noise, enforce- able against any source; regulations limiting environmental noise at the boundary of construction sites; or a number of other regulations or limits tailored to specific localities and land uses.

At the federal level of government, the Noise Control Act of 1972 enabled the Environmental Protection Agency to establish noise emission standards for newly manufactured products which are major sources of noise. The Noise Control Act resulted from the desire by Congress to promote an environment for all Americans free from noise that jeopardizes their health or welfare. The federal law was enacted on the theory that federal action was needed to effectively deal with the noise problems created by vehicles, construction equipment, and other machinery which move

commonly in interstate commerce, therefore requiring national uniformity of treatment.

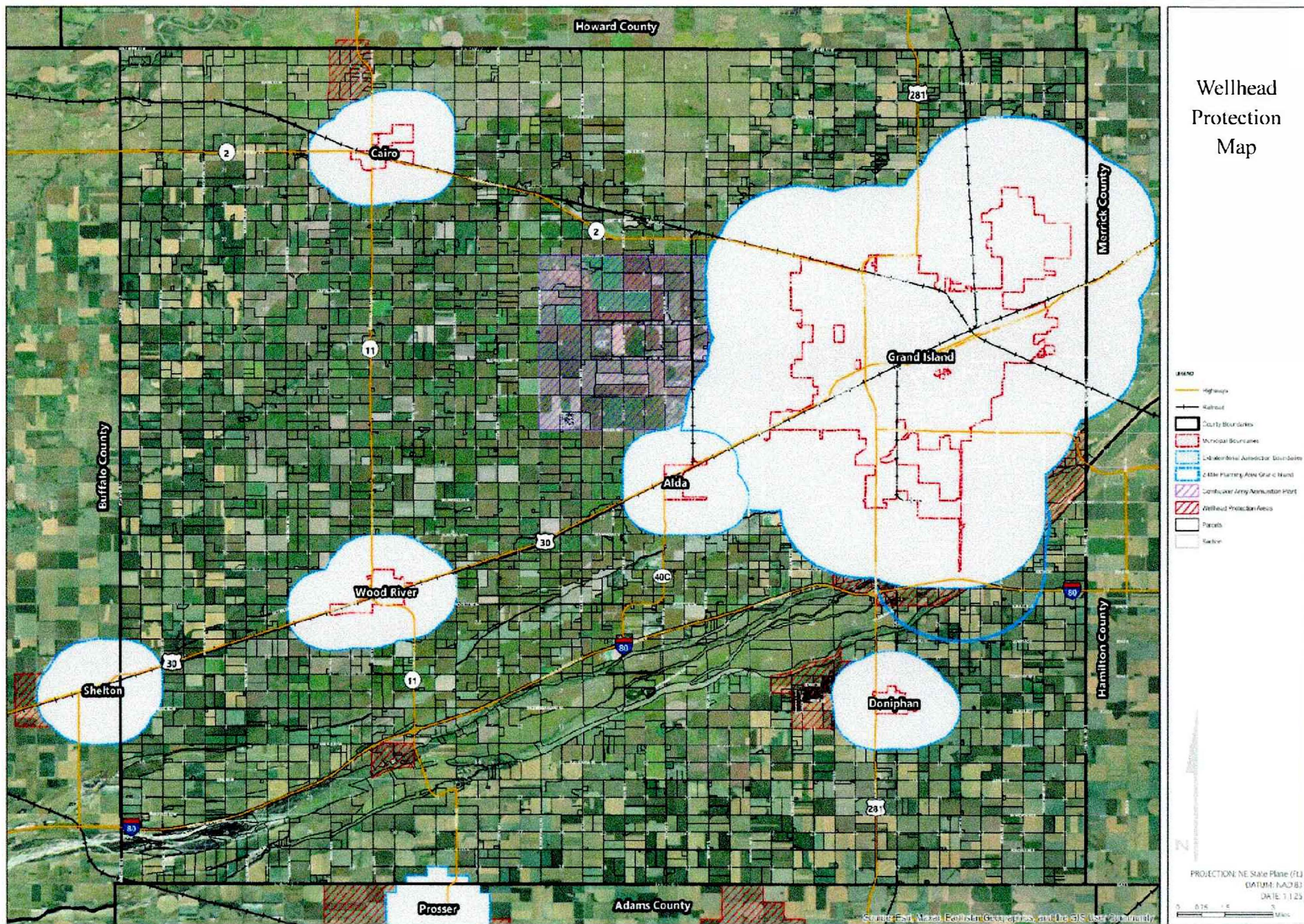


Illustration 9.1 – Wellhead Protection Map
 -170-

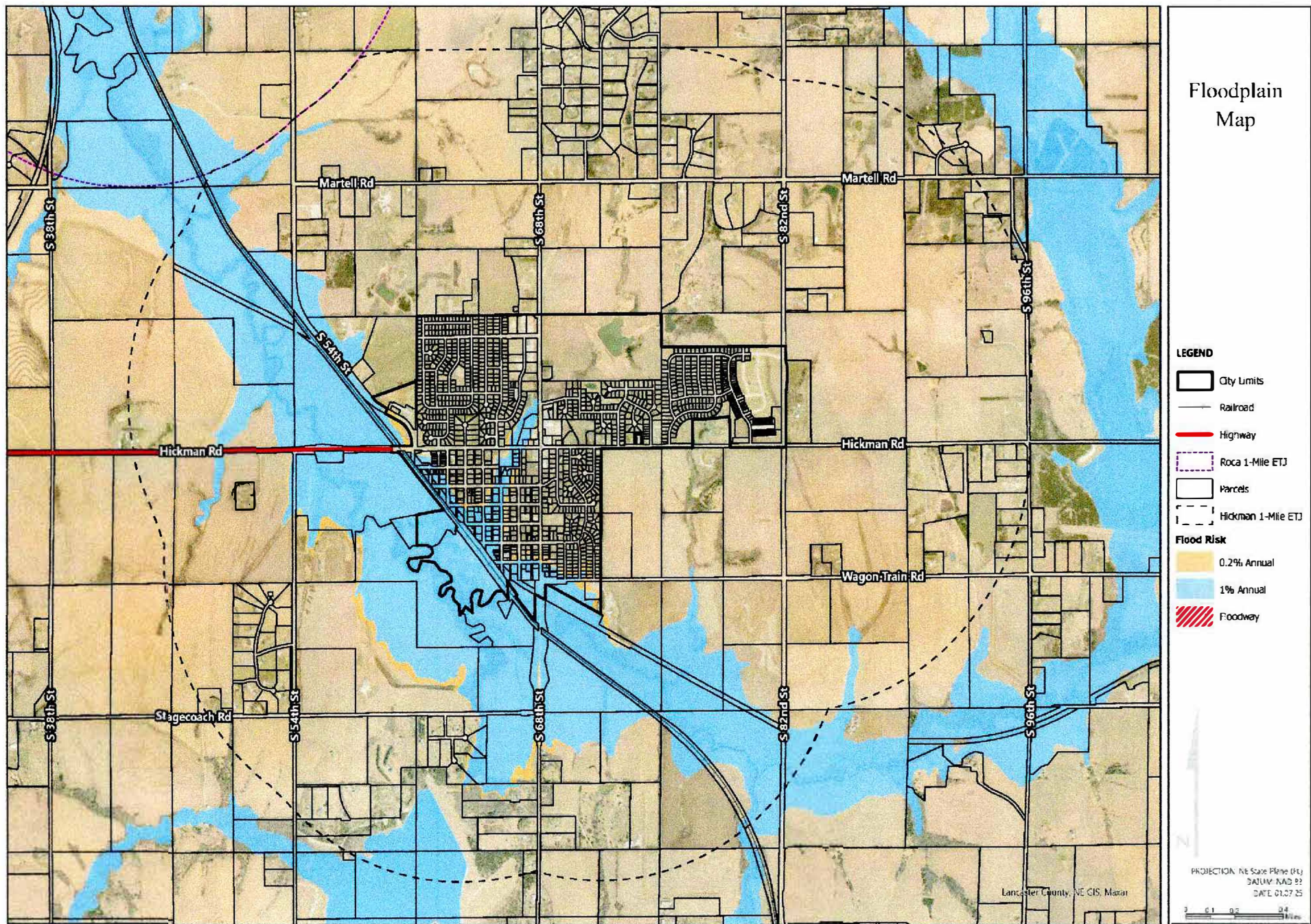


Illustration 9.2 – Floodplain Map

Chapter 10 – Other Implementation Tools

■ Introduction

In addition to the use of zoning and subdivision regulations to implement a municipality or county's comprehensive plan, there are several other tools that can be used effectively to achieve goals and objectives of the plan. This chapter includes discussion of some of the more commonly used additional implementation tools.

■ Capital Improvements Program

A capital improvements program (CIP) results from a process of budgeting for large-scale public expenditures that are expected to have a relatively long life. The process of preparing a capital improvements program is a logical adjunct to the comprehensive planning process. A capital improvement usually involves an investment in land, buildings, or other public works which produce public services or benefits. Capital improvements may also include expenditures for large, long-lasting, pieces of equipment, and studies or surveys by consultants.

The capital improvements program sets priorities for new facilities or improvements, and it examines the financing options needed to pay for long term improvements. Goals, policies, and programs established in the comprehensive plan should serve as the basis for the capital improvements program, and the program, in turn, becomes one of the devices (along with the zoning ordinance and subdivision regulations) used to implement the comprehensive plan.

The capital improvements program is to include all needed improvements and expenditures which should be constructed, repaired, installed, or purchased during a given period of time, usually five to six years. The plan should be reviewed annually, at which time priorities will be reassessed, completed projects removed, new projects added, and the program extended one additional year. The first years program, when adopted, becomes the capital improvements budget for the year. The budget "funds" the development of projects for the coming year. By the process of annual review, the program is a continuing process in which an up-to-date schedule of projects can be monitored.

Use of the CIP in Growth Management

Capital improvements programming is a method for controlling, directing, and scheduling physical improvements over a multi-year

period. These improvements include new or expanded physical facilities that are relatively large in size, expensive, and permanent.

While capital improvements are being built to respond to present and anticipated needs, they can help effect change, as well. Water and sewer lines, for example, not only answer existing needs for services, but also may encourage further development. A new school may not only meet educational needs but also may well serve as a catalyst to reverse community or neighborhood decline.

Establishing a Capital Improvements Program

Developing and implementing a capital improvements program requires a great deal of cooperation and coordination among all public officials and community administrators and personnel. The following outlines a procedure for developing a capital improvement program.

1. Determine Administrative Feasibility.

Assemble a group of decision makers and administrators in the local government to assess the possibility of incorporating a CIP into the current budgeting process and procedures. This assessment should include review of current laws and statutes, as well as local fiscal capabilities and policies. The group should determine the length of time the program covers – five to six years – and if the group determines the CIP to be a desirable planning tool, a timeline of events should be developed to include citizen input and should coincide with the annual budgeting process. The group should also determine who will assure that the capital improvements program is developed and implemented and who will ensure that all interested parties are consulted during preparation of the program.

2. Inventory Existing Facilities.

The community needs to determine what future expansion, renovation, or replacement of facilities or equipment is required.

3. Analyze Financial Situations and Assess Funding Possibilities and Fiscal Policies.

Analyze past, present, and future revenues, expenses, and debt. Review previously approved projects to determine whether a funding shortfall or excess is to be expected. Such analysis should include study of long- and short-range tax rates, debt service obligations, the balance between debt service and current expenditures, debt capacity, and availability of federal and state aid relative to local expenditures.

Fiscal policies need to be determined. For example, the community needs to determine if a bond issue is the best means for funding projects.

4. Establish Parameters.

Define what a capital improvement is for the community. Decide which services or facilities will be included in capital improvements programming.

5. Compile Requests and Establish Priorities.

Requests submitted by citizens, administrators, and elected officials must be developed in sufficient detail so that costs and benefits can be evaluated. The community will need to determine which projects are undertaken. These decisions can be based on the extent to which projects meet health and safety needs or needs identified in the community's comprehensive plan. Or they may be determined by the status of the project, i.e., whether it is already under way, legally committed, or needed to correct a particular threat to life. In establishing priorities, the reviewers will need to determine whether the project needs further study, how well coordinated it seems to be, and whether it conforms to the comprehensive plan.

6. Adopt the Capital Improvements Program.

After review and recommendation by the Planning Commission related to plan goals and policies, the City Council, Village Board, or County Board will adopt the program and budget. Adoption is not a commitment of funds, but a reliable indication of future funding.

7. Implement and Update the Capital Improvement program.

Annual review and update of the CIP by the planning commission and the city council or village board of trustees is recommended.

Annexation

Often, community planning goals for future growth and development include expansion of municipal corporate limits. Annexation has been a fertile area of litigation in the last several years as a result of Nebraska's population trends shifting to the south and east part of the state. Annexation powers are granted by state statutes to cities and villages.

Annexation by First Class Cities

A city of the first class may by ordinance annex territory to be within the corporate limits of the city if such land is contiguous or adjacent and is

urban or suburban in character (*Neb. Rev. Stat.* § 16-117). Such power to annex adjacent territory does not extend to agricultural lands which are rural in character. In defining what constitutes “adjacent” or “contiguous”, the statute (*Neb. Rev. Stat.* § 16-118) states that contiguity may be present even though a stream, embankment, strip, or parcel of land not more than 200 feet wide lies between the targeted land and the corporate limits.

Neb. Rev. Stat. § 16-118 (2) also provides in counties in which at least three (3) cities of the first class are located, lands, lots, tracts, streets, or highways shall be deemed contiguous although property owned by the federal government lies between the same and the corporate limits, so long as the lands, lots, tracts, streets, or highways sought to be annexed are adjacent to or contiguous with the property owned by the federal government. In addition, the annexation of any lands, lots, tracts, streets, or highways described in subsection (2) shall not result in any change in the service area of any electric utility without the express agreement of the electric utility serving the area comprising such annexed lands, lots, tracts, streets, or highways at the time of annexation, except that at such time following the annexation of the lands, lots, tracts, streets, or highways as the city lawfully annexes sufficient intervening area so as to directly connect the lands, lots, tracts, streets, or highways to the primary area of the city, such lands, lots, tracts, streets, or highways shall, solely for the purposes of section *Neb. Rev. Stat.* § 70-1008 (electric service), be treated as if they had been annexed by the city on the date upon which the intervening area had been formally annexed.

Procedurally, if a city of the first class wishes to annex territory, it must first adopt a resolution stating that the city is considering annexing the land and a plan for extending the city services to such land. A public hearing on the proposed annexation must be held within 60 days following the adoption of the resolution. A copy of the resolution providing for the public hearing shall be published in a legal newspaper in or of general circulation in the city at least once, not less than ten (10) days preceding the date of the public hearing. A map drawn to scale delineating the land proposed for annexation shall be published with the resolution. A copy of the resolution providing for the public hearing shall be sent by first-class mail following its passage to the school board of any school district in the land proposed for annexation.

Any owner of property contiguous or adjacent to a city of the first class may by petition request that such property be included within the corporate limits of such city. The mayor and city council may include such property within the corporate limits of the city without complying with *Neb. Rev. Stat.* § 16-117, subsections (3) through (6).

The enabling legislation also grants cities of the first class authority to annex cities of the second class or villages under very limited circumstances (*Neb. Rev. Stat.* §§ 16-122 to 16-128).

When property owners within the city limits of a city of the first class and adjacent to the corporate limits of the city desire to be disconnected (de-annexed) from the city, a procedure to do so is authorized by statute (*Neb. Rev. Stat.* § 16-129). The property owners must file a request with the city council asking that such territory be detached. If the city council determines that the real property is within and adjacent to the corporate limits, the city council may by a majority vote approve such detachment.

Annexation by Second Class Cities and Villages

The authority given to cities of the second class and villages to process annexations accommodates two ways by which the action can be initiated: (1) by property owners (*Neb. Rev. Stat.* § 18-3301) and (2) by the second class city or village (*Neb. Rev. Stat.* § 17-405.01).

Annexation of Contiguous Areas (*Neb. Rev. Stat.* § 18-3301)

Whenever the owner or owners or a majority of the owners of any territory lying contiguous to the corporate limits of any city or village, whether the territory be already in fact subdivided into lots or parcels of ten acres or less or remains unsubdivided, except as provided in section *Neb. Rev. Stat.* § 13-1115, shall desire to annex such territory to any city or village, they shall first cause an accurate plat or map of the territory to be made, showing such territory subdivided into blocks and lots, conforming as nearly as may be to the blocks, lots, and streets of the adjacent city or village. It shall also show the descriptions and numberings, as provided in *Neb. Rev. Stat.* § 18-3304, for platting additions, and conforming thereto as nearly as may be.

Such plat or map shall be prepared under the supervision of the city engineer in cases of annexation to adjacent cities, under the supervision of the village engineer in cases of annexation to adjacent villages, and under the supervision of a competent surveyor in any case. A copy of such plat or map, certified by such engineer or surveyor, as the case may be, shall be filed in the office of the city clerk or village clerk, together with a request in writing, signed by a majority of the property owners of the territory described in such plat for the annexation of such territory. The city council or village board of trustees shall, at the next regular meeting after the filing of such plat and request for annexation, vote upon the question of such annexation, and such vote shall be recorded in the minutes of such city council or village board of trustees. If a majority of all the members of the city council or

village board of trustees vote for such annexation, an ordinance shall be prepared and passed by the city council or village board of trustees declaring the annexation of such territory to the corporate limits of the city or village.

An accurate map or plat of such territory certified by the city engineer, village engineer, or surveyor and acknowledged and proved as provided by law in such cases shall at once be filed and recorded in the office of the county clerk or register of deeds and county assessor of the proper county, together with a certified copy of the ordinance declaring such annexation, under the seal of the city or village. Upon such filing, the annexation of the adjacent territory shall be deemed complete, and the territory included and described in the plat on file in the office of the county clerk or register of deeds shall be deemed and held to be a part of such city or village, and the inhabitants of such territory shall thereafter enjoy the privileges and benefits of such annexation and be subject to the ordinances and regulations of such city or village.

The mayor and council or the chairperson and members of the board of trustees, second class cities and villages may also annex any contiguous or adjacent lands, lots, tracts, streets, or highways which are urban or suburban in character, except this power to annex territory is that such annexation cannot include agricultural lands which are rural in character. (*Neb. Rev. Stat. § 17-405.01*) In defining what constitutes “adjacent” or “contiguous”, the statute (*Neb. Rev. Stat. § 17-405.2*) states that contiguity may be present even though a stream, roadway, embankment, strip, or parcel of land not more than 500 feet wide lies between the targeted land and the corporate limits.

Annexation of Noncontiguous Areas – *Neb. Rev. Stat. § 17-405.01*

In addition, the mayor and city council of any city of the second class or the chairperson and members of the village board of trustees may, by ordinance, annex any lands, lots, tracts, streets, or highways which constitute a redevelopment project area so designated by the city or village or its community redevelopment authority in accordance with the provisions of the Community Development Law when such annexation is for the purpose of implementing a lawfully adopted redevelopment plan containing a provision dividing ad valorem taxes as provided in subsection (1) of section 18-2147 and which will involve the construction or development of an agricultural processing facility, notwithstanding that such lands, lots, tracts, streets, or highways are not contiguous or adjacent or are not urban or suburban in character. Such annexation shall comply with all other provisions of law relating to annexation generally for cities of the second class

and villages. The city or village shall not, in consequence of the annexation under this subsection of any noncontiguous land, exercise the authority granted to it by law to extend its extraterritorial zoning jurisdiction beyond its corporate boundaries for purposes of planning, zoning, or subdivision development without the agreement of any other city, village, or county currently exercising zoning jurisdiction over the area surrounding the annexed redevelopment project area. The annexation of any noncontiguous land undertaken pursuant to this subsection shall not result in any change in the service area of any electric utility without the express agreement of the electric utility serving the annexed noncontiguous area at the time of annexation. *Neb. Rev. Stat. § 70-1008* also applies as previously mentioned for first class cities.

Also, the mayor and two-thirds of the city council of any city of the second class or the chairperson and two-thirds (2/3) of the members of the village board of trustees may, by ordinance, annex any lands, lots, tracts, streets, or highways when such annexation is for the purpose of relocating part or all of such city or village due to catastrophic flooding, notwithstanding that such lands, lots, tracts, streets, or highways are not contiguous or adjacent or are not urban or suburban in character. Such annexation shall comply with all other provisions of law relating to annexation generally for cities of the second class and villages. The city or village shall not, in consequence of the annexation under this subsection of any noncontiguous land, exercise the authority granted to it by law to extend its extraterritorial zoning jurisdiction beyond its corporate boundaries for purposes of planning, zoning, or subdivision development without the agreement of any other city, village, or county currently exercising zoning jurisdiction over the area surrounding the annexed area. The annexation of any noncontiguous land undertaken pursuant to this subsection shall not result in any change in the service area of any electric utility without the express agreement of the electric utility serving the annexed noncontiguous area at the time of annexation, except that at such time following the annexation of the noncontiguous area as the city or village lawfully annexes sufficient intervening territory so as to directly connect the noncontiguous area to the main body of the city or village, such noncontiguous area shall, solely for the purposes of *Neb. Rev. Stat. § 70-1008*, be treated as if it had been annexed by the city or village on the date upon which the connecting intervening territory had been formally annexed. If, within five years following an annexation undertaken pursuant to this subsection, part or all of the city or village has not been relocated to the annexed area, the city or village shall initiate detachment (de-annexation) of such annexed area pursuant to *Neb.*

Rev. Stat. 18-3316 (2). For purposes of this subsection, catastrophic flooding means a flooding event that (a) results in total property damage within the city or village which exceeds forty-five percent of the total assessed value of the improvements within the city or village and (b) is declared to be a major disaster by the President of the United States or the Governor.

Disconnection of Territory from City or Village – Neb. Rev. Stat. § 18-3316

Any person owning real property located within and adjacent to the corporate limits of a city of the first class, city of the second class, or village seeking to have such property detached from the corporate limits of such city or village may file a request with the city council or village board of trustees asking that such property be detached. The request shall contain the legal description of the property sought to be detached. If the city council or village board of trustees determines that the property meets the requirements of this section and that all or a part of such property ought to be detached, the city council or village board of trustees shall adopt an ordinance by a majority vote of its members to order such property detached from the corporate limits of the city or village. The city clerk or village clerk shall file a certified copy of such ordinance in the office of the register of deeds and of the election commissioner or county clerk of the county in which such property is located.

A city of any class or village may initiate detachment of any real property located within and adjacent to the corporate limits of such city or village by first publishing notice in a legal newspaper in or of general circulation in the city or village of the intention of the city or village to detach such property. Such notice shall include a legal description of the property to be detached and shall provide the date, time, and place of the meeting at which the ordinance ordering such property to be detached will be voted on by the city council or village board of trustees. If, by a majority vote of its members, the city council or village board of trustees adopts the ordinance ordering such property detached from the corporate limits of the city or village, the city clerk or village clerk shall file a certified copy of such ordinance in the office of the register of deeds and of the election commissioner or county clerk of the county in which such property is located.

■ The Right to Farm

As farms on the perimeter of municipalities face increasing pressure from expanded development, oftentimes those farmers face local opposition and complaints from nearby homeowners

due to odors, insect infestation, dust, or other factors attributable to the farm operation.

Farm operators typically argue that they were present at the location first and that the objectors arrived later; therefore, the farmer should have the right to continue his or her farm operation. The “coming to the nuisance” defense, which a farm operator could raise in any claim that the farm operation constituted a public or private nuisance, led to enactment in 1982 of the Nebraska Right to Farm Act (*Neb. Rev. Stat. §§ 2-4401 to 2-4404*). The Act has been amended twice, once in 1998, and again in 2019. For the purposes of this Act, a “farm or farm operation” is any tract of land in excess of ten (10) acres in area used for or devoted to the commercial production of farm products. A farm product includes those plants and animals useful to man and includes, but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, livestock, including breeding and grazing, fruits, vegetables, flowers, seeds, grasses, trees, fish, apiaries, equine and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur (*Neb. Rev. Stat. § 2-4402*).

Also protected under the Nebraska Right to Farm Act are “public grain warehouses” or “public grain warehouse operations,” which mean any grain elevator building or receptacle in which grain is held for longer than ten (10) days and includes, but is not limited to, all buildings, elevators, and warehouses consisting of one or more warehouse sections within the confines of a city, township, county, or state that are considered a single delivery point with the capability to receive, load out, weigh, and store grain (*Neb. Rev. Stat. § 2-4402*).

A farm or farm operation or a public grain warehouse or public grain warehouse operation shall not be found to be a public or private nuisance if the farm or farm operation or public grain warehouse or public grain warehouse operation existed before a change in the land use or occupancy of land in and about the locality of such farm or farm operation or public grain warehouse or public grain warehouse operation and before such change in land use or occupancy of land the farm or farm operation or public grain warehouse or public grain warehouse operation would not have been a nuisance. (*Neb. Rev. Stat. § 2-4403*)

Also, no suit shall be maintained against a farm or farm operation or public grain warehouse or public grain warehouse operation for public or private nuisance more than two years after the condition which is the subject matter of the suit reaches a level of offense sufficient to sustain a claim of nuisance.

Note the limitation provided in *Neb. Rev. Stat.* § 2-4403 shall not apply to any action brought to determine compliance with or to enforce a previous order of a court related to the same claim of nuisance or to any claims for additional damages or equitable relief available when a farm or farm operation or public grain warehouse or public grain warehouse operation fails to remediate a nuisance pursuant to such court order.

Designation of County Industrial Areas

To provide employment opportunities and to strengthen the tax base, counties often have goals to attract and retain manufacturing, processing, warehousing, research, and other similar enterprises. *Neb. Rev. Stat.* §§ 13-1111 to 13-1121 provide a tool for this purpose by authorizing counties to designate industrial areas. The designation of such areas places restrictions on nearby local municipalities regarding their annexation powers. The idea behind the statute is to allow a county to create an economic development area without the risk that the property will be annexed immediately by an adjacent municipality.

As used in the foregoing cited statutes unless the context otherwise requires: (1) Industrial area shall mean a tract of land used or reserved for the location of industry, except that such land may be used for agricultural purposes until the use is converted for the location of industry as set forth in *Neb. Rev. Stat.* §§ 13-1111 to 13-1120; and (2) industry shall mean (a) any enterprise whose primary function is to manufacture, process, assemble, or blend any agricultural, manufactured, mineral, or chemical products; (b) any enterprise that has as its primary function that of storing, warehousing, or distributing, and specifically excluding those operations whose primary function is to directly sell to the general public or store personal property; or (c) any enterprise whose primary function is research in connection with any of the foregoing, or primarily exists for the purpose of developing new products or new processes, or improving existing products or known processes. The owner or owners of any contiguous tract of real estate containing twenty (20) acres or more, no part of which is within the boundaries of any incorporated city or village, except cities of the metropolitan or primary class, may file or cause to be filed with the county clerk of the county in which the greater portion of such real estate is situated if situated in more than one county, an application requesting the county board of such county to designate such contiguous tract as an industrial area.

County Industrial Area Creation Process

Upon receipt of the application, the county clerk is to notify any municipal legislative bodies in whose area of zoning jurisdiction the tract is located. Such notice shall request approval or disapproval by the municipality within 30 days. If the city or village fails to respond within the 30-day period, any inaction is deemed as approval. A designation of a tract as an industrial area must be in compliance with zoning ordinances, subdivision regulations, and other ordinances of such city or village.

Upon filing the petition, the county clerk, or, if the real estate is situated in more than one county, the county clerk of the county having the greater portion of such real estate, shall designate and endorse thereon a day for the hearing and determination of the petition by the county board of such county which date shall not be less than thirty (30) days nor more than ninety (90) days subsequent to the filing of said petition. The county clerk shall publish a notice once each week three (3) successive weeks in some newspaper published and of general circulation in the county or counties in which the real estate is located and, if no newspaper is published in the county or counties, such notice shall be published in some newspaper having a general circulation therein. The notice shall state the time and place of hearing and the land affected thereby.

At the time fixed in the notice or on any adjourned day thereafter, any person interested may appear and be heard at a public hearing before the county board of the county in which the petition is filed. After such hearing, if the county board shall find from the evidence produced that (1) such tract is suitable for use as an industrial area, (2) it will be generally beneficial to the community, and (3) the owners of all the land embraced therein have consented to such designation, such board shall designate such tract as an industrial area and cause a certified copy of such order to be filed and recorded in the offices of the county assessor and the register of deeds of the county or counties in which the real estate is situated. If such tract is located in whole or in part within an unincorporated area over which any city or village exercises zoning control, the designation of such tract as an industrial area must first be approved by the municipal legislative body.

Upon designation of such tract as an industrial area by the county board of the county in which the petition is filed, such designated area shall thereupon be used or reserved for the location of industry. Such land may be used for agricultural purposes until the use is converted for the location of industry as set forth in *Neb. Rev. Stat.* §§ 13-1111 to 13-1120. If such tract has a taxable valuation of more than two hundred eighty-six thousand dollars

(\$286,000), it shall not be subject to inclusion within the boundaries of any incorporated city of the first or second class or village, except that such tract regardless of taxable valuation may be annexed if (1) it is located in a county with a population in excess of one hundred thousand (100,000) persons and the city or village did not approve the original designation of such tract as an industrial area pursuant to *Neb. Rev. Stat. § 13-1112*, (2) the annexation is stipulated in the terms and conditions agreed upon between the county and the city or village in any agreement entered into pursuant to *Neb. Rev. Stat. § 13-1112*, or (3) the owners of a majority in value of the property in such tract as shown upon the last preceding county assessment roll consent to such inclusion in writing or petition the city council or village board to annex such area.

During the period any area is designated as an industrial area as provided by *Neb. Rev. Stat. §§ 13-1111 to 13-1120*, the county board in which the greater area of real estate is located shall have exclusive jurisdiction for zoning and otherwise regulating the use of the industrial area in such a way as to confer upon the owners and users thereof the benefits of a designated tract to be held and reserved for industrial purposes only; *Provided*, such authority shall not be granted to the county board if the zoning of such designated area is within the jurisdiction of any city or village.

During the time any tract is designated as an industrial area, as provided by *Neb. Rev. Stat. §§ 13-1111 to 13-1120*, the owners of such designated area shall provide at their expense for water, electricity, sewer, and fire and police protection.

Boundary Changes and Dissolution

The boundaries of the designated industrial area may be changed to include other tracts of real estate containing not less than ten acres when contiguous to the area designated as an industrial area by filing a petition, publishing a notice thereof, and having a hearing on the petition in the same manner as when an original petition to designate a contiguous tract as an industrial area is filed. The county board of the county in which the petition was filed shall designate such additional tract in the industrial area to which the tract is to be attached if the board finds that the conditions of the provisions of *Neb. Rev. Stat. § 13-1114* are complied with. After such designation by such county board, such tract that is designated as part of the industrial area shall be governed by the provisions of *Neb. Rev. Stat. §§ 13-1111 to 13-1120* as though it was part of the original designated tract as an industrial area.

The boundaries of a designated industrial area may be changed to exclude one or more tracts, or parts of tracts, of real estate within the area upon the request of the owner or owners of the tracts, or

parts of tracts, proposed to be excluded, and by the owners filing a petition, publishing a notice thereof, and having a hearing on the petition in the same manner as when an original petition to designate a contiguous tract as an industrial area is filed. The county clerk of the county in which the tract proposed to be excluded is situated shall cause a copy of the published notice to be mailed by certified mail, within five days after the first publication of the notice, to each of the owners of record and other persons, if any, in possession of the real estate not proposed to be excluded from the industrial area, whose addresses are known to the county clerk. After the hearing, if the county board finds that the best interests of the community and the industrial area will be served by the exclusion of the tracts, the county board shall enter an order excluding the tracts, or parts of tracts, requested to be excluded. When a certified copy of such order is filed with the register of deeds and county assessor of the county or counties in which the real estate excluded is located, such tracts, or parts of tracts, shall no longer be an industrial area. (*Neb. Rev. Stat. § 13-1119*)

When the owner or owners of all of the contiguous tracts of real estate designated as an industrial area as provided by sections 13-1111 to 13-1118, shall file with the county board of the county in which such real estate is located, or the greater portion of such real estate, a petition requesting that the designation of the whole of the real estate as an industrial area be terminated, the county board shall enter an order determining that such real estate shall no longer be an industrial area. When a certified copy of such order is filed with the register of deeds and county assessor of the county or counties in which the real estate is located, such real estate shall no longer be an industrial area. (*Neb. Rev. Stat. § 13-1120*)

Review by County Board

Beginning in 1980 and every even-numbered year thereafter during the month of March, the appropriate county board may on its own volition, or shall at the request of the municipal governing body having zoning jurisdiction over the designated industrial tract, review any or all industrial areas in its jurisdiction. When the review is at the request of the municipal governing body having zoning jurisdiction over the designated industrial tract, the county board shall give notice of a hearing by registered or certified mail to the municipal governing body and the owners of the tract, if such owners are known, within ninety days prior to the hearing, and if the owners are not known or cannot be located, then by publishing a notice three successive weeks in some newspaper published and of general circulation in the county or counties in which the real estate is located, and if no newspaper is published

in the county, such notice shall be published in some newspaper having a general circulation in such county. The burden of proving that the tract continues to be used for industry as defined in *Neb. Rev. Stat. § 13-1111* shall be on the owners of the tract. If the owners of the tract do not attend the hearing, the county board shall remove the designation of the industrial area from such tract. If after the hearing the county board finds that the industrial area or a portion thereof is no longer suitable for industrial purposes, or is being used for nonindustrial enterprises, or has had no improvements or industrial buildings thereon within seven years from the date of original industrial designation, or is not in compliance with the zoning ordinances of any city or village exercising zoning control of it, or is not platted in accordance with such zoning ordinances or is no longer in compliance with the definition of industry as set forth in *Neb. Rev. Stat. § 13-1111*, such county board shall remove the designation of industrial area from such tract or portion of such tract. Any tract or portion of such tract used or reserved for industry prior to August 24, 1979, shall not be removed from the industrial area designation against the wishes of its owners as long as the use of such tract or portion continues to be in compliance with the definition of industry as set forth in *Neb. Rev. Stat. § 13-1111*. A certified copy of such order shall be filed with the register of deeds and the county assessor of the county or counties in which the real estate is located.

Eminent Domain

Eminent domain is the right of the government to take (acquire) private property for public use with payment of just compensation to the owner.

The Nebraska statutes contain broad enabling legislation for cities of the first or second classes, and villages – regardless of whether such city or village is operating under a home rule charter – to exercise eminent domain or condemnation powers (*Neb. Rev. Stat. §§ 19-701 to 19-710*). The majority of these statutes empower such cities or villages to condemn and acquire any waterworks, waterworks system, electric light plant, electric light and power plant, heating plant, street railway, or street railway system, located or operating within or partly within and partly without such city or village, together with real and personal property needed or useful in connection therewith, if the main part of such works, plant, or system be within such city or village and even though a franchise for the construction and operating of any such works, plant, or system may or may not have expired.

Statutory Granting of Eminent Domain Power to Cities and Villages

In these statutes there is also a broad grant of power to first class and second class cities and villages to condemn or purchase private property or school lands for the use of the city or village for streets, alleys, avenues, parks, parkways, boulevards, sanitary sewers, storm water sewers, public squares, public auditoriums, public fire stations, training facilities for firefighters, market places, public heating plants, power plants, gas works, electric light plants, wells, or waterworks, including mains, pipelines, and settling basins therefor, and to acquire outlets and the use of streams for sewage disposal. (*Neb. Rev. Stat.* § 19-709). Such broad grant of condemnation power also extends beyond the corporate limits of the city or village, except that such city or village may not condemn real estate which is within the zoning jurisdiction of any other city of the first or second class or village if the use for the property in question would not be permitted under the existing zoning ordinance of the other city or village unless the condemning city or village receives the prior approval over the acquisition and use by the second city or village.

General Condemnation Statutes

Such power shall also include the right to appropriate for any of the purposes described in this section any plant or works already constructed, or any part thereof, whether such plant or works lie wholly within the city or village or part within and part without the city or village or beyond the corporate limits of such city or village, including all real estate, buildings, machinery, pipes, mains, hydrants, basins, and reservoirs, and all appurtenances reasonably necessary thereto and a part thereof, or connected with such works or plants, and all franchises to own and operate the same, if any. The procedure to condemn property shall be exercised in the manner set forth in *Neb. Rev. Stat.* §§ 76-704 to 76-724, except as to property specifically excluded by *Neb. Rev. Stat.* § 76-703, and as to which *Neb. Rev. Stat.* §§ 19-701 to 19-707 or the Municipal Natural Gas System Condemnation Act is applicable.

Condemnation and Acquisition of Utility Systems

Relative to condemnation and acquisition of utility systems through eminent domain, the following are key points in these statutes (*Neb. Rev. Stat.* §§ 19-701 to 19-708):

- If a first or second class city, or village is acquiring a utility system and the utility company operates and provides more than one kind of service, the condemning city or village must acquire all of

the system and may not divide or segregate the existing system into separate components.

- The local authorities may submit the question of whether or not the utility system should be acquired to the electors of the city or village, or the citizens of such city or village may require the issue to be put on the ballot for the next election if such electors file a petition signed by legal voters equaling in number 15 percent of the votes cast at the last general election is filed in the city clerk's or village clerk's office at least sixty (60) days before the election at which the submission is presented.
- If a special or general election is held and the citizens vote to not acquire the utility system, the question shall not again be submitted to the voters until two (2) years has elapsed from and after the date of the findings of the Board of appraisers regarding the value of the property and the city's or village's rejection of such question.
- The question of whether to acquire a utility requires sixty percent (60%) of the vote in a special election and the majority of votes in a general election.
- If the voters elect to acquire the utility system, the city council or the village board of trustees is to certify the result to the Nebraska Supreme Court which, within thirty (30) days, shall appoint a Court of Condemnation consisting of three district court judges. The sole purpose of the Court of Condemnation is to determine the value of the utility system being acquired.
- The court of condemnation may adjourn from time to time, and it shall fix a time for the appearance before it of all such corporations or persons as the court may deem necessary to be made parties to such condemnation proceedings or which the city, the village, or the corporation or persons owning any such plant, system, or works may desire to have made a party to such proceedings. If such time of appearance shall occur after any proceedings have begun, they shall be reviewed by the court, as it may direct, to give all parties full opportunity to be heard. All corporations or persons, including all mortgagees, bondholders, trustees for bondholders, and leaseholders, or any other party or person claiming any interest in or lien upon any such works, plant, or system may be made parties to such condemnation proceedings, and shall be served with notice of such proceedings and the time and place of the meeting of the court of condemnation in the same manner and for such length of time as the service of a summons in cases begun in the district court of the state, either by personal service or service by publication, and actual personal service of notice within or

without the state shall supersede the necessity of notice by publication.

- Any court of condemnation appointed pursuant to section 19-702 shall have full power to summon and swear witnesses, take evidence, order the taking of depositions, and require the production of any and all books and papers deemed necessary for a full investigation and ascertainment of the value of any works, plant, or system to be acquired pursuant to section 19-701. Such court of condemnation shall have all the powers and perform all the duties of commissioners in the condemnation and ascertainment of the value and in making of an award of all property of any such works, plant, or system. The clerk of the district court, in the county where such city or village is located, shall act as the clerk thereof, as such court of condemnation may direct. The sheriff of any such county or any of his or her deputies shall attend upon such court of condemnation and shall have power to serve summons, subpoenas, and all other orders or papers ordered to be served by such court of condemnation. In case of vacancy in such court of condemnation, such vacancy shall be filled by the Supreme Court if the vacancy occurs while the court is in session, and if it occurs while the court is not in session, then by the Chief Justice of the Supreme Court.
- Once the value has been determined, the city or village has the right and power by an ordinance duly passed by its authorities, to elect to abandon the condemnation proceedings.
- If the condemnation proceedings are not abandoned, the utility system being acquired may appeal the finding of value to the district court by filing a bond for costs with the city clerk and, within 90 days after the filing of the bond, file a transcript of the proceedings with the district court.
- If such appeal is taken the city or village, upon tendering the amount of the value and award made by such court of condemnation, to the party owning any such plant, works, or system, shall, notwithstanding such appeal, have the right and power to take immediate possession of such plant, works, or system, and the city or village authorities, without vote of the people, shall have the power, if necessary, to issue and sell bonds of the city or village to provide funds to make such tender.

Uniform Eminent Domain Procedure

A uniform procedure is to be used for the acquisition of private property for a public purpose by the state and its political subdivisions and public utilities and common carriers which have

been granted the power of eminent domain (*Neb. Rev. Stat. §§ 25-2501 to 25-2506*). Property shall include any right or interest in real property, including but not limited to easements, but shall not include easements for public utilities located adjacent to and within ten feet of a public road right-of-way.

Entities Excluded from Uniform Procedure Requirements

Excluded from the purview of the statutory procedure are condemnations involving:

1. water transmission and distribution pipelines and common carrier pipelines and their appurtenances;
2. public utilities in cities of all classes and villages when acquiring property from 10 or fewer separate property owners or when the acquisition is within the corporate limits of any city or village;
3. Sanitary and improvement districts organized under sections 31-727 to 31-762 when acquiring easements for a proposed project involving the acquisition of rights or interests in ten or fewer separately owned tracts;
4. counties and municipalities which acquire property through the process of platting or subdivision process or for street or highway construction or improvements;
5. common carriers regulated by the Federal Railroad Administration of the U.S. Department of Transportation; or
6. the Nebraska Department of Transportation when acquiring property for highway construction.

Notification Requirements

When the state or any political subdivision proposes to acquire private property for public use, unless excluded by one of the above categories, the agency must first give notice of the proposed acquisition at least forty-five (45) days before beginning negotiations. The notice must be directed to the property owner and delivered personally or by certified mail to the address shown on the tax records. The notice shall:

1. describe the property to be acquired and the compensation to be given for such property;
2. include a statement of the authority for the acquisition;
3. include the nature of and the necessity and purpose for which the land shall be used;
4. include the title, right, or interest in the property to be acquired;

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5. specify the amount of property needed for the public purpose;
 6. include the reasons for selecting the proposed location or route; and
 7. state that if approval of any other agency is required, the condemner shall set forth which other agency's approval shall be necessary and, when the acquisition involves a highway, powerline, telephone line, or similar project, shall include a map showing the proposed route also shall be provided.

Public Hearing

After giving notice pursuant to *Neb. Rev. Stat. § 25-2503*, the agency shall hold a public hearing on the proposed project and acquisition at least thirty (30) days before beginning negotiations for such acquisition. Notice of such public hearing shall be published at least ten (10) days prior to such hearing in a legal newspaper published in and of general circulation in each county, if such a newspaper exists, or if no such newspaper is published in the county, notice shall be published in a newspaper which has been designated as the official legal notice publication by the county board and is of general circulation in the county or counties in which the hearing is to be held. When the proposed acquisition consists of property from more than one county, a hearing shall be held in the county seat of each county. When the proposed acquisition is countywide in scope, the hearing shall be held at the county seat. When the proposed acquisition involves a lesser area, the hearing shall be held in a location convenient of the property to be acquired. When the proposed acquisition involves property located outside this state, the hearing shall be held at the principal office of the agency.

At the hearing, the agency shall explain the nature of and necessity for the project for which it seeks to acquire property, the reasons for selecting the particular location or route, the right of each owner of property to be represented by an attorney and to negotiate and accept or reject the offer of damages which will be sustained by the proposed acquisition, and the right to require that such damages be determined pursuant to the procedures for acquisition by eminent domain. The agency shall hear and consider any objections from any person.

If the agency relocates the proposed project following such hearing and such relocation would require the acquisition of rights or interests in the property of more than ten additional owners of separately owned tracts to whom notice was not previously given, the agency shall give notice as provided in *Neb. Rev. Stat. § 25-2503* to such additional owners and shall hold a public hearing as provided in this section with reference solely to

that part of the project which has been relocated; *Provided*, that the time restrictions in *Neb. Rev. Stat. § 25-2503* and this section shall not be applicable to any such additional notice, hearing, or negotiations.

Notification and Hearing When There is a Willing Seller

Any agency acquiring property on a willing buyer-willing seller basis or by gift, devise, or any other form of voluntary transfer shall not be required to give the notice set forth in *Neb. Rev. Stat. § 25-2503* if such agency has no planned project involving acquisition of the specific property, or any part thereof, through the use of eminent domain or the agency has no authority to use eminent domain for acquisition of property, but such agency shall hold a public hearing at least thirty days prior to consummation of the transaction whereby such property is acquired which public hearing and public notice of the same shall comply, where applicable, with *Neb. Rev. Stat. § 25-2504*. A school district may conduct any hearing required by this section as a part of the agenda at a regular or special meeting of its school board or board of education at the board's usual meeting place or at such other location within the school district as the board may designate.

Procedures for Determining Damages

In addition to the procedures described above, state statutes specify additional procedures by which entities holding condemnation powers must exercise those powers (*Neb. Rev. Stat. §§ 76-701 to 76-726*), particularly with regard to determining damages. These statutes apply to any legal entity that has the power of eminent domain, including the state, governmental or political subdivisions of the state, and other entities such as common carriers or public utilities that by statute have been granted the power of eminent domain.

By way of procedure, the condemner must first negotiate with the property owner about acquiring the real property needed for a public purpose without resorting to legal action. If negotiations fail, the condemner may file a petition with the county court seeking to acquire the subject real estate. Upon filing of a petition, the county court is to appoint three (3) “disinterested freeholders” of the county, one of whom is to be a registered or certified general real estate appraiser. The appraisers then have the duty to inspect the property and to assess the damages. Damages are to include all compensable damages of the property owner, including reasonable severance damages and abstracting expenses. To determine the amount of severance damages, the appraisers are to consider the economic effect caused by the separation of part of the real estate

from the part remaining. The appraisers are to disregard any effect on the fair market value of the property to be caused by the public improvement.

Upon the determination of damages, the appraisers must file a report with the county court detailing the assessment of damages. The court shall transmit the report within ten (10) days of the return of appraisers and shall be by personal delivery or the sending by ordinary mail of such copy to the condemnee, to the attorney representing the condemnee at the inspection, view, and hearing, or to the officer or representative of a corporate condemnee so present.

Within sixty (60) days from the filing of such report, the condemner must deposit the dollar amount of the award made by the appraisers, or the condemnation will be deemed to have been abandoned. Upon depositing the award made by the appraisers, the condemner may obtain possession of the property. Thereafter, either party's dispute right is reduced to one of dollars. Each party has a right to appeal the damage award to the district court. If the property owner appeals the damage award and the amount of the final judgment is greater by fifteen percent (15%) than the amount of the award, or if appeal is taken by the condemner and the amount of the final judgment is not less than eighty-five percent (85%) of the award, or if appeal is taken by both parties and the final judgment is greater in any amount than the award, the court may in its discretion award to the property owner (condemnee) a reasonable sum for the fees of his or her attorney and for fees necessarily incurred for not more than two expert witnesses. On any appeal by the condemner, the condemner shall pay all court costs on appeal. If appeal is taken by the condemnee only and the final judgment is not equal to or greater than the award of the appraisers, the court may in its discretion award to the condemner the court costs incurred by the condemner, but not attorney or expert witness fees.

If an appeal is taken to the district court and the district court finds that the condemner did not negotiate in good faith with the property owner or there was no public purpose for taking the property involved, the court shall award to the condemnee a reasonable sum for the fees of his or her attorney and the condemner shall pay all court costs on appeal.

Relocation Assistance

In addition to the damages discussed above regarding eminent domain, oftentimes a property owner is entitled to additional payments under Nebraska's Relocation Assistance Act (*Neb. Rev. Stat. §§ 76- 1214 to 76-1242*). The purpose of the Relocation

Assistance Act is to establish a uniform policy and procedure for the fair and equitable treatment of persons displaced as a result of the publicly financed project. This procedure is applicable to all entities of the state and its political subdivisions and other entities which have been granted the power of eminent domain.

The Relocation Assistance Act requires certain payments to be made by the displacing agency to individuals and owners of businesses and farms in the event that all or part of their real estate is acquired for a publicly-financed project.

The Nebraska Department of Transportation is the lead agency in administering this Act and has the responsibility for establishing a schedule for the payments to be made to displaced persons which must be consistent with the regulations adopted by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

Nebraska's Relocation Assistance Act specifies (*Neb. Rev. Stat. § 76-1228*) that a displaced person shall be paid:

1. actual reasonable expenses for moving himself or herself and his or her family, business, farm operation, or other personal property;
2. actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency;
3. actual reasonable expenses in searching for a replacement business or farm; and
4. Actual reasonable expenses necessary to reestablish at its new site a displaced farm, nonprofit organization, or small business as defined by criteria established by the lead agency which are consistent with regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., as amended, but not to exceed ten thousand dollars (\$10,000).

The lead agency may adopt and promulgate rules and regulations establishing a reasonable maximum payment under subdivision (1)(c) of this section which are consistent with regulations adopted by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property

Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., as amended.

Expenses based upon the preceding four points or expenses based on a schedule established by the lead agency – or the Nebraska Department of Roads (*Neb. Rev. Stat.* §§ 76-1229 – 76-1236).

Unlawful Discrimination in Housing

The Nebraska Fair Housing Act (*Neb. Rev. Stat.* §§ 20-301 to 20-344) makes it unlawful to discriminate in the sale or rental of dwellings, or in the terms and conditions and privileges of the sale or rental of dwellings, against any person because of race, color, creed, religion, sex, sexual orientation, gender identity, marital status, familial status, national origin, age, disability/handicap, or military or veteran status. This Act states that it is the policy of the State of Nebraska that there shall be no discrimination in the acquisition, ownership, possession or enjoyment of housing throughout the State of Nebraska in accordance with Article 1, Section 25, of the Nebraska Constitution. (*Neb. Rev. Stat.* § 20-302)

Of the protected classes listed above, “military or veteran status” is the most recent addition and is designed to protect families with children. There is an exception for qualified elderly housing projects that are designed to have living units for persons age fifty-five (55) and older.

Further, (*Neb. Rev. Stat.* § 18-1724, last amended in 2025) provides notwithstanding any other provision of law, all cities and villages in this state shall have the power by ordinance to define, regulate, suppress, and prevent discrimination on the basis of race, color, creed, religion, ancestry, sex, marital status, national origin, familial status as defined in *Neb. Rev. Stat.* § 20-311, disability as defined in *Neb. Rev. Stat.* § 20-308.01, or age, or military or veteran status in employment, public accommodation, and housing and may provide for the enforcement of such ordinances by providing appropriate penalties for the violation thereof. It shall not be an unlawful employment practice to refuse employment based on a policy of not employing both spouses if such policy is equally applied to both sexes.

Interlocal Cooperation Act

The purpose of the Interlocal Cooperation Act (*Neb. Rev. Stat.* §§ 13-801 to 13-827) is to permit local governmental units to make the most efficient use of their taxing authority and other powers by

enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

Any power or powers, privileges, or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges, and authority conferred by the Interlocal Cooperation Act upon a public agency.

Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the Interlocal Cooperation Act. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force. (*Neb. Rev. Stat. § 13-804*)

A “public agency” is defined to mean any county, city, village, school district, or agency of the state government or of the United States, any drainage district, sanitary and improvement district, or other municipal corporation or political subdivision of this state, and any political subdivision of another state.

The governing body of the unit of local government need only authorize an Interlocal Cooperation Act agreement by ordinance, resolution, or otherwise, before entering into such agreement. Such an agreement must specify the following (*Neb. Rev. Stat. § 13-804*):

- (a) Its duration;
- (b) The general organization, composition, and nature of any separate legal or administrative entity created by the agreement together with the powers delegated to the entity;
- (c) Its purpose or purposes;
- (d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget;
- (e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(f) The manner of levying, collecting, and accounting for any tax authorized under sections (*Neb. Rev. Stat.* §§ 13-318 to 13-326 or 13-2813 to 13-2816; and

(g) Any other necessary and proper matters.

Entering into an agreement with another political subdivision does not relieve any public agency of responsibility imposed on it by law, except to the extent that the new entity created by the agreement actually and timely performs those responsibilities.

Once created, a joint entity may issue bonds to finance the public undertakings created by the new entity. These bonds may be tax-exempt bonds.

The provisions of the Interlocal Cooperation Act are intended to provide an additional and complete method for doing the things authorized by the Act and are to be construed as supplemental powers conferred upon political subdivisions by law (*Neb. Rev. Stat.* § 13-825). If the provisions of the Interlocal Cooperation Act are inconsistent with any provisions of other law, the provisions of the Interlocal Cooperation Act are to control.

Impact Fees

An impact fee is a special fee imposed on a development to help finance the cost of improvements or services that can be attributed to the development. While it is customary to require developers to pay for the cost of improvements necessitated by a development, such as roads, utilities and storm water management facilities on the site of the new development, impact fees extend the philosophy that developments should pay their own way. Impact fees, when permitted by state laws, can be imposed on developments for the costs of schools, parks, fire stations, libraries, and other such public facilities that may not be located directly on the development parcel.

Currently, there are no provisions in Nebraska state statutes that enable local governments to assess and collect impact fees. However, see (*Neb. Rev. Stat.* § 71-15,161 (16) which gives a local public housing agency upon its own initiative and without the approval of any other public agency or governing body, waive or reduce any charge or fee, including, but not limited to, any charge or fee relating to any permit, license, approval, or environmental or other impact fee, any contribution for capital improvements, and any charge or fee for any service or benefit provided by the public agency.

Private Land Use Controls/Restrictive and Protective Covenants

Most frequently, discussions about land use control necessarily involve public regulation by local governments. We have multiple layers of local government land use regulations, including those from cities, counties, and natural resources districts. All of these types of local governments regulate the way land is developed and used. However, it is prudent to keep in mind that oftentimes the private sector gets involved in the process of regulating land use.

Property owners need to be aware that use of their particular tract must comply with the public land use controls (i.e., zoning regulation and/or subdivision regulation) and private land use controls. Private land use controls take a variety of shapes, but most frequently are referred to as protective or restrictive covenants, easements, or deed restrictions.

Most people are familiar with the typical protective covenants that are filed by a developer in connection with the creation of a subdivision. These protective covenants range on a spectrum of instituting loose controls to a very tightly regulated development process. Many protective covenants institute architectural review processes which require the review and approval of building plans before the commencement of any construction. Some subdivisions want to ensure a similarity of development, while others want to ensure the exact opposite.

Protective covenants are also used in nonresidential developments for the creation of commercial centers and/or office parks. Oftentimes an association is created through which property owners pay some common area maintenance fee to maintain private roads, landscaping, etc. Many times, the individual parcels are burdened with “reciprocal easements” to allow the free flow of traffic and customers between commercial parcels.

Other than the requirement that protective covenants must not be discriminatory based upon a protected class of people, the government does not get involved with the formation or enforcement of protective covenants. Only the property owners or individuals who are subject to the protective covenant have standing to enforce the protective covenant that impacts them.

Since private land use controls are private contracts, local governments should not be involved in the process of their enforcement. Protective covenants should be thought of as private contracts between private parties in which the private parties, either individually or through a property owners association (homeowners association, a/k/a HOA), shoulder the burden for enforcement. Thus, when a local government is considering an

application for a zoning change, special permit, or subdivision approval, the local government should disregard the presence of any protective covenants.

It is important to remember that protective covenants usually can be amended through the consent of the property owners, and this often can be accomplished with less than 100 percent participation of the property owners, unless there is a provision to the contrary contained within the covenants. Therefore, local governments should not rely entirely upon protective covenants. Oftentimes, the private property owners will rely upon the zoning ordinance as a “safety net,” but require a higher degree of development controls through the implementation of protective covenants.

Chapter 11 – Management and Administration

■ Interpretation and Enforcement of Plans and Zoning

Who is Responsible for Interpretation and Enforcement?

The interpretation and enforcement of the comprehensive plan, zoning, and subdivision regulations is a major responsibility that is sometimes complicated, difficult, and frustrating.

Municipalities are not required by Nebraska statutes to specifically appoint a building inspector or zoning administrator to enforce zoning regulations. However, such a requirement is usually incorporated within the zoning ordinance adopted by a municipality.

County boards, however, are required to provide for the enforcement of zoning regulations and the issuance of permits for the erection, construction, reconstruction, alteration, repair, or conversion of any nonfarm building or structure within a zoned area (*Neb. Rev. Stat. § 23-114.04 (1)*). Subsection (2) provides that the county board may establish and appoint a county zoning administrator, who may also serve as a building inspector, and may fix his compensation or may authorize any administrative official of the county to assume the functions of such position in addition to his regular duties. The county board may also fix a reasonable schedule of fees for the issuance of permits under the provisions of *Neb. Rev. Stat. § 23-114.04 (1)*. The permits shall not be issued unless the plans of and for the proposed erection, construction, reconstruction, alteration, use or change of use, including sanitation, plumbing and sewage disposal, are filed in writing in the building inspector's office and such plans fully conform to all zoning regulations then in effect.

The county board has the alternative to authorize any administrative official of the county to assume the functions of the zoning administrator. This statute also requires that all subdivision plats outside the extraterritorial jurisdiction of a city or village (where the city or village is exercising planning in that jurisdiction) must receive the approval of the county planning commission.

It is not unusual for some smaller counties to find it necessary to assign these tasks of interpretation and enforcement to an individual who has other county job responsibilities. The additional task of zoning administration can become overwhelming at times and may affect the time the individual has to devote to their other responsibilities.

If possible, the zoning administrator should be an individual with the education and training of a professional planner trained for that responsibility. The professional planner should be employed with explicit responsibilities to implement the comprehensive plan and to administer the zoning and subdivision regulations.

Some municipalities and counties for budgetary and other reasons do not have the capacity to employ a full- time professional planner may consider entering into an interlocal agreement with one or more other governmental units to jointly employ a professional planner who can administer the planning and zoning programs for several communities and perhaps more than one county.

If a municipality or county finds that an interlocal agreement is undesirable, the zoning enforcement would need to be assigned to an individual who has other job responsibilities. The municipality or county may then wish to contact a professional planning consultant for assistance when needed.

Responsibilities and Duties of the Zoning Administrator

Overall Responsibilities

In both municipalities and counties, the zoning administrator, or whoever is charged with the responsibility, prepares all necessary permit application forms, reviews all permits for conformity with regulations, and issues permits where authorized within the regulations. It is important that the individual designated as the zoning administrator is thoroughly familiar with the comprehensive plan and the zoning and subdivision regulations and has the ability to administer and enforce the zoning and subdivision regulations in an unbiased manner, consistent with the purposes and intent of the plan and regulations.

The zoning administrator should receive, review, and process as expeditiously as possible all applications, including sketch plans, preliminary and final plats, and amendments to regulations related to planning and zoning.

A good zoning administrator understands the contents and purposes of the comprehensive plan, a thorough working knowledge of the zoning regulations and subdivision regulations, and a familiarity with the Nebraska planning and zoning statutes. The zoning administrator should know and be able to explain the reasons for the provisions of the regulations and be consistent in the interpretation and enforcement of those regulations. The administrator must be informed and current in planning and zoning matters. It is the responsibility of the administrator to protect the health, safety, and general welfare of all of the citizens within their

zoning jurisdiction through enforcement of the regulations and implementation of the comprehensive plan.

The zoning administrator is not granted the power to unilaterally allow the applicant latitude in deviating from the zoning or subdivision regulations. Exceptions, variations, and amendments to the regulations can be granted only by the local board of adjustment (variances) or the local governing body (amendments). However, in some instances, zoning and subdivision regulations may contain specific conditions for which an administrator may allow an exception or variance. For example, a zoning ordinance may allow the zoning administrator to approve a front or side yard variance for “grandfathered” dwellings of up to five percent of the stipulated setback distance in order to allow owners to obtain title insurance. This approach would significantly reduce the number of appeals cases that would have to be acted upon by the board of adjustment, thereby saving time and expense to the property owner and the local jurisdiction.

Developing and Maintaining Application Forms and Records

Most zoning codes state that applications for permits, variances, rezoning, conditional use permits, etc., are to be made on forms provided by the issuing jurisdiction. Each jurisdiction should have the necessary forms to be filled out by applicants. Included in Appendix 10 of this *Handbook* are examples of forms that can be modified to conform to local regulations and to best suit the needs of the zoning administrator. Without good forms, record keeping is very difficult and time consuming. Forms that systematically record requests and actions serve as essential records for the zoning administrator.

Providing Assistance in the Application Process

Generally, citizens are not familiar with zoning and subdivision regulations and usually need an explanation of the procedure for processing applications. It is important for the zoning administrator to maintain a good relationship with the applicant. To make sure that the application is completed fully and accurately, it is best if it can be reviewed in the presence of the applicant.

A completed application form with all information presented is particularly important for a request for rezoning, a variance, and a special/conditional use permit. These types of requests require review and action by either planning commission, the board of adjustment, city council, village board, or county board depending on what is applied for.

While reviewing the application with the applicant, the zoning administrator can determine if the application satisfies all of the requirements of the zoning and subdivision regulations. Should the request be incomplete or not satisfy the requirements of the regulations, it should be returned to the applicant indicating in writing the reasons why the application is incomplete or does not comply with regulations. To save the time of both the applicant and the review body, an application that is not complete or does not satisfy the requirements of the regulations should not be forwarded to the planning commission or board of adjustment for action. The zoning administrator should inform the applicant what the alternatives are for either appealing the zoning administrator's decision or for conforming to the regulations.

It must be understood that zoning regulations cannot anticipate every circumstance that may occur; therefore, state statutes and zoning regulations provide for the process for making exceptions through the board of adjustment.

Processing Applications

Assuming that the application meets all of the requirements, in the case of an appeal for a variance, the zoning administrator forwards the application and all information leading to the request to the board of adjustment, including any reasons for the denial of a permit. (Please review "Chapter 5: The Board of Adjustment" in this *Handbook*.) In most cases the zoning administrator is the individual who maintains the records of the board of adjustment, advertises and sets up the public hearings, advises the board, and does the follow-up after the meetings.

Notice Provisions

In the case of an amendment to the zoning or subdivision regulations, a rezoning application, or a special or conditional use permit, the zoning administrator is usually the person responsible for preparing and advertising the notice for the public hearing on the matter at least ten (10) days prior to the planning commission, board of adjustment, city council, village board of trustees, or county board meeting at which it will be heard. The legal notice should include the name and address of the applicant, the legal description of the property in question, the address of the property requiring action, an explanation of the request requiring the public hearing, and the time, date, and location of the public hearing. Written notices to landowners in the vicinity of the subject property are also sent, giving similar information. Nebraska statutes spell out the notification requirements for cities and villages (*Neb. Rev. Stat. § 19-905*) and for counties (*Neb. Rev. Stat. § 23-164*).

Notice for rezoning property within the jurisdiction of cities and villages requires a sign to be posted in a conspicuous place on or near the property on which action is pending (*Neb. Rev. Stat. § 19-905*). The sign must be easily visible from the street nearest the property. The sign containing information regarding the hearing and pending action must be no smaller than eighteen (18) inches in height and twenty-four (24) inches in width with black letters no less than 1 ½ inches in height printed on a yellow or white background. This sign must be placed on the property at least ten (10) days prior to the public hearing.

At the option of the city council or village board of trustees of the municipality, in place of the posted notice provided in this section, the owners or occupants of the real estate to be zoned or rezoned and all real estate located within three (300) hundred feet of the real estate to be zoned or rezoned may be personally served with a written notice thereof at least ten (10) days prior to the date of the hearing, if they can be served with such notice within the county where such real estate is located. When such notice cannot be served personally upon such owners or occupants in the county where such real estate is located, a written notice of such hearing shall be mailed to such owners or occupants addressed to their last-known addresses at least ten (10) days prior to such hearing. The provisions of *Neb. Rev. Stat. § 19-905* in reference to notice shall not apply (1) in the event of a proposed change in such regulations, restrictions, or boundaries throughout the entire area of an existing zoning district or of such municipality, or (2) in the event additional or different types of zoning districts are proposed, whether or not such additional or different districts are made applicable to areas, or parts of areas, already within a zoning district of the municipality, but only the requirements of *Neb. Rev. Stat. § 19-904* shall be applicable (Notice of the time and place of such hearing shall be given by publication thereof in a legal newspaper in or of general circulation in such municipality at least one time ten days prior to such hearing).

Counties are not required to post a sign on property under Nebraska statutes, although it may be a requirement stated in the county's zoning regulations.

At least 10 days prior to a planning commission meeting where a proposal for the adoption or amendment of zoning regulations, or the approval of a plat, or the replatting of any real estate, the zoning administrator must notify the board of education of each school district or if the city or village has received a written request for such notification from the military installation within its corporate limits or extraterritorial zoning jurisdiction in which the subject property is located. (*Neb. Rev. Stat. § 19-923*)

A copy of each application and action on a building permit should be submitted to the county assessor.

Conducting Field Inspections

It is good practice for a zoning administrator to become familiar with the site and its surroundings prior to action on an application and to make periodic inspections of progress following their approval. The inspections should be made immediately upon the beginning of construction and frequently thereafter so that necessary corrective action can be made before construction proceeds to a point where corrections may become difficult.

To aid in monitoring and documenting progress and problems on properties where official zoning actions have been taken, the zoning administrator should have a good cell phone or camera, measuring devices, inspection forms, “stop work” tags, an updated zoning map, and extra permit applications, ready to take when going out for inspections.

In the field, the zoning administrator should cross-check the construction or land use on the site with the application for a permit, the plans, or the conditional use permit. If the construction does not comply with the approved application and if the violator is not present, a “stop work” order should be issued.

On routine field trips or in response to a complaint, if a violation is detected, a verbal “stop work” order should be issued if the violator is present.

The zoning administrator should always treat citizens with respect and in a friendly manner. Most times a violator is not aware that what is being done is a violation. The zoning administrator should explain the problem to the violator and suggest what can be done to correct the situation. Should construction be under way without a building permit being issued, an application could be filled out and retroactive building permit issued on the spot if the construction meets all zoning requirements. Often codes provide for increased cost for a building permit if construction is stated before a building permit is issued.

To avoid any claim of trespassing by the zoning administrator, it is useful to have a statement on an application form indicating that, upon signing the application, the applicant is allowing the administrator, with or without others, to enter upon the property for the purpose of inspection.

Keeping Zoning and Subdivision Regulations and Zoning District Map Updated

It is usually the responsibility of the zoning administrator to keep the zoning regulations and zoning district map up to date. In many

cities and villages, the regulations and maps are kept in the office of the zoning administrator. In counties, the zoning district map must be filed with the county clerk (*Neb. Rev. Stat.* § 23-114.03). However, it should be the responsibility of the zoning administrator to make corrections to the regulations and the official zoning district map immediately upon their being amended. Regardless of where the official copy of the zoning and subdivision regulations and the official zoning district map are located, a current copy of the regulations and map should be kept in the possession of the zoning administrator.

Providing Staff Assistance to the Planning Commission

In Nebraska it is common for the zoning administrator to serve as staff to the planning commission. In many jurisdictions the zoning administrator is the only staff person, and his or her duties relative to the planning commission include preparing the agenda, keeping minutes, and maintaining planning commission records. The zoning administrator is responsible for making planning and zoning recommendations to the planning commission, board of adjustment, and governing body, as well as keeping them informed regarding planning matters. If at all possible, a secretary should be assigned or hired to take minutes at planning commission meetings. This allows the zoning administrator to concentrate on questions posed during the meeting by planning commission members and the public.

Providing General Assistance to Citizens on Planning Matters

The zoning administrator is the key person who is depended upon by the citizens for help and information regarding planning and zoning. The administrator is expected to be capable of accurately interpreting the regulations for citizens. Keeping informed is important. There are many sources of information and assistance available to the administrator:

1. Planning consultants can provide the expertise needed.
2. Administrators having a particular problem can call an associate in another jurisdiction who may have had experience in a similar situation.
3. Membership in one or more of the local or national planning and zoning organizations, such as the Nebraska Planning and Zoning Association, the Nebraska Chapter of the American Planning Association, the Nebraska Association of County Officials, among others, is useful.
4. The Internet seems to have an unlimited number of sources of information on planning and zoning but be careful to determine if the content is consistent with Nebraska statutes.

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5. Various departments of state government have knowledgeable resource persons and relevant printed materials.
 6. The Department of Community and Regional Planning within the College of Architecture at the University of Nebraska–Lincoln (phone: 402-472-9212) can be contacted to aid or referral to an appropriate resource.

Processing Complaints of Violation

In the enforcement of the regulations, the zoning administrator may receive written complaints of a violation from any person. The administrator should record such complaints, investigate, and take appropriate action. When a violation is discovered by the zoning administrator, the normal procedure is to notify the person responsible, in writing, indicating the nature of the violation and what needs to be done to correct the situation. Codes usually authorize the action to be taken by the administrator to ensure compliance or to prevent violations.

Pursuing Legal Action on Violations

When legal action is necessary, reports on the violation and records of attempts by the zoning administrator to correct the situation are forwarded by the administrator to the city or village attorney (for a municipality) or the county attorney (where the county has jurisdiction). The administrator needs to cooperate fully with the attorney when legal proceedings are instituted.

In municipalities a violation of such sections or of such ordinance or regulation is declared to be a misdemeanor, and the city council or village board of trustees may provide for the punishment thereof by fine not exceeding one hundred dollars (\$100) for any one offense, recoverable with costs, or by imprisonment in the county jail for a term not to exceed thirty (30) days. Each day such violation continues after notice of violation is given to the offender, which may be considered a separate offense. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of *Neb. Rev. Stat.* §§ 19-901 to 19-915 or of any ordinance or other regulation made under such sections, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

In counties the erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use of any building, structure, automobile trailer, or land in violation of *Neb. Rev. Stat.* §§ 23-114 to 23-114.04, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376 or of any regulation made by the county board under such sections shall be a misdemeanor. Any person, partnership, limited liability company, association, club, or corporation violating such sections or any regulation of the county board or erecting, constructing, reconstructing, altering, or converting any structure without having first obtained a permit shall be guilty of a Class III misdemeanor. Each day such violation continues after notice of violation has been given to the offender may be considered a separate offense. In addition to other remedies, the county board or the proper local authorities of the county, as well as any owner or owners of real estate within the district affected by the regulations, may institute any appropriate action or proceedings to prevent such unlawful construction, erection, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, or to prevent the illegal act, conduct, business, or use in or about such premises. Any taxpayer or taxpayers of the county may institute proceedings to compel specific performance by the proper official or officials of any duty imposed by such sections or in resolutions adopted pursuant to such sections.

Interpreting Zoning Regulations

There are many instances where a proposed use of land is not listed within any of the district regulations. It is the responsibility of the zoning administrator to make the decision of placing the unlisted use within the zoning district that contains uses that are most closely related to the unlisted use and where the purpose and intent of the zoning district can be maintained.

In the interpretation of the regulations, the administrator must rely heavily upon the definitions contained in the zoning and subdivision regulations and not necessarily upon the common usage definitions of the words in question. Definitions of words contained in the zoning and subdivision regulations apply strictly to the usage of the words within the regulations. When assistance is needed in the interpretation, the city or village attorney (for a municipality and its extraterritorial jurisdiction) or the county attorney (for areas in the county jurisdiction) may be consulted.

Any department, official, or public employee may be given the responsibility by the governing body to issue permits and enforce the zoning regulations. No permits can be issued in conflict with the regulations; such permits would become null and void if issued.

Unfortunately, sometimes a permit may be issued in error. If construction has commenced prior to the error being discovered, a “stop work” order should be issued immediately. The specific course of action beyond that point depends upon the seriousness of the situation. Zoning history and Nebraska case law has shown that a variety of actions have been taken by governing bodies, boards of adjustment, and courts to correct such errors or violations.

Nonconforming and Nonstandard Uses

In the Nebraska statutes the wording pertaining to nonconforming uses is practically identical for both a municipality and for a county, except for, perhaps, punctuation and the identification of the governing body.

Nonconforming Uses

Generally, zoning regulations refer to a nonconforming use as the use of a dwelling, building, lot, land or premises, or a part thereof, must have been both existing and lawful at the time the regulations were adopted, and which do not conform with the provisions of the regulations nor to any amendments. Nebraska statutes permit such nonconforming use to be continued in both in municipalities (*Neb. Rev. Stat. § 19-904.01*) and counties (*Neb. Rev. Stat. § 23-173.01*) and, even if the use does not conform with the current zoning regulations.

These statutory provisions for municipal and county zoning regulations deal solely with the “use” of the structure and not whether the building complies with any of the “area” requirements of the zoning regulations, such as setbacks, heights, or similar dimensional requirements. Those types of discrepancies are called “nonstandard” uses (see discussion below).

A nonconforming use may be extended throughout the same building if no structural alteration of the building is proposed or made for the purpose of extending the use. However, if the nonconforming use is abandoned for a period of 12 months, the right to continue the nonconforming use ceases, and thereafter any future use must comply with the zoning regulations. The municipal legislative body or the county board may prescribe standards by which a nonconforming use may be restored or reconstructed.

The municipal legislative body or the county board may provide for the termination of nonconforming uses either by specifying the period in which the nonconforming use shall cease or by providing a formula whereby the compulsory termination of the

nonconforming use is fixed to allow the property owner to recover or amortization of the investment over a period of time. However, in the case of a legally erected outdoor advertising sign, display, or device, no amortization schedule shall be used.

Therefore, if a lawful use exists on a site, but does not conform to the uses permitted by the existing zoning regulations, the use may continue as a non-conforming use. However, local governments may require ultimate compliance with the zoning regulations by requiring the non-conforming use to cease at some point in the future.

Nonstandard Uses

In addition to the nonconforming use of a tract of land or building or structure, there are places where an existing building or structure is located on the property and, other than land use, is otherwise in conflict with the adopted regulations. This may often be referred to as a “nonstandard use” in zoning regulations and may be defined in words similar to those defining nonconformity. However, a “non-standard use” consists of lots occupied by buildings or structures or uses which lawfully existed at the time of the effective date of the regulations, but which now fail to comply with such minimum requirements as land area, density, width, front yard, side yard, rear yard, height, unobstructed open space, or parking for the district in which they are located, even though the use of the premises conforms to the permitted uses within the district.

For example, it is common to find in older sections of a community that new zoning regulations may require a minimum side yard of seven (7) feet, whereas a great number of existing dwellings in the neighborhood may be closer than 5 feet to the side lot line. Although the “use” of the structure conforms to the use allowed in the zoning district, the structure does not conform to the side yard setback requirements. This type of nonstandard use also exists where the minimum lot size has been established at a specific square footage, such as 7,000 square feet, and many existing dwellings are located on lots that have less area.

In most communities where zoning regulations are adopted, it is more common to find more “nonstandard uses” than “nonconforming uses.” Many buildings and structures exist that encroach into the newly established yard and area requirements. This can become a problem when someone wishes to expand or to obtain title insurance. When this occurs, a board of adjustment action may be necessary to determine whether the expansion is consistent with the intent of the zoning regulations in order to grant

a variance. As mentioned previously, some zoning codes give the zoning administrator authority to administratively deal with these issues under certain circumstances.

Adoption and Enforcement of Building and Other Codes

Municipalities and counties are empowered by state statutes (*Neb. Rev. Stat. § 19-922* for municipalities and *Neb. Rev. Stat. § 23-172* for counties) to adopt the provisions of a building code, plumbing code, electrical code, fire prevention code, or any other code relating to building or relating to the erection, construction, reconstruction, alteration, repair, conversion, maintenance, placing, or using of any building, structure, automobile trailer, house trailer, or cabin trailer.

The legislative body of the municipality or county may adopt any standard code, or portion thereof by ordinance or resolution, which contains rules or regulations printed as a code in book or pamphlet form by reference to such code or portions thereof without setting forth in the resolution the conditions, provisions, limitations, or terms of such code. When such code or any such standard code or portion thereof is incorporated by reference into such resolution, it shall have the same force and effect as though it had been written in its entirety in such ordinance or resolution without further or additional publication.

Prior to its adoption, at least one copy of the standard code must be placed on file for use and examination by the public in the office of the clerk of the municipality or county. The adoption of a standard code shall be construed to incorporate amendments to that standard code that may be made from time to time; however, one copy of the current standard code must be kept on file with the municipal or county clerk.

If a county has not adopted a plumbing code by resolution, state law specifies (*Neb. Rev. Stat. § 23-172*) that the American National Standards Institute Uniform Plumbing Code 2018, shall apply to all buildings in the county except those located within the boundaries and extraterritorial zoning jurisdiction of incorporated municipalities. However, this law further specifies that the county is not obligated to inspect plumbing work done within its jurisdiction to determine compliance with the plumbing code.

Violations of Zoning Regulations and Building and Other Codes

Violations of the provisions of zoning regulations, building codes, and other related codes in municipalities and counties are considered misdemeanors.

As previously stated, state statutes provide that each day that violation continues after notice of violation has been given to the offender may be considered a separate offense. If a building is constructed or if land is used in violation of the building codes and zoning regulations, the local authorities may institute legal action to prevent the unlawful construction or to abate any violation.

The state law pertaining to zoning and building code violations in counties (*Neb. Rev. Stat. § 23-114.05*) states that any party who violates the building codes or zoning regulations or fails to obtain a permit for construction is guilty of a Class III misdemeanor.

The state law pertaining to violations of zoning regulations in municipalities (*Neb. Rev. Stat. § 19-913*) specifies that such a violation is a misdemeanor that may be punished by a fine not exceeding \$100 for any one offense or by imprisonment in the county jail for a term not to exceed 30 days. While state statute provides for imprisonment, most jurisdictions rarely, except in special cases, seek fines instead of imprisonment. The reason being is that a person charged with the violation is entitled to a Court-appointed attorney to represent them if they cannot afford their own attorney. Court-appointed attorneys can add to the cost of the enforcement by the municipality or county.

If a local zoning ordinance is more restrictive than any other statute, local ordinance, or regulation, the local zoning ordinance shall control. However, if any other statute or local ordinance is more restrictive than the local zoning ordinance, the provision of such statute or local ordinance or regulation shall govern. In other words, the most restrictive land use regulation as it relates to area requirements shall control.

Notification of School Districts

Municipalities are required by state statute (*Neb. Rev. Stat. § 19-923*) to provide notice to any school district in which any real estate affected by a zoning ordinance adoption or amendment, platting, or replating is situated. The intent of this requirement is to provide for orderly school planning and development. The municipality is to notify the appropriate school board(s) of the next regular meeting of the planning commission at which the proposal is to be heard. The proposal must be submitted to the board(s) of education at least 10 days prior to the planning commission meeting. Administrative plats approved by the zoning administrator or other agent of a municipality are not required to be noticed to the local school district(s).

Impacts of Planning and Zoning on Land Values

Planning and zoning officials in the State of Nebraska must recognize that many of the decisions made by local governments, whether by planning commissions, city councils, or county boards, can have dramatic effects on land values. Whenever a zoning map is adopted, segregating land into separate zoning districts, there can be substantial variation in the resulting values of land. Obviously, the values are very dependent upon demand for uses of land, but all other things being equal, change in zoning classification may have a significant effect on land prices. For example, if agricultural land outside the corporate boundaries of a city is suddenly designated a residential zone, the property owner may see the value of such land increase, sometimes dramatically.

Greenbelt Law

To recognize the relationship between zoning and land value and to help curb the pressures placed on owners of agricultural land located near the corporate limits of municipalities, the Nebraska legislature has enacted a series of statutes (*Neb. Rev. Stat. §§ 77-1343 to 77-1348*) commonly referred to as the “Greenbelt Law.” These statutes allow owners of agricultural land in urban fringe areas to apply for and receive special tax valuation treatment.

Agricultural land and horticultural land as defined in *Neb. Rev. Stat. § 77-1359* is a parcel of land, excluding land associated with a building or enclosed structure located on the parcel, which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land.

Agricultural land and horticultural land does not include land used for commercial purposes that are not agricultural or horticultural purposes, such as land used for a solar farm or wind farm;

The Greenbelt Law provides a special valuation for qualified agricultural or horticultural land so that the current assessed valuation of the land for property tax purposes is the value that the land would have without regard to the value the land would have for other purposes or uses. As a result, farmers who are located on the fringe of a governmental subdivision will pay taxes based on the agricultural value and not on a potential development value. This valuation treatment creates a level playing field among the farms located within urban fringe areas as well as with the farms located in entirely rural areas.

Landowners who want to avail themselves of the land valuation protection provided by the Greenbelt Law must make application to the county assessor on or before June 30 of the first year in which such valuation is requested (*Neb. Rev. Stat. § 77-1345*). The application shall be made upon forms prescribed by the Tax Commissioner and available from the county assessor and shall include such information as may reasonably be required to determine the eligibility of the applicant and the land. The assessor shall not approve an application signed by a person whose authority to sign is not a matter of public record in the county unless there is filed with the assessor a true copy of the deed, contract of sale, power of attorney, lease, or other appropriate instrument evidencing the signer's qualification.

Upon approval of an application, the county assessor shall value the land as provided in *Neb. Rev. Stat. § 77-1344* until the land becomes disqualified for such valuation by:

- (1) Written notification by the applicant or his or her successor in interest to the county assessor to remove such special valuation;
- (2) Inclusion of the land within the corporate boundaries of any sanitary and improvement district, city, or village, except that this subdivision shall not apply on or after January 1, 2023;
- (3) The land no longer qualifying as agricultural or horticultural land; or
- (4) For land that consists of less than five contiguous acres, the owner or lessee of the land not providing an Internal Revenue Service Schedule F or other suitable tax document reporting a profit or loss from farming for two out of the last three years. (*Neb. Rev. Stat. § 77-1347*)

By statute, county assessors are to determine the value of real estate as of January 1 each year, based upon its fair market value. Although the term “fair market value” is a term of art, to most appraisers and many courts this term is defined as the price paid by a willing buyer who is not obligated to buy from a willing seller who is not obligated to sell. In such calculation, one factor that must be considered is any governmental restrictions imposed on the land, including the land uses that are permitted under the applicable zoning ordinance. A change in zoning classification for a property would require the property to be re-valued at its fair market value, based upon the new zoning classification.

Oftentimes a farmer is put at a competitive disadvantage if he or she wishes to continue farming land located at the fringe of a city because of higher taxes that must be paid on land that has been

rezoned for urban-oriented uses. With local governments having extraterritorial jurisdiction over land use planning and zoning, they must be very careful to avoid exerting undue development pressure on property located at the “fringe” of the jurisdiction.

Effective Dates of Enacted Ordinances

All ordinances adopted by voters of a first or second class city or village by initiative referendum shall become immediately effective. Otherwise, ordinances adopted by the governing body of such city or village without submission to the voters shall go into effect 15 days after passage of the ordinance (*Neb. Rev. Stat.* § 19-307).

Public Meetings and Hearings

Virtually all governing bodies (public bodies) in the state, including city councils, village board of trustees, county boards, planning commissions, and boards of adjustment are subject to the provisions of Nebraska’s open public meetings law (*Neb. Rev. Stat.* §§ 84-1407 to 84-1414). The intent of these statutes is to ensure that the “formation of public policy is public business and may not be conducted in secret.” All meetings of public bodies are to be open to the public to permit citizens to exercise their democratic privilege of attending and speaking at meetings where public business is being conducted. These statutes are applicable to all regular, special, and called meetings, whether they are formal or informal, intended for the purpose of briefing, discussion of public business, formation of policy, or taking any other action of the public body. Public body does not include (1) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body, except that all meetings of any subcommittee established under *Neb. Rev. Stat.* § 81-15,175 are subject to the Open Meetings Act, (2) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders, and (3) the Judicial Resources Commission or subcommittees or subgroups of the commission;

These statutes are not applicable to chance meetings or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened, if there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.

The public meetings statutes recognize that public bodies may from time to time be required to discuss sensitive matters that require “closed sessions.” Closed sessions may be held for the discussion of items necessary to protect the public interest or to prevent needless injury to the reputation of an individual. Closed sessions may be held for, but shall not be limited to, such reasons as:

1. discussion of strategy regarding collective bargaining matters, real estate purchases, or litigation;
2. discussion of deployment of security personnel or devices;
3. investigation involving criminal misconduct; or
4. evaluation of job performance if the person being evaluated has not requested a public meeting.

Pursuant to *Neb. Rev. Stat.* § 84-1410, the vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the motion to close as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or

formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under *Neb. Rev. Stat.* § 84-1410 (1)(a).

The public body pursuant to *Neb. Rev. Stat.* § 84-1411 is required to give advanced notice of the time and place of their public meeting, and the notice shall:

- (1) Be published in (i) a newspaper of general circulation within the public body's jurisdiction that is finalized for printing prior to the time and date of the meeting, (ii) posting on such newspaper's website, if available, and (iii) posting on a statewide website, if available, established and maintained as a repository for such notices by a majority of Nebraska newspapers. Such notice shall be placed in the newspaper and on the websites by the newspaper; or (i) posting to the

newspaper's website, if available, and (ii) posting to a statewide website, if available, established and maintained as a repository for such notices by a majority of Nebraska newspapers if no edition of a newspaper of general circulation within the public body's jurisdiction is to be finalized for printing prior to the time and date of the meeting. Such notice shall be placed in the newspaper and on the websites by the newspaper.

- (2) In the case of the governing body of a city of the second class or village, any advisory committee of such governing body, or the governing body of a rural or suburban fire protection district, such notice shall be given by (i) publication in a newspaper of general circulation within the public body's jurisdiction that is finalized for printing prior to the time and date of the meeting, (ii) posting on such newspaper's website, if available, and (iii) posting on a statewide website, if available, established and maintained as a repository for such notices by a majority of Nebraska newspapers. Such notice shall be placed in the newspaper and on the websites by the newspaper; or posting written notice in three conspicuous public places in such city, village, or district. Such notice shall be posted by the public body in the same three places for each meeting.
- (3) In the case of a public body not described in subsection (1) or (2) above, such notice shall be given by a method designated by the public body.
- (4) In addition to a method of notice required by subsection (1) or (2) above, such notice may also be provided by any other appropriate method designated by such public body or such advisory committee.
- (5) Each public body shall record the methods and dates of such notice in its minutes.
- (6) Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (i) twenty-four hours before the scheduled commencement of the meeting or (ii) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the

municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

In addition, *Neb. Rev. Stat. § 84-1411 (2) through (9)* provides which entities may hold a meeting by virtual conferencing and the requirements for doing so. Currently the Nebraska statutes do not provide for municipal or county public bodies to hold meetings by virtual conferencing, except in case of an emergency as declared by the Governor. The COVID 19 pandemic resulted in this provision being passed by the Legislature.

The public has the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to *Neb. Rev. Stat. § 1410*, and may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, a camera, video equipment, or any other means of pictorial or sonic reproduction or in writing. Except for closed sessions called pursuant to section 84-1410, a public body shall allow members of the public an opportunity to speak at each meeting. (*Neb. Rev. Stat. § 84-1412 (1)*)

Public bodies may make or enforce reasonable rules and regulations regarding the conduct of people attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings, including meetings held by virtual conferencing. (*Neb. Rev. Stat. § 84-1412 (2)*)

No public body shall require members of the public to identify themselves as a condition for admission to the meeting nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. The body shall require any member of the public desiring to address the body to identify himself or herself, including an address and the name of any organization represented by such person unless the address requirement is waived to protect the security of the individual. (*Neb. Rev. Stat. § 84-1412 (3)*)

No public body shall, for the purpose of circumventing the Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience; however, no public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place which is located in this state. (*Neb. Rev. Stat. § 84-1412 (4) and (5)*)

Each public body shall, upon request, make a reasonable effort to accommodate the public's right to hear the discussion and testimony presented at a meeting. (*Neb. Rev. Stat. § 84-1412 (7)*)

Public bodies shall make available at the meeting or the instate location for virtual conferencing as required by subdivision (6)(c) of this section, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting, either in paper or electronic form. Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information. (*Neb. Rev. Stat.* § 84-1412 (8))

(*Neb. Rev. Stat.* § 84-1412 (6) provides the criteria for a public body holding a meeting outside of Nebraska.

Neb. Rev. Stat. § 84-1413 provides:

- (1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.
- (2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a public body which utilizes an electronic voting device which allows the yeas and nays of each member of such public body to be readily seen by the public.
- (3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.
- (4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.
- (5) Minutes shall be written or kept as an electronic record and shall be available for inspection within ten (10) working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten (10) working days if the employee responsible for writing or keeping the minutes is absent due to a serious illness or emergency.
- (6) Beginning July 31, 2022, the city council of a city of the first class, the county board of a county with a population greater than twenty-five thousand inhabitants, and the school board of a school district shall make available on such entity's public website the agenda and minutes of any meeting of the

governing body. The agenda shall be placed on the website at least twenty-four hours before the meeting of the governing body. Minutes shall be placed on the website at such time as the minutes are available for inspection as provided in subsection (5) above. This information shall be available on the public website for at least six months.

Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in violation of the Open Meetings Act shall be declared void by the district court if the suit is commenced within one hundred twenty (120) days of the meeting of the public body at which the alleged violation occurred. Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in substantial violation of the Open Meetings Act shall be voidable by the district court if the suit is commenced more than one hundred twenty (120) days after but within one (1) year of the meeting of the public body in which the alleged violation occurred. A suit to void any final action shall be commenced within one (1) year of the action. (*Neb. Rev. Stat. § 84-1414 (1)*)

The Attorney General and the county attorney of the county in which the public body ordinarily meets shall enforce the Open Meetings Act. (*Neb. Rev. Stat. § 84-1414 (2)*)

Any citizen of this state may commence a suit in the district court of the county in which the public body ordinarily meets or in which the plaintiff resides for the purpose of requiring compliance with or preventing violations of the Open Meetings Act, for the purpose of declaring an action of a public body void, or for the purpose of determining the applicability of the act to discussions or decisions of the public body. It shall not be a defense that the citizen attended the meeting and failed to object at such time. The court may order payment of reasonable attorney's fees and court costs to a

successful plaintiff in a suit brought under this section. (*Neb. Rev. Stat. § 84-1414 (3)*)

Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense. (*Neb. Rev. Stat. § 84-1414 (4)*)

Personal Liability

All individuals involved with local government, either as zoning administrators or members of a planning commission, city council, or county board, must be cognizant of the fact that their actions

can lead not only to liability for the municipal corporation, but also under certain circumstances, personal liability for such individuals. Property owners who are aggrieved by decisions made by a zoning administrator or a public body may seek judicial relief in state court and, in some circumstances, federal court. Subject to such aggrieved individuals showing that they have “standing,” meaning that they are directly affected by land use regulations, and assuming that they have “exhausted their administrative remedies” discussed below, property owners oftentimes will seek either injunctive relief, preventing the local government from enforcing the ordinance, or seek the remedy of inverse condemnation by which they seek to recover the value of the property interest “taken” by the action of the local governmental body. (See Chapter 14 of this *Handbook*.)

Local governments also face potential liability under a federal statute (42 U.S.C. § 1983), which was passed as a part of the Civil Rights Act of 1964. If a property owner can allege and prove that the property owner was deprived of any rights, privileges, or immunities secured by the Constitution or law by a person who acts pursuant to a statute, ordinance, or regulation (“under the color of law”), that landowner may seek remedy under this statute. The U.S. Supreme Court has held that property rights are one of the “rights” protected by section 1983.

Local officials are protected from section 1983 liability by “immunities” that are implied under common law. The statute itself does not provide for immunity for local officials, but courts have held that land use agencies and officials are absolutely immune from liability under section 1983 if they are exercising “judicial functions.” Absent the exercise of a judicial function, local agencies and officials are entitled to a “qualified good faith immunity.” Local officials are immune from section 1983 liability based upon an objective good-faith test which has been defined as follows:

Government officials performing discretionary functions generally are shielded from liability insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

Zoning administrators and planning commission members should be aware that the governing body, be it a city council or a county, is authorized to provide members and employees of the political subdivision with personal liability insurance coverage insuring against any liability or claim arising by reason of any act or omission relating to the performance, attempted performance, or failure of performance of official duties as such member or employee. The governing board is authorized to pay the premium

and expense of such insurance from the general fund of the political subdivision. Thus, all individuals involved, be they staff members, zoning administrators, or members of the planning commission, board of adjustment, city council, or county board,

Exhaustion of Administrative Remedies

should make sure that their liability coverage covers them in their efforts for land use control and regulation.

A landowner typically cannot challenge a zoning ordinance or restriction in state court unless that landowner has exhausted all administrative remedies. The courts have adopted this “exhaustion doctrine” to maintain an appropriate distinction between the judicial and executive branches of government. Courts require landowners to exhaust any administrative remedies because they want to give the administrative agency an opportunity to grant administrative relief, thus avoiding a court challenge. The exhaustion doctrine in zoning also reflects a judicial belief that zoning agencies, not the courts, are the proper forum in which to resolve questions concerning the applicability of zoning ordinances.

A failure to exhaust administrative remedies is jurisdictional in many states, and local governments can raise it as an affirmative defense. For example, if a property owner challenges a zoning ordinance in state court because the zoning ordinance would require the property owner’s land to receive a special permit for a particular use, but the property owner fails to even apply for the special permit, that property owner has not exhausted any administrative remedy.

The exhaustion doctrine does not require a property owner to seek legislative relief through an amendment to the zoning ordinance. The type of administrative remedies that must be pursued before a lawsuit can be filed include, under the appropriate circumstances, an application for a special permit, variance, or an appeal to a board of adjustment or any additional remedies that are available under the zoning ordinance, or enabling legislation passed by the state. Therefore, local government should be alert to the fact that if a landowner attempts to bypass administrative procedures and file a lawsuit, the local government could raise failure of the landowner to pursue his or her administrative remedies as an affirmative defense.

Part V. – A Broader Scope of Planning

Chapter 12 – Additional Directions and Opportunities

■ Introduction

The comprehensive plan and land development ordinances and regulations form the basic foundations of the planning process. Each municipality and county should have a comprehensive plan which guides land use policy and major public sector investments. Land development ordinances and regulations implement these overall land use policies and regulate development in the context of both community-wide and individual concerns. Increasingly, municipalities and counties are becoming more concerned about the planning of specific areas or systems that can have a major impact on the character and well-being of the municipality or county. These may include the character of a major highway corridor, the economic health of a central business district (downtown), the reuse of an abandoned railroad corridor, or the character of the countryside.

This chapter addresses several specific levels of planning, as well as statutory powers and protections, by which a municipality or county can address special opportunities and concerns and develop and implement plans that take advantage of these opportunities. It considers such issues as:

- specific area planning;
- historic preservation;
- downtown and business district planning;
- corridor planning;
- greenway planning;
- conservation development; and
- pre-development planning.

■ Specific Area Plans

Many municipalities and counties (and Nebraska state law) consider a comprehensive plan to include a land use map, a transportation or major streets plan, and a program for infrastructure and public facility maintenance and investment.

However, the comprehensive plan should also be a mechanism by which communities and counties assess their strategic resources

and opportunities. These special resources help make one town or county different from another or may represent special opportunities for growth. Examples of these features often include:

- downtown business districts;
- areas with concentrations of historic homes or buildings;
- places that help tell the story of the community;
- streets that have special characteristics, such as mature trees; wide parkway setbacks;
- important community and civic buildings;
- natural features, including drainageways, creeks, rivers; wetlands, wooded areas, hills, and other unusual features; and
- major road or railroad corridors.

The comprehensive plan can define these special resources and consider ways of enhancing them for the overall benefit of the municipality or county. Often, this means defining them as special opportunity areas which may require development of a specific plan.

A specific area plan looks at one area or group of areas in much greater detail than a comprehensive plan. It tends to look at areas from a building or street scale and may include an overall design or development concept for the area. In addition, specific area plans usually are action-oriented, leading to defined strategies or projects that can accomplish their goals.

A specific area plan might usually include:

- a description of the area and its context;
- a definition of the development opportunities and goals for the area;
- an assessment of current conditions, including land use, buildings, public facilities, infrastructure, traffic, and distinguishing physical characteristics;
- a plan of what the area should look like in the future; and
- an implementation program, outlining what should be done to realize the future plan for the area.

Redevelopment plans, which are required before a community can use tax increment financing to assist a project, are a type of specific area plan. Corridor plans, preservation district plans, and other documents that lead to a program of action also fall within this subset of planning practice. The following discussion

Historic Preservation

Most Nebraska communities and counties have special areas that tell their story or include buildings or features that are especially significant to local, regional, state, or even national history. These features make each community and county in the state unique. In many cases, they can also be important to economic development and visitor attraction programs. Studies have shown that the history of communities, or viewing historical attractions, are of great interest to potential visitors. Numerous communities in the state have used history to important economic advantage.

Some cities in the state have completed historic preservation plans that have been incorporated into their comprehensive community plans. A historic preservation component of a comprehensive plan typically would include:

- a brief history of the community;
- a review of previous preservation or historic rehabilitation efforts;
- the goals and reasons for establishing a preservation program;
- an inventory of important buildings and sites in the community, including delineation of concentrations of historically or architecturally significant buildings that potentially could be historic districts or that are related to one another by historical or architectural themes;
- recommended implementation strategies to protect and enhance important community features.

As with most plans, the definition of goals is especially important. It is important to determine the nature of the job before selecting the proper tools. However, historic preservation includes a number of tools that can respond to specific needs. Some of these tools are discussed in the following paragraphs.

Nebraska Historic Buildings Survey

The Nebraska State Historic Preservation Office in the Nebraska State Historical Society coordinates an ongoing statewide project known as the Nebraska Historic Buildings Survey (NeHBS). This project is aimed at identifying and evaluating historic properties across Nebraska, contributing to preservation efforts and the National Register of Historic Places.

The primary goal of the Nebraska Historic Building Survey is to identify historic buildings and structures that are eligible for

the National Register of Historic Places. This survey helps communities make informed decisions regarding historic preservation and planning. It documents properties that reflect Nebraska's rich architectural and historical heritage, with over 69,000 properties currently recorded.

County-by-County Approach: The survey is conducted on a county-by-county basis, allowing for comprehensive coverage of both urban and rural areas. The survey includes reconnaissance-level assessments where properties are photographed and documented.

Criteria for Evaluation: Properties must generally be at least 50 years old and possess historical or architectural significance to qualify for the National Register. The survey evaluates properties based on their integrity and significance in relation to historical events, architectural styles, or notable individuals.

Findings and Impact: The data collected from the survey is compiled into reports that are made available to the public. These reports can be used to create historic preservation plans and participate in state preservation programs. The survey not only aids in recognizing significant buildings but also promotes local awareness and appreciation of Nebraska's historical resources.

Resources and Further Information: For more detailed information about specific surveys, methodologies, and findings, you can access the following resources:

- Nebraska State Historical Society - Historic Preservation Survey. The survey can be found at the following URL:
(<https://history.nebraska.gov/historic-perservation/survey/>)
- Nebraska Historic Buildings Survey Report – This ongoing effort is crucial for preserving Nebraska's architectural heritage and ensuring that significant historical sites are recognized and protected for future generations. The survey completed in August 2006 can be found at the following URL
(<https://govdocs.nebraska.gov/epubs/h6000/b009.0094-2006.pdf>)

Further information about this program or about historic resources in any Nebraska county or community, contact:

Nebraska State Historic Preservation Office Nebraska State
Historical Society
1500 R Street
Lincoln, NE 68508
Phone: 402-471-0501
E-mail: hn.hp@nebraska.gov
Web site: <https://history.nebraska.gov>

National Register of Historic Places

The National Register is our nation's official list of significant historic properties. Created by the National Historic Preservation Act of 1966, the National Register includes buildings, structures, districts, objects, and sites that are significant in our history or prehistory. These properties may reflect a historically significant pattern, event, person, architectural style, or archaeological site. National Register properties may be significant at the local, state, or national levels. Local properties that retain their physical integrity and convey local historic significance may also be listed in the National Register. It is important to note what listing a property in the National Register means or, perhaps more importantly, what it does not mean.

The National Register does not:

- Restrict, in any way, a private property owner's ability to alter, manage, or dispose of a property.
- Require that properties be maintained, repaired, or restored.
- Invoke special zoning or local landmark designation. Allow the listing of an individual private property over an owner's objection.
- Allow the listing of a historic district over a majority of property owners' objections.
- Require public access to private property.

Listing a property in the National Register does:

- Provide prestigious recognition to significant properties.
- Encourage the preservation of historic properties.
- Provide information about historic properties for local and statewide planning purposes.
- Help promote community development, tourism, and economic development.
- Provide basic eligibility for financial incentives, when available.

The Nebraska Historic Buildings Survey (described above) has revealed properties in Nebraska that are worthy and have been subsequently listed in the National Register. In Nebraska, nominations of properties for listing on the National Register of Historic Places are processed by the Nebraska State Historic Preservation Office in the Nebraska State Historical Society before being sent to the National Park Service for final review and action. Further information about the National Register may be obtained from the Nebraska State Historic Preservation Office.

Preservation Tax Credits

The costs of rehabilitating an income-producing historic property may qualify for federal income tax credits if the historic property is on the National Register of Historic Places or if it contributes to the significance of a National Register historic district or a locally designated historic landmark district. Such tax credits have been available since the provision was added to the Internal Revenue Code in 1976. The income-producing historic property may be rented for residential, office, commercial, or industrial uses.

To qualify for these tax credits, the rehabilitation of the property must conform to the “Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings,” which allows adaptation of a property to present-day uses while maintaining the key architectural qualities of the building’s original design. The Nebraska State Historic Preservation Office is involved in certifying rehabilitation projects under the tax credit program. It is important to contact the Preservation Office before proceeding with any project for which the use of tax credits is anticipated.

Review of Federal Projects Impacting Historic Properties

Any federally funded development or redevelopment project must take into account possible effects upon historic properties and resources. Section 106 of the National Historic Preservation Act requires that federal agencies take into account the effect of their undertakings on historic properties; develop and evaluate alternatives that could avoid, minimize, or mitigate adverse effects their projects may have on historic properties; and afford the federal Advisory Council on Historic Preservation an opportunity to comment on the project and its effects on historic properties. The regulations that govern the Section 106 process, as it is known, also require that the federal agency consult with the NeSHPO when conducting these activities.

Certified Local Government Program (CLG)

An important goal of the NeSHPO is to translate the federal preservation program, as embodied by the National Historic Preservation Act, to the local level. One element of this goal is to link local governments with a nationwide network of federal, state, and local organizations. One of the most effective tools for this purpose is the CLG program. A CLG is a local government, either a county or municipality that has adopted preservation as a priority.

Process for Becoming a CLG

To become a CLG, a municipality or county must:

- establish a historic preservation ordinance that includes protection of historic properties at a level the community decides is appropriate;
- create a local historic preservation commission to oversee the preservation ordinance and the CLG program;
- promote historic preservation and outreach;
- conduct and maintain some level of historic building survey for the area under the jurisdiction of the local government; and
- establish a mechanism to designate local historic landmarks.

Advantages of CLG Status

Advantages of achieving CLG status include:

- A CLG is eligible to receive matching funds, not available to non-CLGs, from the Nebraska State Historic Preservation Office to support local preservation activities.
- Costs for rehabilitating buildings located within locally designated historic districts in the jurisdiction of CLGs may be eligible for federal income tax credits (see discussion of federal income tax credits above) without the properties having to be listed on the National Register of Historic Places.
- Through their local historic building survey activities and their ability to designate local landmark buildings, CLGs are better prepared to incorporate historic preservation goals in local land use planning and zoning.
- CLGs are better prepared, overall, to monitor and preserve structures that reflect the local community's heritage.
- CLGs have ready access to a nationwide information network of local, state, federal and private preservation institutions.
- A CLG, through its local historic preservation ordinance and its historic preservation commission, has the means to promote pride in and understanding of the local community's history.

More information on the CLG program can be obtained from the Nebraska State Historic Preservation Office.

Local Historic Preservation Ordinance

On the basis of a local historic preservation plan, a Nebraska community can adopt a local historic preservation ordinance that pertains to locally designated historic landmarks and districts. A preservation ordinance, which may be adopted under the zoning powers that are delegated by state law to municipalities and counties in Nebraska, usually require actions that will substantially alter a designated historic landmark or a property in a designated historic district, and must be reviewed and approved by a local historic preservation commission. Often, residents of special areas voluntarily take initiative to create districts through the mechanism of a local ordinance to protect the overall integrity and character of their neighborhoods.

Designation of Historic Landmarks and Districts

A community's or county's historic preservation ordinance should generally define what qualifies for designation as a local historic landmark or district.

Design Standards

The community or county usually will adopt design standards to guide building owners as they reinvest in their properties by making modifications by . These design standards are often found in commercial "main street" districts.

Downtown and Business District Planning

Downtowns are special places for municipalities. Often commercial areas look the same from one place to another; however, downtowns are individual expressions of their communities. This means that residents are particularly attune to the health of their central business districts. This is often difficult since the advent of strip malls and shopping centers, and more recently online shopping. Downtowns often represent major capital and business investments and are tightly bound up with the economies of their communities. Particularly in small and medium-sized cities, it has become more difficult to have an economically strong city without a reasonably sound downtown.

Community leaders and residents often state dissatisfaction with their downtown district. They may remember an earlier era when the downtown area fulfilled another role that is now lost in nostalgia. They may also recall a revitalization project that failed to truly revitalize the district. Careful downtown and business

district planning can be a powerful antidote to these debilitating attitudes.

As with most planning processes, downtown planning must seek to understand the problem in order to define the right solutions. On many occasions, for example, downtown planning has jumped directly to construction projects, such as sidewalk, street lighting, or landscape projects, without assessing whether the project really addressed the area's problems. When such projects fail to cure the district, people can become even more pessimistic about the community's future. A good downtown planning process includes:

- An understanding of the role of the downtown district.

Some downtowns have a substantial retail base and may benefit most from improvements that strengthen the shopping environment. Other downtowns may be more related to offices and service businesses, or to government and civic life. Different types of districts require different planning strategies. No single solution applies to every area.

- A process that involves participation of as many interested parties as possible in planning for downtown.
- An assessment of the markets that the downtown can attract.

If tourism is a strong potential market, strategies aimed at outside visitors will be important. On the other hand, if the main effort will be to retain local consumers, strategies like convenient hours and greater product and business variety may be more important.

- A recognition of the complexity of a downtown development program.

New sidewalks by themselves do not attract shoppers. However, an attractive public environment like façade renovations and streetscapes that are part of an overall strategy that also considers marketing, management, event planning, and other features, can be very useful.

- Realization that downtown's health depends on cooperation and partnerships.

Nebraska provides a variety of tools that can assist a downtown district with its revitalization. Several of these are discussed in the following paragraphs.

The Business Improvement District (BID) Program

Business improvement districts (BIDs) are special assessment districts that can finance public improvements, parking,

management, and maintenance within a business district. They are created according to a specific process established in state statutes (see Chapter 13 of this *Handbook*).

Tax Increment Financing (TIF)

Tax increment financing can use added property tax revenues created by growth and development in an area to finance improvements within the boundaries of a redevelopment district. TIF can be used by communities in Nebraska to support redevelopment activities that are authorized under the Community Development Law (see Chapter 13 of this *Handbook*).

Community Development Block Grant (CDBG) Funds

CDBG funds can be used to fund planning efforts in a downtown district and can also be used to help finance the adaptive reuse of buildings within a central business district (see Chapter 13 of this *Handbook*).

Nebraska Main Street Network, f/k/a Lied Main Street Program

The Nebraska Street Program was created in 1994 to help Nebraska communities under 50,000 population revitalize their downtown areas and re-establish the downtown as a community focal point and center of activity.

The program was initiated through a start-up grant from the Lied Foundation Trust. The grant was used to establish a state office and secure a contract with Main Street America located in Chicago, Illinois. Main Street America was founded in 1980 as the National Main Street Center®, a program of the National Trust for Historic Preservation. Over the past 40 years the MSA network has helped to generate over \$115.27 billion in local reinvestment, rehab

345,801 buildings, create 815,894 new jobs, and start 181,647 new businesses in over 2,000 communities.

The Nebraska Main Street Program was a result of the partnering of Nebraska Department of Economic Development, Nebraska

Department of Transportation, Nebraska State Historical Society, and University of Nebraska Lincoln College of Architecture.

The Main Street program provides programming and services to communities including:

- Offering official Main Street America designation to communities that apply and meet the criteria
- Main Street director orientation and professional development

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- Local site visits to help the community develop strategies to tackle comprehensive downtown revitalization and business district management
 - Design and historic preservation assistance
 - Specialized training and information on topics specific to downtown revitalization
 - Education about State and Federal programs, public and private sector grants, and loans
 - Facilitating partnerships for designated Main Street communities and other business districts
 - Opportunities for networking and learning between communities

Main Street programs are more than fixing up buildings or building streetscapes. They're about forming connections between people through social interaction and business development. Human connections play the biggest role in downtown revitalization. When a community puts people first, good design follows.

To achieve successful downtown revitalization, communities need to create people centered places. Too many communities focus on physical improvements and wonder why their downtown still lacks vibrancy real economic success by:

1. Supporting innovation and entrepreneurship to increase the economic and social diversity of downtown while also increasing value and revenue by:
 - Facilitating business engagement – build collaborations and networking, coordinate business to business interaction
 - Supporting real estate development and community-initiated development
 - Encouraging angel investments and developing small grants for targeted businesses in specific sectors
 - Serving as an information resource
 - Providing education & training opportunities for businesses
 - Cultivating local talents to provide goods & services to help businesses
 - Coordinating, mentoring, and support programming for business retention (including business transition)
 - Working closely with community colleges & universities
 - Supporting entrepreneurship education in the schools (with real life applications downtown)
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- Showcasing businesses and sharing them with the world
2. Investing in human capital through volunteerism, leadership, building relationships inside and outside the community, supporting each other, financial support for people to build their skills – downtown revitalization is just as much about investing in people and learning downtown revitalization and management skills as it is investing in fixing up buildings and investing in businesses by:
 - Facilitating learning opportunities for the community
 - Young professionals’ groups
 - Internships and opportunities for youth to work in businesses or create tools for the community to use
 - Establishing funds to help community members learn a new skill they can bring back to the community
 3. Changing attitudes and building a sense of place through design and improving the physical condition of the public and private spaces in downtown by:
 - Public spaces, streets and sidewalks – active and safe landscape & streetscape
 - Pedestrian safety and amenities -attractiveness and comfort
 - Buildings and businesses (inside and out) - functional and attractive; window displays, signage, interior design, merchandise displays
 - Public buildings – setting the example for others to follow
 - Accessibility (ADA)
 - Places and opportunities for social interaction – creating a distinctive destination
 - Ease of navigation – not everyone visiting your town is from there--maps, wayfinding, providing physical addresses not just place names
 4. Focus on building social capital and civic engagement
 - To change community attitudes and behavior
 - To change the attitudes of business owners, employees, and community members
 - To make downtown a fun place that is active and welcoming – word of mouth is still the best form of advertising – if one person likes a place and tells others

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- Engaged community members and a shared vision for the future
 - Communication, communication, communication
 - Opportunities for social interaction/sharing of ideas and solutions and building networks within the community
 - Youth engagement (not “free labor” for projects, but real community decision-making and projects that they plan, choose and implement)

Steps to Main Street Designation

Main Street Program Community Requirements

- Establish the Main Street Four Point Approach™ methodology as the foundation for or within the organization. Main Street is a comprehensive program for downtown revitalization and downtown business district management and requires simultaneous focus in design, promotion, economic vitality, and organization. It is not a one solution program.
- Active board of directors & working committees
- Ability to pay the annual program fee (\$1,875) *includes the required \$375 Main Street America designated community partner
- Can be a stand-alone non-profit organization or an “embedded” program (example – a combined Chamber of Commerce/Main Street organization or a program within an economic development entity) with the caveat that the Main
- Street program must be acknowledged and recognized as such within the parent organization
- Employment of full-time or part-time professional staff that either has experience in downtown revitalization or is committed to gaining experience
- Program has a constant focus on the downtown commercial business district (is not distracted by activities that do not pertain to downtown)
- Ability to meet all legal and financial obligations required by the State of Nebraska and the Internal Revenue Service
- Develop and maintain a historic preservation ethic
- Develop a work plan based on vision and market conditions
- Provide an office for the program
- Have a budget with funding for travel to training and an operating budget for the program

-
- Maintain records, information and key statistics
 - Report required key statistics to the Nebraska Main Street Network
 - Participate in the annual year end evaluation with the Nebraska Main Street Network
 - Actively participate with the Nebraska Main Street Network while attending workshops, meetings, and conferences
 - Utilize the programs and services of the Nebraska Main Street Network
 - Have a strong commitment to the program from local government and other community organizations and stakeholders

Organizational Steps

- Decide on your organizational structure – stand-alone non-profit or embedded within another organization
- Decide on an organizational or program name
- Establish Bylaws and Articles of Incorporation (or revision of existing organization documents to account for the Main Street program)
- Establish legal status in Nebraska (Sec of State) for a stand-alone program or update status
- IRS 501c tax status for a stand-alone program
- Develop policies and procedures that govern the organization legally, financially and for personnel matters
- Secure insurance (directors' and officers' insurance, liability, etc.)
- Set up a budget for the program and determine where you will obtain operational funding
- Establish accounting practices including an annual audit
- Create a mission statement
- Establish your Main Street district boundaries and create a map
- Establish board of directors and staff
- Develop board & staff job descriptions
- Set up office
- Regularly communicate with the downtown stakeholders and the community

-
- Work with the Nebraska Main Street Network to actively learn more about the Main Street program and work to meet the organizational steps for designation as a Main Street community (communities are not expected to work toward designation on their own without the help of the Nebraska Main Street Network)

After Designation

- Visioning, market position, and work plan development—part of the new Main Street Approach™
- Physical assessment of the district
- On-going active participation in training, technical assistance and activities from the Nebraska Main Street Network and the National Main Street Center

Ongoing Requirements

- Broad based community support for the program (local city government, downtown businesses, other organizations, citizens of the community)
- Willingness and ability to maintain Main Street designation for the long-term
- Historic preservation ethic
- Active board, staff and working committees
- Adequate operating budget and paid staff
- Active participation in Nebraska Main Street Network programming including asking for assistance and community specific training
- Monthly and annual reporting requirements
- Participation in annual assessment
- Recommended attendance at the annual National Main Street Center's Main Street NOW Conference

More Information

For more information about the Nebraska Main Street Network, please contact:

Nebraska Main Street Network
c/o Community Development Resources
912 North 70th Street
Lincoln, NE 68505
Phone: 402-436-2387
Website: <https://nebraskamainstreet.org/>

Corridor Design and Planning

Most municipalities include a major highway or road corridor, usually lined by vehicle-oriented commercial or industrial development. We often view these corridors as necessary evils - important avenues for commerce, but generally not appealing to residents or visitors. This is unfortunate, because in a vehicle-oriented society, these corridors increasingly are the community's front door. In addition, frequent curb cuts and traffic conflicts create safety problems, and heavy traffic can create barriers through the middle of communities.

Some cities are beginning to look at these corridors in different ways, considering how they can develop as assets. Streets should be positive public environments and should unite rather than divide communities. Some issues that specific corridor plans examine may include:

- present and future land use;
- traffic flow and access consolidation;
- parallel pedestrian access and trails;
- landscaping standards;
- street furniture, lighting, graphics, and directional information; and
- design standards for signage.

Corridor planning also can address new urban corridors or development opportunities. Examples are new streets that may be developed as part of the implementation of a comprehensive plan or its transportation element. Careful planning in advance of development can avoid the problems experienced by older linear commercial or industrial strips.

Corridor planning can also apply to new opportunities, such as a newly abandoned railroad corridor. Sometimes, such a corridor can produce more development if the city maintains control over it than if it is divided among neighboring landowners. A plan can assess the development possibilities of such a corridor and determine its ability to fill other roles in the community, such as transportation or recreation.

Greenway and Trail Planning

Many municipalities have become interested in the development of greenways and trails. The increasing popularity of walking, running, and bicycling has made trail planning and development very popular in communities of all sizes. In addition, the presence

of financing for trail development was made through the federal Transportation Equity Act for the 21st Century (TEA-21) passed in 1998. The Act initially over \$200 billion to improve the Nation's transportation infrastructure, enhance economic growth and protect the environment. Transportation project planning and funding processes were to be locally and State-driven. As part of its long-term transportation plan, each State and metropolitan area was to develop transportation improvement programs (TIPs), which prioritize projects and funding. Only projects in an approved TIP were eligible for Federal funding. Through additions to both the Surface Transportation Program (STP) and the National Highway System (NHS), TEA-21 created flexibility to fund environmental enhancement opportunities. It also encouraged municipalities to proceed with trail development, as well as identifying priorities and phasing for realizing a greenway plan. Unfortunately, TEA-21 is not currently in effect as a standing law.

A good greenway system also should relate closely to the city's transportation system, thereby connecting different parts of town and providing safe access to important facilities and community features. In addition, greenways can penetrate into newly developing areas and can help provide a framework which unites new and established parts of the city.

Several devices that can be used to help communities implement greenways and trail plans are discussed in the following paragraphs.

Transportation Enhancements

Railbanking

Railbanking, established in 1983 as an amendment to Section 8(d) of the National Trails System Act, is a voluntary agreement between a railroad company and a trail sponsor (such as a trail organization or government agency) to use an out-of-service rail corridor as a trail until a railroad might need the corridor again for rail service. This interim trail use of railbanked corridors has preserved thousands of miles of rail corridors that would otherwise have been abandoned.

Railbanking takes place during the rail corridor abandonment process, and official negotiations with the railroad can begin only after the railroad submits an initial notification to abandon the line to the Surface Transportation Board (STB). Any qualified private organization or public agency that has agreed to maintain the corridor for future rail use is eligible to negotiate for railbanking.

During negotiations, the railroad is permitted to remove all its equipment and materials, except for bridges, tunnels and culverts, from a corridor.

If railbanking negotiations fail, the railroad will usually proceed with line abandonment. If negotiations succeed, a railbanking agreement will be established, and the railroad will turn the corridor over to the qualified private organization or public agency. This property transfer precludes abandonment. In other words, because a railbanked corridor is not considered abandoned, it can be sold, leased or donated to a trail manager without reverting to adjacent landowners.

The railroad has the right to re-establish rail service on a railbanked corridor. Should that occur, the trail-managing agency ordinarily is entitled to fair market compensation from the railroad seeking to re-establish rail service. However, to avoid disputes, this issue should be specifically addressed as a contingency in the initial contract with the railroad.

Natural Resources Districts (NRDs)

Drainageways often provide important greenway resources, with or without trails. NRDs can form partnerships with communities to own and maintain important greenways. In some areas of Nebraska, NRDs have also been the administering agencies for major recreational trails. There are several examples of these in Nebraska.

Nebraska's Statewide Transportation Improvement Program (STIP) is the Nebraska Department of Transportation's four-year highway improvement program developed under Title 23 United States Code (USC), Section 135 Statewide Planning, (f) Statewide Transportation Improvement Program. It includes by reference the Transportation Improvement Programs (TIP's) from the Omaha, Lincoln and South Sioux City metropolitan planning Organizations (MPO's.)

The STIP includes financial summary tables to demonstrate fiscal constraint. Projects that are funded in the TIP/STIP and constructed, implemented, operated or maintained using federal dollars must conform to any and all federal, state or local regulations/statutes that are applicable based on the type of project, type of funding received, scope of work and/or impact to the natural or human environments.

The Federal Highway Administration (FHWA) requires each state highway agency to develop a Statewide Transportation Improvement Program (STIP). The STIP must list all highway and transit projects that will be using federal funds as well as all

regionally significant transportation projects using non-federal funding sources. It covers a period of four years and in Nebraska is updated every year on October 1.

Periodically, the Nebraska Department of Transportation (NDOT) must amend the STIP for reasons such as to add or remove projects, to make adjustments to funding sources or estimates or to update a project's scope of work.

Federal law requires that all citizens and other interested parties in the State's transportation planning process be given reasonable opportunity to comment on the proposed STIP and on any proposed amendments to an approved STIP. NDOT uses statewide news releases and an automated email subscription management system called GovDelivery to inform the public and advise them of the means and time period to comment on STIP's and their amendments. All comments will be addressed and those responses reported to the FHWA. By Subscribing to this page, you will be notified by email whenever documents are available for public comment.

Federal law requires that all citizens and other interested parties in the State's transportation planning process be given reasonable opportunity to comment on the proposed STIP and on any proposed amendments to an approved STIP.

Nebraska STIP

A substantial time period is required to complete the STIP. The opportunity for public involvement is available at various times throughout the planning process.

- State Transportation Improvement Program (STIP). The STIP includes four years of projects, including all federally funded transportation projects and all regionally significant projects regardless of their funding source. The STIP projects are compiled from: the Department's Surface Transportation Program Book, the Metropolitan Planning Organization's Transportation Improvement Programs (TIPs), City and County One-and-Six Year plans, project lists submitted by Tribal organizations and Federal Lands.
- County and Municipality Projects. A draft one- and six-year plan is developed at the local level with the local governing body reviewing and holding a public hearing on the plan. Following the hearing, the local government will consider the comments and make appropriate revisions to the plan. A Resolution of Adoption of the one- and six-year plan is then passed by the local government, forwarded to NDOT's Local Assistance Division for review and then included in the STIP.

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- Roadway Location/Corridor Study. During the location/corridor study for a roadway project, location information meetings may be scheduled and held by Department staff. These meetings will be conducted to discuss our plans and receive public comments. Concurrent with these meetings, the project plans are documented, and input is included into the appropriate draft environmental statement. At the conclusion of the study and at the time that a draft environmental statement has been approved, a location/corridor public hearing will be scheduled and held by the Department. Publication of meeting and hearing notices and news releases will be coordinated by the Department's Project Development staff with the Department's Public Hearings Officer. Appropriate visual aids will be produced for use at the information meeting(s) and location public hearing.
 - Following the location public hearing, approval of the project location will be requested from the Nebraska State Highway Commission.

Nebraska Project Criteria

The Nebraska Department of Transportation (NDOT) is the grantee (recipient) of Federal transportation funds for the State and, therefore, responsible for ensuring that funds are expended in accordance with applicable laws and regulations. This responsibility extends to funds from the Federal Highway Administration (FHWA) passed through NDOT to subgrantees for transportation projects. Federal funds improve transportation infrastructure and enhance services to meet the needs of the public. NDOT's subgrantees of Federal transportation funds, referred to as Local Public Agencies (LPAs), include counties, cities, Metropolitan Planning Organizations (MPO), educational institutions, nonprofit entities, etc. If an LPA receives Federal funding for any portion of work on a transportation project, all phases of that project must comply with Federal and State requirements. Compliance with Federal regulations is mandatory throughout the entire life of the project, which extends beyond construction and project close-out. The life of the project extends through post-construction activities such as maintenance of the facility and ensuring adherence to environmental commitments.

All project proposals in Nebraska must meet three criteria to be eligible for funding consideration:

- fit within the eligible activities listed above;
- usually provide for at least 20 percent (20%) non-federal cash matching funds (except for projects that use

railbanked land, the value of which can be used in lieu of a cash match); and

- satisfactorily describe, in the form of a resolution from the governing body of the applicant governmental entity, how operation and maintenance of the project will be provided now and into the future.

Nebraska Program Categories

The eligible enhancement activities (listed above) have been divided in the Nebraska program into three categories:

1. Trails

- Bicycle and pedestrian facilities
- Safety and educational activities for pedestrians and bicyclists
- Railway corridors — acquisition or easement

2. Historic preservation

- Historic preservation
- Historic transportation facilities
- Archaeological planning and research

3. Scenic byways

- Scenic and/or historic sites — acquisition or easement
- Scenic or historic highways (including tourist and welcome center facilities)
- Landscaping
- Control and removal of outdoor advertising
- Run-off mitigation
- Establishment of transportation museums

Under the Nebraska Transportation Enhancement Program, federal funds pay 80 percent of the cost of the enhancement, and the remaining 20 percent must be paid with state or local funds. Local donated labor or materials (in-kind) may not be used as any part of the 20 percent required match.

Further information on the Nebraska Transportation Enhancement Program may be obtained from:

Nebraska Department of Transportation
1500 Nebraska Parkway
Lincoln, NE 68502
Phone: 402-471-4567

Pre-Development Planning

Growth in most municipalities occurs in a piecemeal and incremental way. Developers complete and build subdivisions and projects that function internally but do not create the kinds of connections (including street and open space systems) that are necessary to build a community. The concept of pre-development planning dates back to the nineteenth century, when town builders platted the streets and parks of a town and adopted an “official map” well in advance of any actual construction. The official map established the context within which individual builders worked.

In a pre-development area plan, the community defines the framework of arterial, collector, and local through streets that will be necessary to serve the overall needs of a development area. It may also include greenway corridors and park sites within this framework. This plan then becomes the framework within which developers plat subdivisions and builders construct homes and buildings.

The pre-development planning concept can help assure that as communities grow, they grow together rather than apart.

Conservation Planning

Urban development and agricultural uses often come into conflict on the boundaries of communities. In the process, the rural character of land is lost, as more and more land is absorbed into urban uses. Even large lot developments on the urban fringe can take the form of conventional urban subdivisions. Often, these designs compromise or degrade the very sense of low density and rural character that cause people to move to the edges of cities. In areas where preservation of rural character is a major value, the concept of conservation subdivisions is more appropriate.

The technique of conservation development provides a mechanism for permitting development while maintaining important agricultural and environmental resources. In a conservation subdivision, the density yield of a parcel of ground remains neutral.

However, environmental assets are pooled together as open spaces or preserves, in exchange for somewhat smaller lots in the built-up part of the development. The open space may be owned in common by property owners or may be maintained in private ownership. Conservation designs, skillfully executed, are more successful at preserving such features as vistas, waterways, and agricultural lands, than conventional parceling. As a result, this technique preserves environmental features, thereby furthering

public interest, while at the same time creating more marketable developments.

Conservation subdivisions are designed on a specific parcel using a four-step process, including:

1. Identify potential conservation areas on a site specific basis. These may include:
 - soils which do not support residential development,
 - wetlands,
 - flood plains,
 - steep slopes in excess of 15%,
 - wildlife habitats,
 - woodlands,
 - prime agricultural lands,
 - historic sites, and
 - ridge lines and view corridors.
2. Locate house sites to maximize view lots or adjacency to significant site assets. Street alignments should maximize the design quality of the site and should generally be interconnected.
3. Design the street and trails system to serve the residential sites.
4. Draw in parcel lines.

See, Neb. Rev. Stat. § 76-2,111 to § 76-2,118 – the Conservation and Preservation Easements Act mentioned in previous chapters of this Handbook.

Chapter 13 – Community and Economic Development

Introduction

Most counties and municipalities in Nebraska are concerned about the strength of their local economy and seek opportunities for new growth and business expansion. Several important tools are available to assist communities with community and economic development, including the federal Community Development Block Grant program and several state tools: the Community Development Law which authorizes tax increment financing, the Local Option Municipal Economic Development Act, the Business Improvement District Act, and the Community Development Assistance Act. These tools all involve a process that is a good idea in any case – community and economic development planning. This chapter addresses some of the concepts and mechanics of community and economic development, focusing on the tools that are available through federal and Nebraska law.

Community Development Block Grant (CDBG) Program

The Community Development Block Grant (CDBG) program is one of the nation's largest federal grant programs. Authorized under Title I of the Housing and Community Development Act of 1974 (P.L. 93- 383; 42 U.S.C § 5301 et seq.), the CDBG program is administered by the U.S. Department of Housing and Urban Development (HUD) through the states (the Department of Economic Development (NDED) in Nebraska), and has been the backbone of improvement efforts in many municipalities, providing a flexible source of annual grant funds for local governments nationwide.

Overall CDBG Priorities

In Nebraska, CDBG funds may be utilized to address construction or renovation of various infrastructure projects such as water, wastewater and solid waste facilities, streets, and flood control projects; construction or improvements of a range of community facilities such as senior, health and social services centers; expansion of public services to serve low income persons; creation of new jobs through small business loans or infrastructure improvements; and various affordable housing projects including home reconstruction, rehabilitation or repair programs.

All CDBG-funded activities must meet one of the following national objectives: (1) Benefit low- and moderate-income persons; (2) Aid in the prevention or elimination of slums and blight; or (3) Meet certain community development needs having a particular urgency. Low- and moderate-income people are generally defined as families that earn no more than 80 percent of median income. Housing and economic development are two critical activities funded by the CDBG program. CDBG funds for housing historically have predominantly funded rehabilitation. CDBG economic development assistance has been primarily to small businesses.

Every Nebraska county or incorporated municipality not designated as a CDBG Entitlement Community is eligible to apply for funding through DED. The CDBG Entitlement Communities of Lincoln, Omaha, Bellevue and Grand Island administer the program in their own areas. Based on the category of CDBG funding requested, general rules regarding eligibility can differ; refer to the CDBG Application Guidelines for more detailed information on eligibility.

Overall CDBG Program Organization

The federal CDBG program has two major administrative components: (1) the entitlement communities' program and (2) the state program.

Entitlement Communities Program

Entitlement communities are metropolitan cities and urban counties with 50,000 or more residents. Entitlement cities receive annual direct CDBG grants from the federal government according to relative need, based on the larger of two quantities derived from two formulas. One formula uses the presence of overcrowded housing in the locality, its population, and the poverty rate. The second formula uses housing age, population growth lag, and the poverty rate.

State Program

The CDBG state program, also known as the non-entitlement program, includes those units of local government that do not receive CDBG funds directly from HUD as part of the entitlement communities' program. Non-entitlement areas are cities with populations of less than 50,000 and counties with populations of less than 200,000. HUD distributes CDBG funds to each state in the state program, an amount based on a statutory formula, which

takes into account population, poverty, incidence of overcrowded housing, and age of housing.

Neither the states nor HUD distribute funds directly to citizens or private organizations. All funds in the state program are distributed by the states to units of local government. HUD's role in the state program is to ensure that the state complies with federal laws, regulations, and policies in administering the program in the state.

States must award at least 70 percent of their CDBG funds for activities which benefit low- and moderate-income persons. These can be activities in which the majority of beneficiaries who benefit are low and moderate income or activities that benefit an area in which at least 51 percent of the residents are of low and moderate income.

States have three major responsibilities in administering the CDBG program:

- formulate community development objectives;
- decide how to distribute funds among communities in nonentitlement areas; and
- ensure that recipient communities comply with applicable state and federal laws and requirements.

States establish their own processes and rules to govern the distribution of their CDBG funds. While the states may adopt policies that give priority to funding particular kinds of projects, such as economic development of wastewater treatment systems, their choices are limited by the activities that are eligible under the national program, which include, but are not limited to:

- acquisition of property for public purposes;
- reconstruction or rehabilitation of housing and other property;
- construction or reconstruction of public facilities and improvements, such as streets, water and sewer facilities, neighborhood centers, recreation facilities, and other public works;
- assistance to for-profit businesses for special economic development activities, such as micro-enterprise loans to low-income entrepreneurs;
- public services for youths, seniors, or the disabled;
- crime reduction initiatives, such as establishing neighborhood watch programs and providing extra police patrols;

-
- assistance to home buyers through, for example, down payment assistance or a revolving loan fund for first-time buyers;
 - enforcement of local building codes to reverse housing deterioration; and
 - planning and administrative expenses.

The CDBG State Program in Nebraska

In Nebraska the state CDBG program is administered by the Nebraska Department of Economic Development (DED).

DED coordinates a process of developing priorities for the use of the state's CDBG funds in compliance with federal guidelines. DED also administers the annual funding process that invites eligible non-entitlement communities in the state to submit applications for funds in various categories. Grants are awarded to local governments based upon the state's priorities and the adequacy of the applications submitted by the local governments.

Categories of Activities Eligible for Funding

The categories of activities for which Nebraska awards CDBG funds are:

- Economic development;
- Tourism development;
- Planning;
- Public Works – Facilities;
- Public Works – Infrastructure; and
- Downtown Revitalization.

Evaluation Criteria

The principal criteria for evaluating applications in the above categories of eligible activities are as follows:

- community development, housing, and planning categories:
 - meeting locally identified needs
 - commitment of local resources
 - benefits to a high percentage of low and moderate income persons
 - elimination of slums and blight
-

Economic Development Category

- support of businesses that expand the state's economic base
- creation or retention of jobs for low and moderate income persons
- business development category
- project proposal and measures of success
- service providers' qualifications
- community support and partnerships
- benefits to low and moderate-income persons
- project implementation plan and resources
- parks
- assistance to nonprofit organizations
- assistance to first-time home buyer programs

Planning:

- Supports project-related studies
- data collection
- paths to implementation
- the preparation of plans, such as housing studies, comprehensive plans, downtown revitalization plans and historic preservation studies
- community development and housing plans

Economic Development

- Loans to businesses
- infrastructure construction projects undertaken for economic development purposes.

Tourism Development

- Funding is for tourist attractions expected to draw 2,500 visits annually

Downtown Revitalization

- Revitalization efforts located within the downtown business district, including historic restoration
- removal of architectural barriers
- loans to businesses for facade improvements, signage, and/or to meet community codes.

Prior to 1975, Nebraska communities were unable to carry out re-development programs involving assembly of land for conveyance to private developers without creation of an urban renewal authority approved by the voters of a municipality.

Other Programs Offered by NDED – Housing

There are two (2) other programs and funds administered by NDED dealing with work force Housing in addition to the CDBG program. Both programs are to disperse their funds through grants until their funds are extinguished. Each fund has a current sunset date of July 1, 5027 for the Rural Workforce Housing Fund and July 1, 2029 for the Middle Income Workforce Housing Investment Fund.

(1) Rural Workforce Housing Fund (RWHF) – was created by the Legislature in 2017 as part of LB518 with the passage of the Rural Workforce Housing Investment Act (*Neb. Rev. Stat. § 81-1226 to § 81-1234*). The following projects are eligible for RWHF Awards by applying through NDED:

- New owner-occupied housing costing no more than \$325,000.
- New rental housing units costing no more than \$250,000.
- Owner-occupied or rental housing units for which the cost to substantially rehabilitate exceeds 50% of a unit's assessed value.
- Upper-story housing.
- Rehabilitation/conversion of an existing building into housing.
- And in all cases, housing that does not receive federal or state low-income housing tax credits, Community Development Block Grants, HOME funds, National Housing Trust Fund, or funds from the Affordable Housing Trust Fund that would restrict the level of individual or household income to anything less than 100% of AMI.

Communities in a county with a population of less than 100,000, as determined by the most recent federal decennial census, are eligible. Presently, this excludes communities in Douglas, Lancaster, and Sarpy Counties.

Eligible applicants must be non-profit development organizations (NDO), approved by the Department director, that invest or intend to invest in workforce

housing eligible activities, and that have an active board of directors with expertise in development, construction and finance.

RWHF awards are made on a competitive basis until funds are no longer available. The initial competitive application cycle took place in 2017-18. Subsequent allocations of funds allowed for two application cycles in both the 2020 and 2022 program years. In 2024, the Nebraska Legislature allocated \$12,500,000 for a fourth program year of the Rural Workforce Housing Fund. Grants are to awarded by NDED though FY2026-2027. Beginning July 1, 2027, any funds held by NDED in the Rural Workforce Housing Investment Fund shall be transferred to the General Fund.

The 2024 RWHF program required a minimum investment of 25% of the RWHF award in matching funds.

Matching funds can be dollars contributed by individuals, businesses, foundations, local and regional political subdivisions, or other non-profit organizations into a single investment fund administered by the eligible nonprofit development organization (NDO).

The maximum amount of grant funds awarded to any one nonprofit development organization over a two-year period shall not exceed five million dollars (\$5,000,000).

Competitive applications for RWHF program funds are evaluated on demonstrations of:

- Ongoing workforce housing needs as identified by a recent housing study.
- Difficulties filling employment positions or attracting workers in communities or regions with a low unemployment rate.
- A community's or region's commitment to growing its housing stock.
- A project's likelihood of occupancy in a period of 24 months.
- The ability to grow and manage an investment fund for rural workforce housing.

Check the Nebraska Department of Economic Development's website under the Programs tab to check

status of program and view the application at the following URL:.

<https://opportunity.nebraska.gov/programs/housing/>

- (2) Middle Income Workforce Housing Fund (MWHF) – was created by the Legislature in 2020 as part of LB866 with the passage of the Middle Income Workforce Housing Investment Act (*Neb. Rev. Stat. § 81-1235 to § 81-1243*). The Fund is to supply matching grants to non-profit development organizations (NDO) that administer local workforce housing investment funds. MWHF funds are awarded for investment in Nebraska communities located in Douglas, Lancaster, and Sarpy counties.

Housing Projects Eligible for MWHF Awards Include:

- Construction of new owner-occupied housing units with an after-construction appraised value of at least \$125,000 but not more than \$330,000.
- Owner-occupied housing units for which the cost to substantially rehabilitate exceeds 50% of the unit's before-construction assessed value. After construction, appraised value of the building alone must be at least \$125,000 but not more than \$275,000.
- Upper-story housing for occupation by a homeowner.
- In all cases, housing must not be a beneficiary of federal or state low-income housing tax credits, Community Development Block Grant funds, HOME Investment Partnerships funding, National Housing Trust Funds, American Rescue Plan Act funds, or funds from the Nebraska Affordable Housing Trust Fund.

Projects must take place in Lancaster and Sarpy counties, or within or adjacent to qualified census tracts in Douglas County as described in 26 U.S.C. 42(d)(5)(b), as such section existed on January 1, 2024, 2025, and subsequent years.

Recipients who are approved by the Department of Economic Development must be non-profit development organizations (NDO) that administer or intend to administer a workforce housing investment fund and currently invest in MWHF eligible activities. The organization must have an active board of directors with expertise in development, construction and finance.

Through state fiscal year 2026-2027, available funds shall be awarded on a competitive basis until they have been fully obligated.

No more than \$10,000,000 may be awarded to any one non-profit development organization over a two-year period and through fiscal year 2026-2027. Beginning July 1, 2029, any funds held by the department in the Middle Income Workforce Housing Investment Fund shall be transferred to the General Fund.

MWHF applications require a minimum of \$0.25 per dollar, (i.e. 25% of requested award) match. Matching funds can be dollars contributed by individuals, businesses, foundations, local and regional political subdivisions, or other non-profit organizations into a single investment fund, administered by the eligible nonprofit development organization (NDO).

Competitive awards from the MWHF will be evaluated on demonstrations of:

- Need for additional owner-occupied housing needs as identified by a recent housing study or letter from the city planning department;
- A neighborhood or community that has a higher-than-state average unemployment rate;
- A neighborhood or community that exhibits a commitment to growing its housing stock;
- Projects that can reasonably be ready for occupancy in a period of 24 months;
- The ability to grow and manage a workforce housing investment fund.

Check the Nebraska Department of Economic Development's website under the Programs tab to check status of program and view the application at the following URL:

<https://opportunity.nebraska.gov/programs/housing/>

Community Development Law

In 1975, the Legislature enacted the Community Development Law (*Neb. Rev. Stat.* § 18-2101 to § 18-2157), which permits cities of all classes and villages to establish community redevelopment authorities (CRAs) by ordinance. The law empowers CRAs to

undertake broad urban renewal and municipal growth opportunities through a variety of mechanisms. This law, with subsequent amendments, has been the cornerstone of redevelopment and community development activities in Nebraska.

Enactment of Nebraska's Community Development Law was a response to the existence of areas in cities and villages that have deteriorated and become substandard and blighted for a variety of reasons. Such areas are harmful to the social and economic wellbeing of the entire communities in which they exist. Conditions in many such areas are considered beyond the remedy and control of the normal regulatory process or impossible to reverse through the ordinary operations of private enterprise. The Community Development Law enables cities and villages to take steps to eliminate blight through the acquisition, clearance, and disposition of property for redevelopment or through the conservation and rehabilitation of property.

Creating a Community Redevelopment Agency (CRA)

Cities of all classes and villages of this state are hereby granted power and authority to create a community development agency by ordinance, which agency may consist of the governing body of the city or village or a new or existing municipal division or department, or combination thereof. When such an agency is created, it shall function in the manner prescribed by ordinance and may exercise all of the power and authority granted to a community redevelopment authority under the Community Development Law. Whenever such a city exercises the power conferred in this section, it may levy taxes for the exercise of such jurisdiction and authority and may issue general obligation bonds, general obligation notes, revenue bonds, and revenue notes including general obligation and revenue refunding bonds and notes for the purposes set forth in the Community Development Law and under the power granted to any authority described. (*Neb. Rev. Stat. § 18-2101.01*) The Community Development Law also authorizes the creation of a limited community redevelopment authority. A limited community redevelopment authority is one that has only one single specific limited pilot project authorized. In addition, the question of creating a CRA can be submitted to the voters of the city or village; approval by a majority vote of the electors voting in the election is required if this approach is taken. When an authority is created, it bears the name of the city or village creating it and is legally known as the "Community Redevelopment Authority of the City (or Village) of (name of city or village)."
(*Neb. Rev. Stat. § 182102.01*)

A CRA consists of five (5) or seven (7) persons appointed by the mayor with approval by the governing body of the city or village. In cities having a city manager form of government, the city manager appoints the members of the CRA. Terms of office for the members of the authority are five years, with one member's term expiring every year. Members may be reappointed to the CRA.

Any authority established under this section shall organize by electing one of its members as chairperson and another as vice chairperson, shall have power to employ counsel, a director who shall be ex officio secretary of the authority, and such other officers and employees as may be desired, and shall fix the term of office, qualifications, and compensation of each. The holder of the office of community redevelopment administrator or coordinator of the city may, but need not, be appointed the director but at no additional compensation by the authority. Community redevelopment authorities of cities of the first and second class and villages may secure the services of a director, community redevelopment administrator, or coordinator, and other officers and employees as may be desired through contract with the Department of Economic Development upon terms which are mutually agreeable. Any authority established under this section may validly and effectively act on all matters requiring a resolution or other official action by the concurrence of three members of a five (5) member authority or four members of a seven-member authority present and voting at a meeting of the authority. Orders, requisitions, warrants, and other documents may be executed by the chairperson or vice-chairperson or by or with others designated in its bylaws.

Powers of a CRA

An authority pursuant to *Neb. Rev. Stat.* § 18-2107 shall constitute a public body corporate and politic, exercising public and essential governmental functions and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the Community Development Law, including the power:

- (1) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal bylaws, rules, and regulations not inconsistent with the Community Development Law;
- (2) To prepare or cause to be prepared and recommend redevelopment plans to the governing body of the city and to

undertake and carry out redevelopment projects within its area of operation;

- (3) To arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities for or in connection with a redevelopment project; and, notwithstanding anything to the contrary contained in the Community Development Law or any other provision of law, to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of a redevelopment project, and to include in any contract let in connection with such a project provisions to fulfill such federally imposed conditions as it may deem reasonable and appropriate;
- (4) Within its area of operation, to purchase, lease, obtain options upon, or acquire by gift, grant, bequest, devise, eminent domain, or otherwise any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project; to hold, improve, clear, or prepare for redevelopment any such property; to sell, lease for a term not exceeding ninety-nine years, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real or personal property or any interest therein; to enter into contracts with redevelopers of property containing covenants, restrictions, and conditions regarding the use of such property for residential, commercial, industrial, or recreational purposes or for public purposes in accordance with the redevelopment plan and such other covenants, restrictions, and conditions as the authority may deem necessary to prevent a recurrence of substandard and blighted areas or to effectuate the purposes of the Community Development Law; to make any of the covenants, restrictions, or conditions of the foregoing contracts covenants running with the land and to provide appropriate remedies for any breach of any such covenants or conditions, including the right in the authority to terminate such contracts and any interest in the property created pursuant thereto; to borrow money, issue bonds, and provide security for loans or bonds; to establish a revolving loan fund; to insure or provide for the insurance of any real or personal property or the operation of the authority against any risks or hazards, including the power

to pay premiums on any such insurance; to enter into any contracts necessary to effectuate the purposes of the Community Development Law; and to provide grants, loans, or other means of financing to public or private parties in order to accomplish the rehabilitation or redevelopment in accordance with a redevelopment plan, except that the proceeds from indebtedness incurred for the purpose of financing a redevelopment project that includes the division of taxes as provided in Neb. Rev. Stat. § 18-2147 shall not be used to establish a revolving loan fund. No statutory provision with respect to the acquisition, clearance, or disposition of property by other public bodies shall restrict an authority exercising powers here under, in such functions, unless the Legislature shall specifically so state;

- (5) To invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement in property or securities in which savings banks or other banks may legally invest funds subject to their control; and to redeem its bonds at the redemption price established therein or to purchase its bonds at less than redemption price, and such bonds redeemed or purchased shall be canceled;
- (6) To borrow money and to apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government, from the state, county, municipality, or other public body, or from any sources, public or private, including charitable funds, foundations, corporations, trusts, or bequests, for purposes of the Community Development Law, to give such security as may be required, and to enter into and carry out contracts in connection therewith; and notwithstanding any other provision of law, to include in any contract for financial assistance with the federal government for a redevelopment project such conditions imposed pursuant to federal law as the authority may deem reasonable and appropriate and which are not inconsistent with the purposes of the Community Development Law;
- (7) Acting through one or more members of an authority or other persons designated by the authority, to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths and to issue commissions for the examination of witnesses who are outside of the state or unable to attend before the authority or excused from attendance; and to make available to appropriate agencies or public officials, including those charged with the duty of abating or requiring the correction of nuisances or like

conditions, demolishing unsafe or insanitary structures, or eliminating conditions of blight within its area of operation, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, safety, morals, or welfare;

- (8) Within its area of operation, to make or have made all surveys, appraisals, studies, and plans, but not including the preparation of a general plan for the community, necessary to the carrying out of the purposes of the Community Development Law and to contract or cooperate with any and all persons or agencies, public or private, in the making and carrying out of such surveys, appraisals, studies, and plans;
- (9) To prepare plans and provide reasonable assistance for the relocation of families, business concerns, and others displaced from a redevelopment project area to permit the carrying out of the redevelopment project to the extent essential for acquiring possession of and clearing such area or parts thereof; and to make relocation payments to or with respect to such persons for moving expenses and losses of property for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the federal government;
- (10) To make such expenditures as may be necessary to carry out the purposes of the Community Development Law; and to make expenditures from funds obtained from the federal government without regard to any other laws pertaining to the making and approval of appropriations and expenditures;
- (11) To certify on or before September 30 of each year to the governing body of the city the amount of tax to be levied for the succeeding fiscal year for community redevelopment purposes, not to exceed two and six-tenths cents on each one hundred dollars upon the taxable value of the taxable property in such city, which levy is subject to allocation under section 77-3443 on and after July 1, 1998. The governing body shall levy and collect the taxes so certified at the same time and in the same manner as other city taxes are levied and collected, and the proceeds of such taxes, when due and as collected, shall be set aside and deposited in the special account or accounts in which other revenue of the authority is deposited. Such proceeds shall be employed to assist in the defraying of any expenses of redevelopment plans and projects, including the payment of principal and interest on any bonds issued to pay the costs of any such plans and projects;
- (12) To exercise all or any part or combination of powers granted in *Neb. Rev. Stat.* § 18-2107;

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- (13) To plan, undertake, and carry out neighborhood development programs consisting of redevelopment project undertakings and activities in one or more community redevelopment areas which are planned and carried out on the basis of annual increments in accordance with the Community Development Law for planning and carrying out redevelopment projects;
 - (14) To agree with the governing body of the city for the imposition of an occupation tax for an enhanced employment area; and
 - (15) To demolish any structure determined by the governing body of the city to be unsafe or unfit for human occupancy in accordance with *Neb. Rev. Stat. § 18-1722.01*.

Redevelopment Projects

A redevelopment project pursued by a CRA can involve a broad range of work in a designated redevelopment area, including (*Neb. Rev. Stat. § 18-2103(29)*):

- (a) To acquire substandard and blighted areas or portions thereof, including lands, structures, or improvements the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such substandard and blighted areas;
- (b) to clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon and to install, construct, or reconstruct streets, utilities, parks, playgrounds, public spaces, public parking facilities, sidewalks or moving sidewalks, convention and civic centers, bus stop shelters, lighting, benches or other similar furniture, trash receptacles, shelters, skywalks and pedestrian and vehicular overpasses and underpasses, enhancements to structures in the redevelopment plan area which exceed minimum building and design standards in the community and prevent the recurrence of substandard and blighted conditions, and any other necessary public improvements essential to the preparation of sites for uses in accordance with a redevelopment plan;
- (c) to sell, lease, or otherwise make available land in such areas for residential, recreational, commercial, industrial, or other uses, including parking or other facilities functionally related or subordinate to such uses, or for public use or to retain such land for public use, in accordance with a redevelopment plan; and may also include the preparation of the redevelopment plan, the planning, survey, and other work incident to a

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- (d) redevelopment project and the preparation of all plans and arrangements for carrying out a redevelopment project;
 - (e) to dispose of all real and personal property or any interest in such property, or assets, cash, or other funds held or used in connection with residential, recreational, commercial, industrial, or other uses, including parking or other facilities functionally related or subordinate to such uses, or any public use specified in a redevelopment plan or project, except that such disposition shall be at its fair value for uses in accordance with the redevelopment plan;
 - (f) to acquire real property in a community redevelopment area which, under the redevelopment plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitate the structures, and resell the property;
 - (g) to carry out plans for a program of voluntary or compulsory repair, rehabilitation, or demolition of buildings in accordance with the redevelopment plan; and
 - (h) to carry out construction of affordable housing

The clear definition of all aspects of a “redevelopment project” is key for CRAs in negotiating with redevelopers who submit redevelopment proposals to the CRA for consideration and approval.

Tax Increment Financing (TIF)

Tax increment financing has become an extremely popular form of financing redevelopment projects in recent years as more cities have gained expertise and experience in use of the mechanism. The use of TIF for redevelopment projects is authorized in the Community Development Law (*Neb. Rev. Stat. §§ 18-2147 to 2149*). TIF permits cities to use the added property tax revenues created by a redevelopment project to finance project-related improvements.

The valuation for assessment of the taxable real property in a redevelopment project area for the year prior to the effective date of the usage of tax increment financing is referred to as the “redevelopment project valuation.” This valuation more or less equates to a snapshot of the value before redevelopment. After redevelopment, as the redeveloper continues to pay real estate taxes, that portion attributable to the pre-redevelopment value is continued to be paid to the county for distribution to all of the taxing districts. Any increase in valuation, or the difference between pre- and post-redevelopment value, is the “increment” which is to be captured by the county for payment to the CRA. The CRA is to segregate such funds into a special fund to pay the

principal or interest and any premiums due on bonds or loans or advances of money. The Community Development Law limits the time period during which a CRA may capture the tax increment due to a redevelopment project to a maximum of 15 years (*Neb. Rev. Stat.* § 18-2147).

Tax-increment financing enables the CRA to install the type of public improvements for the “redevelopment project” that will enable a redeveloper to build the private improvements. Thus, the CRA may capture the “increment” to pay for public streets, utilities, parking facilities, landscaping, etc.

Perhaps TIF can be explained best by describing a hypothetical redevelopment project, as follows: A project is proposed on a vacant blighted site within a community. The present assessed value of the site is \$50,000. The city has a property tax rate of \$2.50 per \$100 of valuation. Therefore, property taxes on the site currently are \$1,250 per year. The proposed project on the site will have an assessed value of \$1 million, which will produce \$25,000 in annual tax revenues. In a TIF project, the taxes from the project that are distributed to the taxing jurisdictions are maintained at pre-redevelopment levels. The incremental taxes (in this case, \$25,000 minus \$1,250, or \$23,750) can be used to finance project-related costs. Incremental taxes can be used in this way for a period not to exceed 15 years from the date of passage of a redevelopment plan establishing a TIF project. In many cases, communities issue bonds (called TIF bonds), the principal value of which is based on the amount that can be amortized by these annual tax payments.

TIF funds can be used for a variety of redevelopment purposes, including land acquisition, public improvements and amenities, infrastructure, and utilities. Several cities, including Omaha, also utilize TIF to assist rehabilitation projects under the terms of a 1984 state constitutional amendment. Generally, state statutes do not appear to authorize the use of TIF to provide direct financing for actual new construction of private buildings.

Procedures for Designating a Redevelopment Project

In order to utilize the redevelopment powers granted by the Community Development Law (including land acquisition and tax increment financing), state statutes require some specific procedures.

Blight Declaration

Potential redevelopment areas must be located in areas which are first declared “blighted” by their communities. State statutes

establish specific criteria which must be met in order for an area to be declared blighted (*Neb. Rev. Stat.* § 18-2103(4)).

The range of conditions that may lead to a declaration of blight in a designated area include an area in which, by reason of the presence of a substantial number of deteriorated or deteriorating structures, existence of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision, obsolete or no platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations, or constitutes an economic or social liability and is detrimental to the public health, safety, morals, or welfare in its present condition and use and in which there is at least one of the following conditions:

- (i) Unemployment in the designated area is at least one hundred twenty percent of the state or national average;
- (ii) the average age of the residential or commercial units in the area is at least forty (40) years;
- (iii) more than half of the plotted and subdivided property in an area is unimproved land that has been within the city for forty (40) years and has remained unimproved during that time;
- (iv) the per capita income of the area is lower than the average per capita income of the city or village in which the area is designated;
- (v) the area has had either stable or decreasing population based on the last two decennial censuses; or
- (vi) less than twenty percent (20%) of the housing in the area is affordable housing. In no event shall a city of the metropolitan, primary, or first class designate more than thirty-five (35%) percent of the city as blighted, a city of the second class shall not designate an area larger than fifty percent (50%) of the city as blighted, and a village shall not designate an area larger than one hundred percent (100%) of the village as blighted.

A redevelopment project involving a formerly used defense site as authorized under *Neb. Rev. Stat.* § 18-2123.01, any area which is located within a good life district established under the Good Life

Transformational Projects Act, and any area declared to be an extremely blighted area under *Neb. Rev. Stat. § 18-2101.02* shall not count towards the percentage limitations contained in this subdivision.

Neb. Rev. Stat. § 18-2101.02 (14) also provides a definition of “extremely blighted area” as a substandard and blighted area in which: (a) The average rate of unemployment in the area during the period covered by the most recent federal decennial census or American Community Survey 5-Year Estimate is at least two hundred percent (200%) of the average rate of unemployment in the state during the same period; and (b) the average poverty rate in the area exceeds twenty percent (20%) for the total federal census tract or tracts or federal census block group or block groups in the area;

Declarations of blight for an area require:

- (1) A redevelopment plan for a redevelopment project area shall not be prepared and the governing body of the city in which such area is located shall not approve a redevelopment plan unless the governing body has, by resolution adopted after the public hearings required under this section, declared such area to be a substandard and blighted area in need of redevelopment.
- (2) Prior to making such declaration, the governing body of the city shall conduct or cause to be conducted a study or an analysis on whether the area is substandard and blighted and shall submit the question of whether such area is substandard and blighted to the planning commission or board of the city for its review and recommendation. The planning commission or board shall hold a public hearing on the question after giving notice of the hearing as provided in *Neb. Rev. Stat. § 18-2115.01*. The planning commission or board shall submit its written recommendations to the governing body of the city within thirty days after the public hearing.
- (3) Upon receipt of the recommendations of the planning commission or board, or if no recommendations are received within thirty days after the public hearing required under *Neb. Rev. Stat. § 2109 (2)*, the governing body shall hold a public hearing on the question of whether the area is substandard and blighted after giving notice of the hearing as provided in *Neb. Rev. Stat. § 18-2115.01*. At the public hearing, all interested parties shall be afforded a reasonable opportunity to express their views respecting the proposed

declaration. After such hearing, the governing body of the city may adopt a resolution declaring that substandard and blighted conditions exist in the area under study. After the governing body has declared that substandard and blighted conditions exist in the area under study, the governing body may, by one or more resolutions, declare such area or any portion of such area to be a substandard and blighted area without further public hearing.

- (4) Copies of each substandard and blighted study or analysis conducted pursuant to subsection (2) of this section shall be posted on the city's public website or made available for public inspection at a location designated by the city.

The Community Development Law allows (*Neb. Rev. Stat.* § 18-2123) inclusion of undeveloped vacant land outside a city's limits, but within a three-mile radius, in a redevelopment project area. Such undeveloped vacant land can be included within a redevelopment project if it is necessary or convenient to the proper clearance or redevelopment of one or more substandard or blighted areas within the city. As discussed in Chapter 10 of this *Handbook*, Nebraska state statutes allow second class cities and villages in certain circumstances to annex non-contiguous land for redevelopment for agricultural processing facilities (*Neb. Rev. Stat.* § 17-405.01).

Redevelopment Plan

A redevelopment plan shall not be submitted or recommended to the governing body of the city in which the redevelopment project area is to be located until a general plan for the development of the city has been prepared.

The authority itself may prepare or cause a redevelopment plan to be prepared or any person or agency, public or private, may submit such a plan to an authority. A redevelopment plan shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements, and the proposed land uses and building requirements in the redevelopment project area, and shall include without being limited to:

- (a) The boundaries of the redevelopment project area, with a map showing the existing uses and condition of the real property therein;
- (b) a land-use plan showing proposed uses of the area;

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- (c) information showing the standards of population densities, land coverage, and building intensities in the area after redevelopment;
 - (d) a statement of the proposed changes, if any, in zoning ordinances or maps, street layouts, street levels or grades, or building codes and ordinances;
 - (e) a site plan of the area; and
 - (f) a statement as to the kind and number of additional public facilities or utilities which will be required to support the new land uses in the area after redevelopment. Any redevelopment plan may include a proposal for the designation of an enhanced employment area.

This section shall not apply to a redevelopment plan that receives an expedited review under *Neb. Rev. Stat. § 18-2155*.

Prior to recommending a redevelopment plan to the governing body for approval, an authority shall submit such plan to the planning commission or board of the city in which the redevelopment project area is located for review and recommendations as to its conformity with the general plan for the development of the city as a whole. The planning commission or board shall submit its written recommendations with respect to the proposed redevelopment plan to the authority within thirty (30) days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission or board or, if no recommendations are received within thirty (30) days, then without such recommendations, an authority may recommend the redevelopment plan to the governing body of the city for approval.

This section shall not apply to a redevelopment plan that receives an expedited review under *Neb. Rev. Stat. § 18-2155*.

The governing body may require that other components be included as part of the redevelopment plan. For example, a redevelopment plan should have an implementation component, including an estimate of project costs and a description of the actions needed to execute the project. If land acquisition is required, the plan should indicate the sites in the redevelopment area that are to be acquired.

In its recommendation to the governing body, the CRA must include a statement of the proposed method and estimated cost of acquisition and preparation of the redevelopment project area and the estimated proceeds or revenue from its disposal to redevelopers.

The plan must include a statement of the proposed method of financing the redevelopment project and describe a feasible

method for the relocation of families, if any, are to be displaced from a redevelopment project area (*Neb. Rev. Stat.* § 18-2114).

Cost-Benefit Analysis

The CRA must conduct a cost-benefit analysis for each redevelopment project whose redevelopment plan includes the division of taxes as provided in *Neb. Rev. Stat.* § 18-2147. In conducting the cost-benefit analysis, the authority shall use a cost-benefit model developed for use by local projects. Any cost-benefit model used by the authority shall consider and analyze the following factors:

- (a) Tax shifts resulting from the division of taxes as provided in *Neb. Rev. Stat.* § 18-2147;
- (b) Public infrastructure and community public service needs impacts and local tax impacts arising from the approval of the redevelopment project;
- (c) Impacts on employers and employees of firms locating or expanding within the boundaries of the area of the redevelopment project;
- (d) Impacts on other employers and employees within the city or village and the immediate area that are located outside of the boundaries of the area of the redevelopment project;
- (e) Impacts on the student populations of school districts within the city or village; and
- (f) Any other impacts determined by the authority to be relevant to the consideration of costs and benefits arising from the redevelopment project.

Copies of each cost-benefit analysis conducted pursuant to *Neb. Rev. Stat.* § 18-2113 (2) shall be posted on the city's public website or made available for public inspection at a location designated by the city.

This section shall not apply to a redevelopment plan that receives an expedited review under *Neb. Rev. Stat.* § 18-2155.

The Department of Economic Development shall, to the extent that funds are appropriated for such purpose, reimburse applying cities or villages for the fees paid by such cities or villages for the use of the cost-benefit analysis model, developed and approved by the Legislature, for projects using funds authorized by *Neb. Rev. Stat.* § 18-2147.

Approval Process for Redevelopment Plan

The process of adopting a redevelopment plan requires:

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- (1) The planning commission or board of the city shall hold a public hearing on any redevelopment plan or substantial modification thereof after giving notice of the hearing as provided in *Neb. Rev. Stat.* § 18-2115.01.
 - (2) After the hearing required under subsection (1) of this section, the governing body of the city shall hold a public hearing on any redevelopment plan or substantial modification thereof after giving notice of the hearing as
 - (3) provided in *Neb. Rev. Stat.* § 18-2115.01. At the public hearing, all interested parties shall be afforded a reasonable opportunity to express their views respecting the proposed redevelopment plan.
 - (4) For purposes of this section, substantial modification means a change to a redevelopment plan that (a) materially alters or reduces existing areas or structures otherwise available for public use or access, (b) substantially alters the use of the community redevelopment area as contemplated in the redevelopment plan, or (c) increases the amount of ad valorem taxes pledged under section 18-2150 by more than five percent, if the amount of such taxes is included in the redevelopment plan.
 - (5) This section shall not apply to a redevelopment plan that receives an expedited review under *Neb. Rev. Stat.* § 18-2155.

Notice Requirements

- (1) For any hearing to be held pursuant to *Neb. Rev. Stat.* § 18-2101.02, § 18-2109, or § 18-2115:
 - (a) The notice of hearing shall:
 - (i) Be published at least once a week for two consecutive weeks in a legal newspaper in or of general circulation in the community;
 - (ii) Be given to any neighborhood association which is registered under *Neb. Rev. Stat.* § 18-2115.01 (2) and whose area of representation is located in whole or in part within a one-mile radius of the area to be declared extremely blighted under *Neb. Rev. Stat.* § 18-2101.02, the area to be declared substandard and blighted under *Neb. Rev. Stat.* § 18-2109, or the area to be redeveloped in the redevelopment plan or substantial modification thereof under *Neb. Rev. Stat.* § 18-2115; and
 - (iii) Be given to the president or chairperson of the governing body of each county, school district,

community college area, educational service unit, and natural resources district that includes the real property to be declared extremely blighted under *Neb. Rev. Stat.* § 18-2101.02, the real property to be declared substandard and blighted under *Neb. Rev. Stat.* § 18-2109, or the real property subject to the redevelopment plan or substantial modification thereof under *Neb. Rev. Stat.* § 18-2115;

- (b) The time of the hearing shall be at least ten days from the last publication of notice under subdivision (1)(a)(i) of this section;
- (c) The notice of hearing described in *Neb. Rev. Stat.* § 18-2115.01 (1)(a)(ii) shall be given at least ten (10) days prior to the hearing, shall be sent in the manner requested by the neighborhood association, and shall be deemed given on the date it is sent to the neighborhood association. The notice of hearing described in *Neb. Rev. Stat.* § 18-2115.01 (1)(a)(iii) of this section shall be given at least ten (10) days prior to the hearing, shall be sent by certified mail, return receipt requested, to the president or chairperson of the governing body, and shall be deemed given on the date it is mailed by certified mail to the president or chairperson; and
- (d) The notice of hearing shall include the following information:
 - (i) The time, date, place, and purpose of the hearing;
 - (ii) A map of sufficient size to show the area to be declared extremely blighted under *Neb. Rev. Stat.* § 18-2101.02, the area to be declared substandard and blighted under *Neb. Rev. Stat.* § 18-2109, or the area to be redeveloped in the redevelopment plan or substantial modification thereof under *Neb. Rev. Stat.* § 18-2115, or information on where to find such map;
 - (iii) For a hearing held pursuant to *Neb. Rev. Stat.* § 18-2101.02, information on where to find copies of the study or analysis conducted pursuant to *Neb. Rev. Stat.* § 18-2102.02;
 - (iv) For a hearing held pursuant to *Neb. Rev. Stat.* § 18-2109, information on where to find copies of the study or analysis conducted pursuant to *Neb. Rev. Stat.* § 18-2109 (2); and
 - (v) For a hearing held pursuant to *Neb. Rev. Stat.* § 18-2115, a specific identification of the area to be redeveloped under the plan and information on where to find copies of any cost-benefit analysis conducted pursuant to *Neb. Rev. Stat.* § 18-2113.

(2) Each neighborhood association desiring to receive notice of any hearing required under *Neb. Rev. Stat.* § 18-2101.02, § 18-2109, or

§ 18-2115 shall register with the city's planning department or, if there is no planning department, with the city clerk. The registration shall include a description of the area of representation of the association, the name of and contact information for the individual designated by the association to receive the notice on its behalf, and the requested manner of service, whether by email, first-class mail, or certified mail. Registration of the neighborhood association for purposes of this section shall be accomplished in accordance with such other rules and regulations as may be adopted and promulgated by the city.

Plan Approval

(1) Following the public hearings required under *Neb. Rev. Stat. § 18-2115*, the governing body may approve a redevelopment plan if:

(a) it finds and documents in writing that the plan is feasible and in conformity with the general plan for the development of the city as a whole and the plan is in conformity with the legislative declarations and determinations set forth in the Community Development Law, and

(b) it finds and documents in writing that, if the plan uses funds authorized in *Neb. Rev. Stat. § 18-2147*

(1) the redevelopment project in the plan would not be economically feasible without the use of tax-increment financing,

(2) the redevelopment project would not occur in the community redevelopment area without the use of tax-increment financing, and

(3) the costs and benefits of the redevelopment project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services, have been analyzed by the governing body and have been found to be in the long-term best interest of the community impacted by the redevelopment project.

(2) In connection with the approval of any redevelopment plan which includes the designation of an enhanced employment area, the governing body may approve the redevelopment plan if it determines that any new investment within such enhanced employment area will result in at least:

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- (a) Two (2) new employees and new investment of one hundred twenty-five thousand dollars (\$125,000) in counties with fewer than fifteen thousand (15,000) inhabitants,
 - (b) Five (5) new employees and new investment of two hundred fifty thousand dollars (\$250,000) in counties with at least fifteen thousand (15,000) inhabitants but fewer than twenty-five thousand (25,000) inhabitants,
 - (c) Ten (10) new employees and new investment of five hundred thousand dollars (\$500,000) in counties with at least twenty-five thousand (25,000) inhabitants but fewer than fifty thousand (50,000) inhabitants,
 - (d) Fifteen (15) new employees and new investment of one million dollars (\$1,00,000) in counties with at least fifty thousand (50,000) inhabitants but fewer than one hundred thousand (100,000) inhabitants,
 - (e) Twenty (20) new employees and new investment of one million five hundred thousand dollars (\$1,500,000) in counties with at least one hundred thousand (100,000) inhabitants but fewer than two hundred thousand (200,000) inhabitants,
 - (f) Twenty-five (25) new employees and new investment of two million dollars (\$2,000,000) in counties with at least two hundred thousand (200,000) inhabitants but fewer than four hundred thousand (400,000) inhabitants, or
 - (g) Thirty (30) new employees and new investment of three million dollars (\$3,000,000) in counties with at least four hundred thousand (400,000) inhabitants.

Any business that has one hundred thirty-five thousand (135,000) square feet or more and annual gross sales of ten million dollars (\$10,000,000) or more shall provide an employer-provided health benefit of at least three thousand dollars (\$3,000) annually to all new employees who are working thirty (30) hours per week or more on average and have been employed at least six (6) months. In making such determination, the governing body may rely upon written undertakings provided by any redeveloper in

connection with application for approval of the redevelopment plan.

- (3) This section shall not apply to a redevelopment plan that receives an expedited review under *Neb. Rev. Stat.* § 18-2155.

Plan Modifications Conditions

A redevelopment plan which has not been approved by the governing body when submitted by a redeveloper under *Neb. Rev. Stat.* § 18-2155 or when recommended by the authority may again be submitted or recommended to the governing body with any modifications deemed advisable. A redevelopment plan may be modified at any time by the authority, except that if modified after the lease or sale of real property in the redevelopment project area, the modification must be consented to by the redeveloper or redevelopers of such real property or his or her successor, or their successors, in interest affected by the proposed modification. Where the proposed modification will substantially change the redevelopment plan as previously approved by the governing body the modification must similarly be approved by the governing body.

Report to Property Tax Administrator

(1)(a) On or before December 1 each year, each city which has approved one or more redevelopment plans which are financed in whole or in part through the division of taxes as provided in *Neb. Rev. Stat.* § 18-2147 shall provide a report to the Property Tax Administrator on each such redevelopment plan which includes the following information:

- (i) A copy of the redevelopment plan and any amendments thereto, including the date upon which the redevelopment plan was approved, the effective date for dividing the ad valorem tax as provided to the county assessor pursuant to *Neb. Rev. Stat.* § 18-2147 (6), and the location and boundaries of the property in the redevelopment project; and
- (ii) A short narrative description of the type of development undertaken by the city or village with the financing and the type of business or commercial activity locating within the redevelopment project area as a result of the redevelopment project.

(1)(b) If a city has approved one or more redevelopment plans using an expedited review under *Neb. Rev. Stat.* § 18-2155, the city may file a single report under this subsection for all such redevelopment plans.

(2) The report required under subsection (1) of this section must be filed each year, regardless of whether the information in the report has changed, except that a city is not required to refile a copy of the redevelopment plan or an amendment thereto if such copy or amendment has previously been filed.

(3) The Property Tax Administrator shall compile a report for each active redevelopment project, based upon information provided by the cities pursuant to subsection (1) of this section and information reported by the county assessor or county clerk on the certificate of taxes levied pursuant to *Neb. Rev. Stat. § 77-1613.01*. Each report shall be electronically transmitted to the Clerk of the Legislature not later than March 1 each year. The report may include any recommendations of the Property Tax Administrator as to what other information should be included in the report from the cities so as to facilitate analysis of the uses, purposes, and effectiveness of tax-increment financing and the process for its implementation or to streamline the reporting process provided for in this section to eliminate unnecessary paperwork.

Redevelopment Projects Annual Report

On or before May 1 of each year, each authority, or such other division or department of the city as designated by the governing body, shall compile information regarding the approval and progress of redevelopment projects that are financed in whole or in part through the division of taxes as provided in *Neb. Rev. Stat. § 18-2147* and report such information to the governing body of the city and to the governing body of each county, school district, community college area, educational service unit, and natural resources district whose property taxes are affected by such division of taxes. The report shall include, but not be limited to, the following information:

- (1) The total number of active redevelopment projects within the city that have been financed in whole or in part through the division of taxes as provided in *Neb. Rev. Stat. § 18-2147*;
- (2) The total estimated project costs for all such redevelopment projects;
- (3) The estimated amount of outstanding indebtedness related to each such redevelopment project and an estimated date by which such indebtedness is expected to be paid in full;
- (4) A comparison between the initial projected valuation of property included in each such redevelopment project as described in the redevelopment contract or, for redevelopment projects approved using an expedited review under *Neb. Rev. Stat. § 18-2155*, in the redevelopment plan and the assessed

value of the property included in each such redevelopment project as of January 1 of the year of the report;

- (5) The number of such redevelopment projects approved by the governing body in the previous calendar year;
- (6) Information specific to each such redevelopment project approved by the governing body in the previous calendar year, including the project area, project type, amount of financing approved, and total estimated project costs;
- (7) The number of redevelopment projects for which financing has been paid in full during the previous calendar year and for which taxes are no longer being divided pursuant to *Neb. Rev. Stat. § 18-2147*; and
- (8) The percentage of the city that has been designated as blighted.

Inclusion of Certain Costs in Redevelopment Project

- (1) A redevelopment project that includes the division of taxes as provided in *Neb. Rev. Stat. § 18-2147* shall not provide for the reimbursement of costs incurred prior to approval of the redevelopment project, except for costs relating to:
 - (a) The preparation of materials and applications related to the redevelopment project;
 - (b) The preparation of a cost-benefit analysis conducted pursuant to *Neb. Rev. Stat. § 18-2113*;
 - (c) The preparation of a redevelopment contract;
 - (d) The preparation of bond and other financing instruments;
 - (e) Land acquisition and related due diligence activities, including, but not limited to, surveys and environmental studies; and
 - (f) Site demolition and preparation.
- (2) This section shall not be construed to require the reimbursement of legal fees incurred prior to approval of the redevelopment project.

City to Retain Plans

- (1) On and after October 1, 2018, each city that has approved one or more redevelopment plans or redevelopment projects that are financed in whole or in part through the division of taxes as provided in *Neb. Rev. Stat. § 18-2147* shall retain copies of (a) all such redevelopment plans and (b) all supporting documents associated with the redevelopment

plans or redevelopment projects, with any related substandard and blighted declaration under *Neb. Rev. Stat.* § 18-2109, and with any related extremely blighted declaration under *Neb. Rev. Stat.* § 18-2101.02 that are received or generated by the city.

- (2) The city shall retain the redevelopment plans and supporting documents described in subsection (1) of this section for the period of time required under any applicable records retention schedule adopted under the Records Management Act or for three years following the end of the last fiscal year in which ad valorem taxes are divided, whichever period is longer.
- (3) For purposes of this section, supporting document includes any substandard and blighted study or analysis conducted pursuant to *Neb. Rev. Stat.* § 18-2109, any extremely blighted study or analysis conducted pursuant to *Neb. Rev. Stat.* § 18-2101.02, any cost-benefit analysis conducted pursuant to *Neb. Rev. Stat.* § 18-2113, and any invoice, receipt, claim, or contract received or generated by the city that provides support for receipts or payments associated with the redevelopment plan or redevelopment project.

Real Estate Sale, Lease, Transfer

An authority may sell, lease for a term not exceeding ninety-nine years, exchange, or otherwise transfer real property or any interest therein in a redevelopment project area to any redeveloper for residential, recreational, commercial, industrial, or other uses, including parking or other facilities functionally related or subordinate to such uses, or for public use in accordance with the redevelopment plan, subject to such covenants, conditions, and restrictions as it may deem to be in the public interest or to carry out the purposes of the Community Development Law. Such real property shall be sold, leased, or transferred at its fair value for uses in accordance with the redevelopment plan. In determining the fair value of real property for uses in accordance with the redevelopment plan, an authority shall take into account and give consideration to the uses and purposes required by such plan; the restrictions upon, and the covenants, conditions, and obligations assumed by the redeveloper of such property; the objectives of the redevelopment plan for the prevention of the recurrence of substandard and blighted areas; and such other matters as the authority shall specify as being appropriate. In fixing rentals and selling prices, an authority shall give consideration to appraisals of the property for such uses made by land experts employed by the authority.

Implementing a Redevelopment Project

Following approval of a redevelopment plan, the local governing body selects one or more redevelopers to perform the work outlined in the plan.

Redeveloper Selection Process and Redevelopment Agreement

The process by which CRAs may approve specific redevelopment contracts with redevelopers in a redevelopment area is prescribed by the Community Development Law (*Neb. Rev. Stat. § 18-2119*). Once an area has been declared to be in need of redevelopment, the CRA must publish a notice once a week for two consecutive weeks inviting proposals from private redevelopers or persons interested in undertaking the redevelopment of the area. The CRA is to make available all pertinent information to interested parties. The CRA is to consider all proposals and the “financial and legal ability of the prospective redevelopers” in making the selection. The CRA may negotiate with any redevelopers regarding proposals for the purchase or lease of any property in the redevelopment project area.

The CRA may accept a redevelopment proposal as it deems to be in the public interest, provided it has, not less than 30 days prior thereto, notified the city council or village board of its intention to accept such redevelopment contract proposal.

Payments in Lieu of Taxes for Property Owned by a CRA

Property owned by a CRA is public property and is exempt from all taxes. Thus, in those circumstances where the CRA actually owns real estate, such real estate is exempt from real estate taxes, but in lieu thereof, the CRA is to pay a sum equal to the amount which the taxing district received from such real property during the year immediately preceding the acquisition of such real property by the CRA (*Neb. Rev. Stat. § 18-2137*).

Micro TIF – Expedited Review Process

Pursuant to *Neb. Rev. Stat. § 18-2155*, the governing body of a city may elect by resolution to allow expedited reviews of redevelopment plans that meet the requirements of subsection (2) of this section. A redevelopment plan that receives an expedited review pursuant to this section shall be exempt from the requirements of *Neb. Rev. Stat. §§ 18-2111 to 18-2115 and 18-2116*.

Qualifications for Expedited Review

- (a) The redevelopment plan includes only one redevelopment project;

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- (b) The redevelopment project involves:
- (i) The repair, rehabilitation, or replacement of an existing structure that has been within the corporate limits of the city for at least sixty (60) years and is located within a substandard and blighted area; or
 - (ii) The redevelopment of a vacant lot that is located within a substandard and blighted area that has been within the corporate limits of the city for at least sixty (60) years and has been platted for at least sixty years;
- (c) The redevelopment project is located in a county with a population of less than one hundred thousand (100,000) inhabitants; and
- (d) The assessed value of the property within the redevelopment project area when the project is complete is estimated to be no more than:
- (i) Three hundred fifty thousand dollars (\$350,000) for a redevelopment project involving a single-family residential structure;
 - (ii) One million five hundred thousand dollars (\$1,500,000) for a redevelopment project involving a multi-family residential structure or commercial structure; or
 - (iii) Ten million dollars (\$10,000,000) for a redevelopment project involving the revitalization of a structure included in the National Register of Historic Places.

Expedited Review Process

A redeveloper shall prepare the redevelopment plan using a standard form developed by the Department of Economic Development. The form shall include:

- (i) the existing uses and condition of the property within the redevelopment project area,
 - (ii) the proposed uses of the property within the redevelopment project area,
 - (iii) the number of years the existing structure has been within the corporate limits of the city or the number of years that the vacant lot has been platted within the corporate limits of the city, whichever is applicable,
 - (iv) the current assessed value of the property within the redevelopment project area,
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- (v) the increase in the assessed value of the property within the redevelopment project area that is estimated to occur as a result of the redevelopment project,
 - (vi) an indication of whether the redevelopment project will be financed in whole or in part through the division of taxes as provided in section 18-2147, and
 - (vii) the agreed-upon costs of the redevelopment project;

The redeveloper shall submit the redevelopment plan directly to the governing body along with an application fee in an amount set by the governing body, not to exceed fifty dollars (\$50.00). Such application fee shall be separate from any fees for building permits or other permits needed for the project. and

The governing body shall determine whether to approve or deny the redevelopment plan within thirty (30) days after submission of the plan. A redevelopment plan may be denied if:

- (i) The redevelopment plan does not meet the requirements of subsection (2) of this section;
- (ii) Approval of the redevelopment plan would exceed the annual limit established under subsection (3) of this section; or
- (iii) The redevelopment plan is inconsistent with the city's comprehensive development plan.

Each city may select the appropriate employee or department to conduct expedited reviews pursuant to this section.

For any approved redevelopment project that is financed in whole or in part through the division of taxes as provided in section 18-2147:

- (a) The authority shall incur indebtedness related to the redevelopment project which shall not exceed the lesser of the agreed-upon costs of the redevelopment project or the amount estimated to be generated over a fifteen-year period from the portion of taxes mentioned in subdivision (1)(b) of Neb. Rev. Stat. § 18-2147. Such indebtedness shall not create a general obligation on behalf of the authority or the city in the event that the amount generated over a fifteen (15) year period from the portion of taxes mentioned in subdivision (1)(b) of Neb. Rev. Stat. § 18-2147 does not equal the costs of the agreed upon work to repair, rehabilitate, or replace the structure or to redevelop the vacant lot as provided in the redevelopment plan;

(b) Upon completion of the agreed upon work to repair, rehabilitate, or replace the structure or to redevelop the vacant lot as provided in the redevelopment plan, the redeveloper shall notify the county assessor of such completion; and

(c) The county assessor shall then determine:

- (i) Whether the redevelopment project is complete. Redevelopment projects must be completed within two years after the redevelopment plan is approved under this section; and
- (ii) The assessed value of the property within the redevelopment project area.

After the county assessor makes the determinations required under subsection (c) above, the county assessor shall use a standard certification form developed by the Department of Revenue to certify to the authority:

- (a) That improvements have been made and completed;
- (b) That a valuation increase has occurred;
- (c) The amount of the valuation increase; and
- (d) That the valuation increase was due to the improvements made.

Once the county assessor has made the certification required under subsection (7) of this section, the authority may begin to use the portion of taxes mentioned in subdivision (1)(b) of Neb. Rev. Stat. § 18-2147 to pay the indebtedness incurred by the authority under subdivision (a) above.

The payments shall be remitted to the holder of the indebtedness. The changes made to this subsection by Laws 2023, LB 531, shall be retroactive in application and shall apply to redevelopment plans approved prior to, on, or after June 7, 2023.

A single fund may be used for all redevelopment projects that receive an expedited review pursuant to this section. It shall not be necessary to create a separate fund for any such project, including a project financed in whole or in part through the division of taxes as provided in Neb. Rev. Stat. § 18-2147.

The governing body of a city that elects to allow expedited reviews of redevelopment plans under this section may revoke such election by resolution at any time. The revocation of such election shall not affect the validity of (a) any redevelopment plan or redevelopment project that was approved under this section prior to the revocation of such election or (b) any

indebtedness incurred by the authority under subsection (6)(a) above prior to the revocation of such election.

Removal of Blighted Designation

If an area has been designated as a substandard and blighted area under section 18-2109 or an extremely blighted area under section 18-2101.02, the governing body of the city may review such area at any time to determine whether the area is still eligible for the relevant designation (*Neb. Rev. Stat. § 18-2156*). As part of such review, the governing body may, but need not:

- (a) Examine any study or analysis of such area conducted pursuant to section *Neb. Rev. Stat. § 18-2101.02* or *Neb. Rev. Stat. § 18-2109* to determine whether the conditions that led to the relevant designation still exist; and
- (b) Examine the conditions within the area to determine whether the area still qualifies as a blighted area, a substandard area, or an extremely blighted area as such terms are defined in *Neb. Rev. Stat. § 18-2103*.

If a review is conducted under this section and the governing body of the city finds that an area is no longer a substandard and blighted area or an extremely blighted area, the governing body may remove the relevant designation by passing a resolution declaring such area to no longer be a substandard and blighted area or an extremely blighted area. If the same area has been designated as both a substandard and blighted area and an extremely blighted area, the governing body may remove both designations in a single resolution.

Removal of a substandard and blighted area designation or an extremely blighted area designation pursuant to this section shall not affect the validity of (a) any redevelopment plan or redevelopment project involving such area that was approved prior to the removal of such designation or (b) any bond, security for such bond, redevelopment contract, or agreement relating to such a redevelopment plan or redevelopment project. (*Neb. Rev. Stat. § 18-2156*)

Beginning January 1, 2026, if an area has been designated as a substandard and blighted area under section 18-2109 or an extremely blighted area under section 18-2101.02 for more than thirty years, the governing body of the city shall not approve a new redevelopment plan or redevelopment project within such area unless and until the city conducts an analysis of the redevelopment projects that have occurred within such area. The analysis shall, at a minimum, include an assessment of the factors contributing to the lack of redevelopment in those parts of the area where significant redevelopment has not occurred and goals for the future

redevelopment of the area. The analysis shall be provided to the planning commission or board of the city and to the governing body of the city. A copy of such analysis shall be made available for public inspection at a location designated by the city.

This section does not apply to the downtown area of a city of the first class, city of the second class, or village. For purposes of this section, downtown area means the urban core of population density and concentrated commercial activity. (*Neb. Rev. Stat. § 18-2157*)

Pursuant to *Neb. Rev. Stat. § 18-2158* for any proposed redevelopment project that includes the division of taxes as provided in *Neb. Rev. Stat. § 18-2147* and that is located in an area which has been declared substandard and blighted because less than twenty percent of the housing in the area is affordable housing, the governing body may approve such project if:

- (1) The project includes the construction of residential housing; and
- (2) The governing body finds that, upon completion of the project, at least thirty percent of the residential housing in such area will be affordable housing.

NOTE: *Neb. Rev. Stat. § 18-2158* above was passed by the Legislature in 2025 (LB288) and became effective on September 3, 2025.

Tax Increment Reporting Requirement

On or before December 1 each year, each city, which has approved one or more redevelopment plans which are financed in whole or in part through the division of taxes as provided in *Neb. Rev. Stat. § 18-2147*, shall provide a report to the Property Tax Administrator on each such redevelopment plan which includes the following information (*Neb. Rev. Stat. § 18-2117.01*):

- (i) A copy of the redevelopment plan and any amendments thereto, including the date upon which the redevelopment plan was approved, the effective date for dividing the ad valorem tax as provided to the county assessor pursuant to subsection (6) of *Neb. Rev. Stat. § 18-2147*, and the location and boundaries of the property in the redevelopment project; and
- (ii) A short narrative description of the type of development undertaken by the city or village with the financing and the type of business or commercial activity locating within the redevelopment project area as a result of the redevelopment project.

If a city has approved one or more redevelopment plans using an expedited review under section 18-2155, the city may file a single report under this subsection for all such redevelopment plans.

The report required under subsection (1) of this section must be filed each year, regardless of whether the information in the report has changed, except that a city is not required to refile a copy of the redevelopment plan or an amendment thereto if such copy or amendment has previously been filed.

The Property Tax Administrator shall compile a report for each active redevelopment project, based upon information provided by the cities pursuant to subsection (1) of this section and information reported by the county assessor or county clerk on the certificate of taxes levied pursuant to *Neb. Rev. Stat. § 77-1613.01*. Each report shall be electronically transmitted to the Clerk of the Legislature not later than March 1 each year. The report may include any recommendations of the Property Tax Administrator as to what other information should be included in the report from the cities so as to facilitate analysis of the uses, purposes, and effectiveness of tax-increment financing and the process for its implementation or to streamline the reporting process provided for in this section to eliminate unnecessary paperwork.

Local Option Municipal Economic Development Act

Many municipalities in Nebraska have identified economic development as a key priority and want to provide incentives for businesses to expand or to locate in their respective jurisdictions

The Nebraska State Constitution prevents communities from lending their faith and credit to private entities. This is generally interpreted as prohibiting municipalities from loaning funds derived from local taxes to private companies or developers. Federal funds have typically been exempted from this restriction, on the basis that their source is external to the tax streams of communities.

In responding to the need to provide Nebraska municipalities with the opportunity of providing assistance to business enterprises in their communities, the Unicameral in 1991 enacted the Local Option Municipal Economic Development Act (*Neb. Rev. Stat. § 18-2701 to § 18-2738*).

Simply stated, the Local Option Municipal Economic Development Act permits cities to use funds raised by local taxation for certain economic development activities when the voters in the municipality determine that it is in the best interest of their community to do so. In most cases, this has involved a specific local tax, usually a local option sales tax, but the city's

property tax may be used. (This is sometimes referred to as an LB840 plan.)

Eligible Activities

The types of activities that may be pursued through this Act include, but are not limited to (*Neb. Rev. Stat. § 18-2705*):

- (a) Direct loans or grants to qualifying businesses for fixed assets or working capital or both,
- (b) loan guarantees for qualifying businesses,
- (c) grants for public works improvements which are essential to the location or expansion of, or the provision of new services by, a qualifying business,
- (d) grants or loans to qualifying businesses for job training,
- (e) the purchase of real estate, options for such purchases, and the renewal or extension of such options,
- (f) grants or loans to qualifying businesses to provide relocation incentives for new residents,
- (g) the issuance of bonds as provided for in the Local Option Municipal Economic Development Act, and
- (h) payments for salaries and support of city staff to implement the economic development program or develop an affordable housing action plan, including any such plan required under *Neb. Rev. Stat. § 19-5505*, or payments for the contracting of such program implementation or plan development to an outside entity.

For cities of the first and second class and villages, an economic development program may also include grants, loans, or funds for:

- (a) Construction or rehabilitation for sale or lease of housing (i) for persons of low or moderate income, (ii) as part of a workforce housing plan, or (iii) as part of an affordable housing action plan, including any such plan required under *Neb. Rev. Stat. § 19-5505*;
- (b) Rural infrastructure development as defined in *Neb. Rev. Stat. § 66-2102*; or
- (c) Early childhood infrastructure development.

An economic development program may be conducted jointly by two or more cities after the approval of the program by the voters of each participating city.

Eligible Beneficiaries

Eligible beneficiaries of funds raised under auspices of the Local Option Municipal Economic Development Act include businesses whose primary source of revenue is derived from any of the following (*Neb. Rev. Stat. § 18-2709*):

- The manufacture of articles of commerce;
- The conduct of research and development;
- The processing, storage, transport, or sale of goods or commodities which are sold or traded in interstate commerce;
- The sale of services in interstate commerce; headquarters facilities relating to eligible activities as listed in this section;
- Telecommunications activities, including services providing advanced telecommunications capability; tourism-related activities; or the production of films, including feature, independent, and documentary films, commercials, and television programs.

In cities of the first class, cities of the second class, and villages, a business that derives its principal source of income from early childhood care and education programs.

A business that derives its principal source of income from retail trade, except that no more than forty percent of the total revenue generated pursuant to the Local Option Municipal Economic Development Act for an economic development program in any twelve (12)-month period and no more than twenty percent (20%) of the total revenue generated pursuant to the act for an economic development program in any five (5)-year period, commencing from the date of municipal approval of an economic development program, shall be used by the city for or devoted to the use of retail trade businesses. For purposes of this subdivision, retail trade means a business which is principally engaged in the sale of goods or commodities to ultimate consumers for their own use or consumption and not for resale; and

In cities with a population of five thousand (5,000) inhabitants or less as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, a business shall be a qualifying business even though it derives its principal source of income from activities other than those set out in *Neb. Rev. Stat. § 18-2709*.

Economic Development Plan

The governing body of any city proposing to adopt an economic development program shall prepare a proposed plan for such

economic development program. The proposed plan shall include (*Neb. Rev. Stat.* § 18-2710):

- (1) A description of the city's general community and economic development strategy;
- (2) A statement of purpose describing the city's general intent and proposed goals for the establishment of the economic development program;
- (3) A description of the types of businesses and economic activities that will be eligible under the program for the city's assistance;
- (4) A statement specifying the total amount of money that is proposed to be directly collected from local sources of revenue by the city to finance the program, whether the city desires the authority to issue bonds pursuant to the Local Option Municipal Economic Development Act to provide funds to carry out the economic development program, the time period within which the funds from local sources of revenue are to be collected, the time period during which the program will be in existence, and a basic preliminary proposed budget for the program;
- (5) A description of the manner in which a qualifying business will be required to submit an application for financial assistance, including the type of information that will be required from the business, the process that will be used to verify the information, and the steps that will be taken to insure the privacy and confidentiality of business information provided to the city;
- (6) A description of the administrative system that will be established to administer the economic development program, including a description of the personnel structure that will be involved and the duties and responsibilities of those persons involved; and
- (7) A description of how the city will assure that all applicable laws, regulations, and requirements are met by the city and the qualifying businesses which receive assistance.

If the economic development program will involve making grants or loans for the construction or rehabilitation of housing for persons of low or moderate income or if the program will involve the purchase of or option to purchase land, there are other required components of the economic development plan, which are spelled out (*Neb. Rev. Stat.* § 18-2710.01 and § 182711) in the Local Option Municipal Economic Development Act.

The economic development plan is intended to be a very specific document, establishing the detailed uses of funds and operations of the program. Therefore, it should be very carefully thought out.

If the proposed economic development program involves the making of grants or loans for the construction or rehabilitation for sale or lease of housing as part of a workforce housing plan, the proposed plan shall include (*Neb. Rev. Stat. § 18-2710.02*):

- (1) An assessment of current housing stock in the city, including both single-family and market rate multifamily housing;
- (2) Whether the plan will also include housing for persons of low or moderate income under *Neb. Rev. Stat. § 18-2710.01*;
- (3) Such other factors, as determined by the city, which are particularly relevant in assessing the conditions faced by existing businesses in recruiting new employees; and
- (4) Such other factors, as determined by the city, which are particularly relevant in assessing the conditions faced by persons seeking new or rehabilitated housing in the city.

Adoption of the Economic Development Plan

Upon completion of the economic development plan (*Neb. Rev. Stat. § 18-2712*), the governing body of the city must schedule a public hearing at which the plan is presented for public comment and discussion. Following the public hearing, the governing body shall adopt the proposed plan and any amendments by resolution. At the discretion of the governing body, the resolution may include the full text of the proposed plan or it may be incorporated by reference. The resolution shall include a statement of the date at which the economic development program will be presented to the voters of the city for approval pursuant to *Neb. Rev. Stat. § 18-2713* and the language of the ballot question as it will appear on the ballot. Following its adoption, a copy of the resolution and the proposed plan shall be filed with the city clerk who shall make it available for public review at city hall during regular business hours.

Adoption of the Economic Development Program

Before adopting an economic development program based upon the adopted economic development plan, a city must submit the question of its adoption to the registered voters in an election. The governing body of the city shall order the submission of the question by filing a certified copy of the resolution proposing the

economic development program with the election commissioner or county clerk not later than fifty days prior to a special election or a municipal primary or general election which is not held at the statewide primary or general election or not later than March 1 prior to a statewide primary election or September 1 prior to a statewide general election. The governing body of the city may determine not to submit the question at a particular election and order the removal of the question from the ballot by filing a certified copy of the resolution approving removing the question with the election commissioner or county clerk not later than March 1 prior to a statewide primary election or September 1 prior to a statewide general election.

The question on the ballot shall briefly set out the terms, conditions, and goals of the proposed economic development program, including the length of time during which the program will be in existence, the year or years within which the funds from local sources of revenue are to be collected, the source or sources from which the funds are to be collected, the total amount to be collected for the program from local sources of revenue, and whether the city proposes to issue bonds pursuant to the Local Option Municipal Economic Development Act to provide funds to carry out the economic development program. The ballot question shall also specify whether additional funds from other non-city sources will be sought beyond those derived from local sources of revenue. In addition to all other information, if the funds are to be derived from the city's property tax, the ballot question shall state the present annual cost of the economic development program per ten thousand dollars of assessed valuation based upon the most recent valuation of the city certified to the Property Tax Administrator pursuant to *Neb. Rev. Stat. § 77-1613.01*. The ballot question shall state: "Shall the city of (name of the city) establish an economic development program as described here by appropriating annually from local sources of revenue \$ _____ for _____ years?". If the only city revenue source for the proposed economic development program is a local option sales tax that has not yet been approved at an election, the ballot question specifications in this section may be repeated in the sales tax ballot question.

If a majority of those voting on the issue vote in favor of the question, the governing body may implement the proposed economic development program upon the terms set out in the resolution. If a majority of those voting on the economic development program vote in favor of the question when the only city revenue source is a proposed sales tax and a majority of those voting on the local option sales tax vote against the question, the governing body shall not implement the economic development

program, and it shall become null and void. If a majority of those voting on the issue vote against the question, the governing body shall not implement the economic development program.

Neb. Rev. Stat. § 18-2714 provides after approval by the voters of an economic development program, the governing body of the city shall, within forty-five (45) days after such approval, establish the economic development program by ordinance in conformity with the terms of such program as set out in the original enabling resolution.

After the adoption of the ordinance establishing the economic development program, such ordinance shall only be amended after the governing body of the city (a) gives notice of and holds at least one public hearing on the proposed changes, (b) approves the proposed changes by a two-thirds vote of the members of such governing body, and (c) except as provided in *Neb. Rev. Stat.* § 18-2714 (3) of this section, submits the proposed changes to a new vote of the registered voters of the city in the manner provided in *Neb. Rev. Stat.* § 18-2713.

A new vote of the registered voters of the city is not required for the following types of amendments to an economic development program:

- (a) An amendment adding a type of qualifying business to those that are eligible to participate in the economic development program or removing a type of qualifying business from those that are eligible to participate in such program if such addition or removal is recommended by the citizen advisory review committee established under *Neb. Rev. Stat.* § 18-2715;
- (b) An amendment making corrective changes to comply with the Local Option Municipal Economic Development Act; or
- (c) An amendment making corrective changes to comply with any other existing or future state or federal law.

The governing body of a city may, at any time after the adoption of the ordinance establishing the economic development program, by a two-thirds vote of the members of the governing body, repeal the ordinance in its entirety and end the economic development program, subject only to the provisions of any existing contracts relating to such program and the rights of any third parties arising from those contracts. Prior to such vote by the governing body, it shall publish notice of its intent to consider the repeal and hold a public hearing on the issue. Any funds in the custody of the city for such economic development program which are not spent or committed at the time of the repeal and any funds to be received in the future from the prior operation of the economic

development program shall be placed into the general fund of the city.

Citizen Advisory Review Committee

The ordinance establishing the economic development program must create a citizens advisory committee to review the operation and effectiveness of the program on an ongoing basis (*Neb. Rev. Stat. § 18-2715*). The advisory committee is to consist of five to ten registered voters of the city, appointed by the mayor and approved by the governing body. At least one member of the advisory committee shall have expertise or experience in the field of business finance or accounting. None of the advisory committee members may be elected or appointed city officials, employees of the city, or officials or employees of any qualifying business receiving financial assistance from the economic development program. At least once every six (6) months, the committee is to report to the governing body on its findings and suggestions at a public hearing called for that purpose.

Members of the citizen advisory review committee, in their capacity as members and consistent with their responsibilities as members, may be permitted access to business information received by the city in the course of its administration of the economic development program, which information would otherwise be confidential (a) under *Neb. Rev. Stat. § 84-712.05* (Public Records Law), (b) by agreement with a qualifying business participating in the economic development program, or (c) under any ordinance of the city providing access to such records to members of the committee and guaranteeing the confidentiality of business information received by reason of its administration of the economic development program. Such ordinance may provide that unauthorized disclosure of any business information which is confidential under *Neb. Rev. Stat. § 84-712.05* shall be a Class III misdemeanor.

Business Improvement District Act

The business improvement district (BID) is a mechanism that has been widely used to assist development and improvement of business areas, usually, but not limited to central business districts, in many cities across the country. Nebraska's Business Improvement District Act (*Neb. Rev. Stat. § 19-4015 to § 19-4038*) was originally introduced to assist with the improvement of a "main street" district in a metropolitan city – Omaha's Benson business district. The purpose of the BID Act is to provide cities with a financing mechanism to create municipal

improvements enhancing business areas. Cities of the metropolitan, primary, first, and second class in Nebraska may establish BIDs pursuant to the Business Improvement District Act. (*Neb. Rev. Stat.* § 19-4018)

Eligible Activities

The BID mechanism the city may impose (1) a special assessment upon the property within a business improvement district in the city or (2) a general business occupation tax on businesses and users of space within a business improvement district. After March 27, 2014, any occupation tax imposed pursuant to this section shall make a reasonable classification of businesses, users of space, or kinds of transactions for purposes of imposing such tax, except that no occupation tax shall be imposed on any transaction which is subject to tax under section § 53-160, § 66-489, § 66-489.02, § 66-4,140, § 66-4,145, § 66-4,146, § 77-2602, or § 77-4008 or which is exempt from tax under § 77-2704.24. The proceeds or other available funds may be used for the purposes stated in *Neb. Rev. Stat.* § 19-4019.

Any money available under *Neb. Rev. Stat.* § 19-4018 may be used for any one or more of the following purposes:

- (1) The acquisition, construction, maintenance, and operation of public off street parking facilities for the benefit of the business improvement district area;
- (2) Improvement of any public place or facility in the business improvement district area, including landscaping, physical improvements for decoration or security purposes, and plantings;
- (3) Construction or installation of pedestrian shopping malls or plazas, sidewalks or moving sidewalks, parks, meeting and display facilities, bus stop shelters, lighting, benches or other seating furniture, sculptures, trash receptacles, shelters, fountains, skywalks, and pedestrian and vehicular overpasses and underpasses, and any useful or necessary public improvements in the business improvement district area;
- (4) Leasing, acquiring, constructing, reconstructing, extending, maintaining, or repairing parking lots or parking garages, both above and below ground, or other facilities for the parking of vehicles, including the power to install such facilities in public areas, whether such areas are owned in fee or by easement, in the business improvement district area;

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- (5) Creation and implementation of a plan for improving the general architectural design of public areas in the business improvement district;
 - (6) The development of any public activities and promotion of public events, including the management and promotion and advocacy of retail trade activities or other promotional activities, in the business improvement district area;
 - (7) Maintenance, repair, and reconstruction of any improvements or facilities authorized by the Business Improvement District Act;
 - (8) Any other project or undertaking for the betterment of the public facilities in the business improvement district area, whether the project be capital or noncapital in nature;
 - (9) Enforcement of parking regulations and the provision of security within the business improvement district area; and
 - (10) Employing or contracting for personnel, including administrators for any improvement program under the act, and providing for any service as may be necessary or proper to carry out the purposes of the act.

Process for Establishing Business Improvement Districts

Appointment and Responsibilities of a Business Improvement Board

The mayor, with the approval of the city council, shall appoint a business improvement board consisting of property owners, residents, business operators, or users of space within the business area to be improved (*Neb. Rev. Stat. § 19-4021*). The boundaries of the business area shall be declared by resolution of the city council at or prior to the time of the appointment of the business improvement board. The business improvement board shall make recommendations to the city council for the establishment of a plan or plans for improvements in the business area. If it is found that the improvements to be included in one business area offer benefits that cannot be equitably assessed together under the Business Improvement District Act, more than one business improvement district as part of the same plan for improvements for that business area may be proposed. The business improvement board may make recommendations to the city as to the use of any occupation tax funds collected, and may administer such funds if so directed by the mayor and city council. The business improvement board shall also review and make recommendations to the city regarding changing the boundaries or the functions or ordinance provisions of the business improvement district under *Neb. Rev. Stat. § 194029.02 to § 19-4029.05*.

The business improvement board shall consist of five or more members to serve such terms as the city council, by resolution, determines. The mayor, with the approval of the city council, shall fill any vacancy for the term vacated. A board member may serve more than one term. The board shall select from its members a chairperson and a secretary. (*Neb. Rev. Stat. § 194022*).

The business area normally is a portion of the city that is zoned for business, public, or commercial purposes (*Neb. Rev. Stat. § 19-4020*).

In the event that the city council has not acted to call a hearing to create a business improvement district as provided in *Neb. Rev. Stat. § 19-4029*, it shall do so when presented with a petition signed by the record owners of thirty percent (30%) of the assessable front footage in a business area or by the users of thirty percent (30%) of space in a business area. (*Neb. Rev. Stat. § 19-4026*)

Designating Business Improvement Districts

Before acting on any recommendations from the business improvement board to create one or more business improvement districts, the city council must receive recommendations from the city's planning commission.

Subsequently, the city council may, by resolution, state its intention to establish one or more business improvement districts. The resolution must contain the following information:

1. a description of the boundaries of any proposed district;
2. the time and place of a hearing to be held by the city council to consider establishment of a district or districts;
3. the proposed public facilities and improvements to be made or maintained within the district or districts; and
4. the proposed or estimated costs for improvements and facilities within the district or districts and the method by which the revenue will be raised.

BIDs need to be located within the designated boundaries of the city's business area (*Neb. Rev. Stat. § 19-4020*).

Public Hearing and Notice

Whenever a hearing is held under section *Neb. Rev. Stat. § 194026* or § 19-4029, the city council shall:

- (1) Hear all protests and receive evidence for or against the proposed action;

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- (2) Rule upon all written protests received prior to the close of the hearing, which ruling shall be final; and
 - (3) Continue the hearing from time to time as the city council may deem necessary.

Notice is required at least ten (10) days prior to the date of any hearing under *Neb. Rev. Stat.* § 19-4026, § 19-4029, § 19-4029.02, and § 19-4029.03, notice of such hearing shall be given by:

- (a) One publication of the notice of hearing in a legal newspaper in or of general circulation in the city;
- (b) Mailing a copy of the notice of hearing to each owner of taxable property in the proposed, modified, or expanded business improvement district as shown on the latest tax rolls of the county treasurer for such county;
- (c) Providing a copy of the notice of hearing to any neighborhood association registered pursuant to subsection (2) of this section in the manner requested by such neighborhood association; and
- (d) If an occupation tax is to be imposed, mailing a copy of the notice of hearing to each user of space in the proposed, modified, or expanded business improvement district.

The notice required by *Neb. Rev. Stat.* § 19-4029.01 (1)(c) shall be provided to any neighborhood association which is registered pursuant to this subsection and whose area of representation is located, in whole or in part, within a one (1)-mile radius of the existing or proposed, modified, or expanded boundaries of the business improvement district. Each neighborhood association desiring to receive such notice shall register with the city the area of representation of such association and provide the name of and contact information for the individual designated to receive notice on behalf of such association and the requested manner of service, whether by email or first-class or certified mail. The registration shall be in accordance with any rules and regulations adopted and promulgated by the city.

Any notice of hearing for any hearing required by *Neb. Rev. Stat.* § 19-4026 and § 19-4029 shall contain the following information:

- (a) A description of the boundaries of the proposed business improvement district;
- (b) The time and place of a hearing to be held by the city council to consider establishment of the business improvement district;

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- (c) The proposed public facilities and improvements to be made or maintained within any business improvement district; and
 - (d) The proposed or estimated costs for improvements and facilities within the proposed business improvement district and the method by which the revenue shall be raised. If a special assessment is proposed, the notice shall also state the proposed method of assessment.

Any notice of hearing for any hearing required by *Neb. Rev. Stat.* § 19-4029.02 and § 19-4029.03 shall contain the following information:

- (a) A description of the boundaries of the area to be added to or removed from the existing business improvement district and a description of the new boundaries of the modified business improvement district;
- (b) The time and place of a hearing to be held by the city council to consider establishment of the modified business improvement district;
- (c) The new public facilities and improvements, if any, to be made or maintained within any business improvement district; and
- (d) The proposed or estimated costs for new and existing improvements and facilities within the proposed, modified, or expanded business improvement district and the method by which the revenue shall be raised. If a special assessment is proposed, the notice shall also state the proposed method of assessment.

Ordinance to Establish BID

Upon receiving a recommendation from a business improvement board, the city council may create one or more business improvement districts. The city council, following a hearing, may establish or reject any proposed business improvement district or districts. If the city council decides to establish any business improvement district, it shall adopt an ordinance to that effect. This ordinance shall contain the following information:

- (1) A statement that notice of hearing was given, including the date or dates on which it was given, in accordance with *Neb. Rev. Stat.* § 19-4029.01;
- (2) The time and place the hearing was held concerning the formation of the business improvement district;

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- (3) A statement that a business improvement district has been established;
 - (4) The purposes of the business improvement district, and the public improvements and facilities to be included in such district;
 - (5) The description of the boundaries of the business improvement district;
 - (6) A statement that the businesses and users of space in the business improvement district shall be subject to the general business occupation tax or that the real property in the business improvement district will be subject to the special assessment authorized by the Business Improvement District Act;
 - (7) The proposed method of assessment to be imposed within the business improvement district or the initial rate of the occupation tax to be imposed; and
 - (8) Any penalties to be imposed for failure to pay the tax or special assessment.

The ordinance shall recite that the method of raising revenue shall be fair and equitable. In the use of a general occupation tax, the tax shall be based primarily on the square footage of the owner's and user's place of business. In the use of a special assessment, the assessment shall be based upon the special benefit to the property within the business improvement district.

BID Financing Mechanisms

As previously stated, the activities to be carried out in a BID established by a city council can be financed through one or both of two possible mechanisms:

- (1) a special assessment against the real estate located in the BID or
- (2) a general business occupation tax levied upon the businesses and users of space with the district.

Special Assessment

A city may levy a special assessment against the real estate located in a BID for the purpose of paying all or any part of the total costs and expenses of performing any authorized work, except maintenance, repair, and reconstruction costs, within the district (*Neb. Rev. Stat. § 19-4030*). The amount of the special assessment shall be determined by the city council sitting as a board of equalization.

Assessments shall be levied in accordance with the method of assessment that was proposed in the ordinance creating the district; however, if the city council finds that the proposed method of assessment does not provide a fair and equitable method of apportioning costs, then it may assess the costs under another method.

The city council must schedule a hearing on any special assessments proposed to be levied in a BID. Notice of the hearing must be published once a week for three (3) weeks in a daily or weekly newspaper of general circulation published in the city.

If a written protest is made prior to the close of the special assessment hearing by owners of over 50 percent (50%) of the assessable units in the proposed district, the proceedings shall terminate (*Neb. Rev. Stat. § 19-4027*). For example, in a situation where the BID project is to be financed on the basis of an assessment of a fixed dollar amount per lineal foot of property fronting on a “main street” BID and the district contains 1,000 lineal feet of frontage, if owners accounting for 500 or more frontage feet submit valid written protests, the BID process must end.

All special assessments levied under the act shall be liens on the property and shall be certified for collection and collected in the same manner as special assessments for improvements and street improvement districts of the city are collected.

Appeals of a decision of the city council regarding special assessments may be made directly to the district court of the county in which the city is located (*Neb. Rev. Stat. § 19-4030*).

Occupation Tax

In addition to, or in place of, the special assessment described above, a city may levy a general business occupation tax upon the businesses and users of space within a BID for the purpose of acquiring, constructing, maintaining, or operating public off-street parking facilities and other public improvements and facilities in connection with such parking facilities (*Neb. Rev. Stat. § 19-4031*). For the purpose of setting the occupation tax, the city council may classify businesses or users of space in the BID (*Neb. Rev. Stat. § 19-4031(2)*).

Requirements for notices of a hearing on an occupation tax proposed for a BID, as well as the process for appealing the decision of a city council to levy such a tax, are the same as described above for a special assessment in a BID (*Neb. Rev. Stat. § 19-4031(1)*).

If a written protest is made prior to the close of the occupation tax hearing by over 50 percent of the users of space in the proposed district, the proceedings shall terminate (*Neb. Rev. Stat. § 19-4027*).

Keys to Success in Using BID's

The business improvement district is an appropriate and popular mechanism for financing implementation of a downtown plan. Generally, the most successful BID projects:

- have a project advocate who is a significant business or property owner in the district;
- use a participatory planning process to establish a consensus around a course of action;
- are based on a project plan that has visible benefits to most properties in the district; and
- have an equitable method of assessment that assesses people in proportion to their benefit, and
- are clear and easy to understand.

In summary, the BID Act provides a comprehensive mechanism through which cities may enhance business areas by providing public facilities and improvements. The procedural safeguards required by this Act are designed to ensure that the creation of the BID and the assignment of special assessments or occupation taxes to the property owners and occupants within the BID have been subject to public scrutiny.

Community Development Assistance Act

(Note the Community Development Assistance Act ((Neb. Rev. Stat. § 13-201 to § 13-208) which was enacted in 1985 by the Nebraska Legislature, was transferred to Neb. Rev. Stat. § 77-3113 to § 77-3120.)

Creating High Impact Economic Futures Act, how cited

Neb. Rev. Stat. § 77-3113 to § 77-3120 shall be known and may be cited as the Creating High Impact Economic Futures Act and may also be referred to as the CHIEF Act.

Legislative findings

The Legislature hereby found that areas of chronic economic distress in the State of Nebraska are a detriment to the economic well-being, health, and safety of the citizens of Nebraska. The Legislature further contends that current governmental solutions have not been able to completely resolve certain problems such as overcrowding, unemployment, and poor health and sanitary

conditions in a community which lead to further deterioration. Such problems cannot be remedied by the government alone, but can be alleviated through a partnership between the government and private enterprise. It is therefore declared to be public policy in this state to encourage contributions by business firms and individuals that offer and provide community and neighborhood assistance and community services. (*Neb. Rev. Stat.* § 77-3114)

Terms Defined Under the Act

For purposes of the Creating High Impact Economic Futures Act, unless the context otherwise requires (*Neb. Rev. Stat.* § 77-3115):

- (1) Accelerator program means a program that (a) provides education and mentorship lasting no more than twenty-four months for early-stage technology companies that have been recruited to a location in this state and (b) has a defined curriculum and mentorship component designed to accelerate a technology company's development and growth;
- (2) Agribusiness or agricultural business entity means any person, partnership, limited partnership, corporation, limited liability company, or other entity engaged in a business that processes raw agricultural products, including, but not limited to, corn, or that provides value-added functions with regard to raw agricultural products;
- (3) Area of chronic economic distress means an area of the state which meets any of the following conditions:
 - (a) An unemployment rate which exceeds the statewide average unemployment rate;
 - (b) A per capita income below the statewide average per capita income; or
 - (c) A population loss between the two most recent federal decennial censuses;
- (4) Business firm means any business entity, including a corporation, a fiduciary, a sole proprietorship, a partnership, a limited liability company, a corporation having an election in effect under Chapter 1, subchapter S of the Internal Revenue Code, as defined in section 49-801.01, subject to the state income tax imposed by *Neb. Rev. Stat.* § 77-2715 or § 77-2734.02, an insurance company paying premium or related retaliatory taxes in this state pursuant to *Neb. Rev. Stat.* § 44-150 or § 77-908, or a financial institution paying the tax imposed pursuant to *Neb. Rev. Stat.* § 77-3801 to § 77-3807;
- (5) Community betterment organization means any:
 - (a) Organization performing eligible activities in a community development area and to which contributions

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- are tax deductible under the provisions of the Internal Revenue Service of the United States Department of the Treasury;
- (b) County, city, or village performing eligible activities;
 - (c) Inland port authority created pursuant to the Municipal Inland Port Authority Act;
 - (d) Agribusiness or agricultural business entity; or
 - (e) Organization designated as an iHub under the Nebraska Innovation Hub Act in a community development area;
- (6) Community development area means any:
- (a) Village, city, county, unincorporated area of a county, or census tract which has been designated by the department as an area of chronic economic distress;
 - (b) Economic redevelopment area as defined in *Neb. Rev. Stat. § 77-6906*;
 - (c) Enterprise zone designated pursuant to the Enterprise Zone Act;
 - (d) Qualified census tract in Nebraska as defined in 26 U.S.C. 42(d)(5)(B)(ii)(I), as such section existed on January 1, 2024;
 - (e) County with a population of less than ten thousand (10,000) inhabitants; or
 - (f) Inland port district created pursuant to the Municipal Inland Port Authority Act;
- (7) Department means the Department of Economic Development (NDED);
- (8) Eligible activities include:
- (a) Employment training;
 - (b) operations of any inland port authority created under the Municipal Inland Port Authority Act;
 - (c) medical services;
 - (d) operation of an agribusiness or agricultural business entity;
 - (e) recreational services or activities, including, but not limited to, operations for a sports complex or sports venue as defined in *Neb. Rev. Stat. § 13-3102*;
 - (f) home improvement services and programs;
 - (g) crime prevention activities, including, but not limited to
 - (i) mental health counseling and advice,
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- (ii) community, youth, and senior citizen centers, and
 - (iii) any legal enterprise which aids in the prevention or reduction of crime;
 - (h) construction or operation of intermodal facilities or a shovel-ready site owned by the qualifying organization or by a city or village in this state;
 - (i) creation or operation of an accelerator program for technology companies; or
 - (j) operations of an iHub;
- (9) Inland port authority has the same meaning as in *Neb. Rev. Stat. § 13-3303*;
- (10) Inland port district has the meaning as in *Neb. Rev. Stat. § 13-3303*; and
- (11) Innovation hub or iHub has the same meaning as in *Neb. Rev. Stat. § 81-12,108*.

Community betterment organization; program or project; tax credit status

Any community betterment organization which provides eligible activities in a community development area may apply any time during the fiscal year to the department to have one or more programs or projects certified for tax credit status as provided in *Neb. Rev. Stat. § 77-3117* to *§ 77-3120*. The proposal shall set forth the program or project to be conducted, the community development area, the estimated amount to be required for completion of the program or project or the annual estimated amount required for an ongoing program or project, the plans for implementing the program or project, and the amount of contributions committed or anticipated for such activities or services. (*Neb. Rev. Stat. § 77-3116*)

Program or project; proposal; contents; department; review; evaluation

A proposal submitted under *Neb. Rev. Stat. § 77-3116* to the NDED shall only include all of the following:

- (a) A description of the program or project to be conducted, including the eligible activities that will be provided as a result of the program or project;
- (b) A description of the community development area, including the geographical location and boundaries of the community development area;
- (c) The estimated amount to be required for completion of the program or project, including (i) a proposed budget for the program or project with information on personnel and

administrative overhead costs, (ii) the amount of tax credits requested for the year of application, and (iii) the amount of contributions pledged or anticipated from individuals or business firms eligible for tax credits as well as other sources of funding for the program or project;

- (d) The annual estimated amount required for an ongoing program or project, including a proposed annual budget with information on personnel and administrative overhead costs, and the amount of tax credits anticipated to be sought in future years;
- (e) A description of the community betterment organization's plans and capacity for implementing the program or project and continuing the program or project;
- (f) Documentation that the proposal is supported by the appropriate subdivision of local government, including any letters of support on the proposal provided by such subdivision of local government, and information regarding whether the proposal is consistent with any community development plan that may exist for the area in which the community betterment organization will provide eligible activities; and
- (g) If the community betterment organization is recognized by the Internal Revenue Service of the United States
- (h) Department of the Treasury as an organization to which contributions are tax deductible, documentation of such recognition.

NDED shall review all proposals based on the following criteria:

- (a) The extent to which the proposed program or project will create or maintain jobs, provide youth sport participation, stimulate economic development, or provide an economic benefit to the community development area;
- (b) A demonstrated capacity and performance of the community betterment organization to execute the proposed program or project;
- (c) The involvement of residents and community support of the affected area in the planning of the proposed program or project and the extent to which they will be involved in its implementation;
- (d) The extent to which private sector contributions have been committed to the proposed program or project, contingent upon approval of the program or project by the department; and

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- (e) Documentation that the proposed program or project is supported by the appropriate subdivision of local government, including any letters of support provided by such subdivision of local government, and information regarding whether the proposed program or project is consistent with any community development plan that may exist for the area in which the community betterment organization will provide eligible activities.

Proposals submitted subsequent to the first year shall be evaluated on performance of the prior year's program or project, other resources developed and continued need. (*Neb. Rev. Stat. § 773117*)

The tax credits provided for in *Neb. Rev. Stat. § 77-3117* to *§ 773120* shall be available for contributions to a certified program or project which may qualify as a charitable contribution deduction on the federal income tax return filed by the business firm or individual making such contribution. The maximum tax credit allowance approved by the department shall be final for the fiscal year in which the program or project is certified. A copy of all decisions shall be transmitted to the Tax Commissioner. A copy of all credits allowed to business firms under *Neb. Rev. Stat. § 44-150* and *Neb. Rev. Stat. § 77-908* shall be transmitted to the Director of Insurance.

For all business firms and individuals eligible for the credit allowed by *Neb. Rev. Stat. § 77-3119*, except for insurance companies paying premium and related retaliatory taxes in this state pursuant to section *Neb. Rev. Stat. § 44-150* or *Neb. Rev. Stat. § 77-908*, the Tax Commissioner shall provide for the manner in which the credit allowed by *Neb. Rev. Stat. § 77-3119* shall be taken and the forms on which such credit shall be allowed. The Tax Commissioner shall adopt and promulgate rules and regulations for the method of providing tax credits. The Director of Insurance shall provide for the manner in which the credit allowed by *Neb. Rev. Stat. § 77-3119* to insurance companies paying premium and related retaliatory taxes in this state pursuant to *Neb. Rev. Stat. § 44-150* and *Neb. Rev. Stat. § 77-908* shall be taken and the forms on which such credit shall be allowed. The Director of Insurance may adopt and promulgate rules and regulations for the method of providing the tax credit. The Tax Commissioner shall allow against any income tax due from the insurance companies paying premium and related retaliatory taxes in this state pursuant to *Neb. Rev. Stat. § 44-150* or *Neb. Rev. Stat. § 77-908* a credit for the credit provided by *Neb. Rev. Stat. § 77-3119* and allowed by the Director of Insurance.

The decision of the department to approve or disapprove all or any portion of a proposal or certify a program or project for a designated amount of tax credits shall be provided in writing within forty-five (45) days after receipt of a complete application. If the program or project is approved or certified for a designated amount of tax credits, the department shall prepare and transmit a written agreement to the community betterment organization. The date the written agreement is fully executed by the community betterment organization and the department shall be the date from which contributions may be made to the approved program or project.

Documentation evidencing contributions made to programs or projects certified for tax credit status by the department shall be submitted to the department. NDED may request additional documentation as the facts and circumstances may require, or to substantiate the value of the contribution, but documentation shall generally be as follows:

- (a) Cash contributions may be shown by a photocopy of both sides of the canceled check or by proof of electronic funds transfer that includes documentation from the bank account of origin and destination. Checks shall be made payable to the community betterment organization and noted specifically for that program or project, and electronic funds transfers shall be transferred into the community betterment organization's bank account for the program or project certified for tax credit status by NDED;
- (b) Real property contributions may be shown by the deed and documentation of at least one independent appraisal of the real property by a real property appraiser credentialed under the Real Property Appraiser Act;
- (c) Contributions of equipment or supplies may be shown by copies of invoices signed by both the contributor and the community betterment organization receiving the equipment or supplies;
- (d) Stock contributions shall be converted into cash before the community betterment organization receives the donation. Stock contributions may be shown as cash contributions; and
- (e) Other contributions may be shown by affidavit or by other signed statement deemed acceptable by the department that identifies the contribution, the value of the contribution, and how the value was determined along with other information as may be requested by the department for the particular situation.

The value of eligible contributions made to community betterment organizations for programs or projects certified for tax credit status by the department shall be determined based upon the valuation of charitable contributions for federal income tax purposes established by the Internal Revenue Service of the United States Department of the Treasury.

Tax Credit Eligibility, Amount, Nonrefundable

Pursuant to *Neb. Rev. Stat.* § 77-3319, an individual taxpayer who makes one or more contributions to one or more programs or projects certified for tax credit status during a tax year shall be eligible for a tax credit under the Creating High Impact Economic Futures Act. The amount of the credit shall be equal to one hundred percent of the total amount of such contributions made during the tax year.

Taxpayers who are married but file separate returns for a tax year in which they could have filed a joint return may each claim fifty percent of the tax credit that would otherwise have been allowed for a joint return.

Any partnership, limited liability company, or corporation having an election in effect under subchapter S of the Internal Revenue Code of 1986, as amended, that makes one or more contributions to one or more programs or projects certified for tax credit status during a tax year shall be eligible for a tax credit under the Creating High Impact Economic Futures Act. The amount of the credit shall be equal to fifty percent of the total amount of such contributions made during the tax year. The credit shall be attributed to each partner, member, or shareholder in the same proportion used to report the partnership's, limited liability company's, or subchapter S corporation's income or loss for income tax purposes.

An estate or trust that makes one or more contributions to one or more programs or projects certified for tax credit status during a tax year shall be eligible for a tax credit under the Creating High Impact Economic Futures Act. The amount of the credit shall be equal to fifty percent of the total amount of such contributions made during the tax year. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for income tax purposes.

A corporate taxpayer as defined in section 77-2734.04 that makes one or more contributions to one or more programs or projects certified for tax credit status during a tax year shall be eligible for a tax credit under the Creating High Impact Economic Futures

Act. The amount of the credit shall be equal to fifty percent of the total amount of such contributions made during the tax year.

The tax credit allowed under this section shall be a non-refundable credit. Any amount of the tax credit that is unused may be carried forward and applied against the taxpayer's income tax liability for the next five years immediately following the tax year in which the credit is first allowed. The tax credit cannot be carried back.

Limits on Tax Credits

Neb. Rev. Stat. § 77-3120 provides the annual limit on the total amount of tax credits allowed for calendar year 2025 shall be nine hundred thousand dollars with a total of three hundred thousand dollars for each congressional district. Once credits have reached the annual limit, no additional credits shall be allowed. The maximum amount of credits per program or project shall not exceed one hundred fifty thousand dollars for the first congressional district and one hundred fifty thousand dollars for the third congressional district. Tax credits shall not be allowed for calendar year 2026 or any calendar year thereafter, except that any tax credits allowed in calendar year 2025 that are unused may be carried forward as provided in *Neb. Rev. Stat.* § 77-3119 (6).

Nebraska Municipal Land Bank Act

Legislative Intent

Neb. Rev. Stat. § 18-3401 to *Neb. Rev. Stat.* § 18-3418 shall be known and may be cited as the Nebraska Municipal Land Bank Act. The Legislature finds and declares as follows:

- (1) Nebraska's municipalities are important to the social and economic vitality of the state, and many municipalities are struggling to cope with vacant, abandoned, and tax-delinquent properties;
- (2) Vacant, abandoned, and tax-delinquent properties represent lost revenue to municipalities and large costs associated with demolition, safety hazards, and the deterioration of neighborhoods;
- (3) There is an overriding public need to confront the problems caused by vacant, abandoned, and tax-delinquent properties through the creation of new tools for municipalities to use to turn vacant spaces into vibrant places; and
- (4) Land banks are one of the tools that can be utilized by municipalities to facilitate the return of vacant, abandoned,

and tax-delinquent properties to productive use. (*Neb. Rev. Stat. § 18-3403*)

Definitions

For purposes of the Nebraska Municipal Land Bank Act:

- (1) Board means the board of directors of a land bank;
- (2) Chief executive officer means the mayor, city manager, or chairperson of the board of trustees of a municipality;
- (3) Immediate family has the same meaning as in section 49-1425;
- (4) Land bank means a land bank established in accordance with the act;
- (5) Municipality means any city or village of this state; and
- (6) Real property means lands, lands under water, structures, and any and all easements, air rights, franchises, and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise, and any and all fixtures and improvements located thereon.

Creation of a Land Bank

A single municipality may create a land bank if the municipality is a city of the metropolitan class or city of the primary class. Such municipality shall create the land bank by the adoption of an ordinance which specifies the following:

- (a) The name of the land bank;
- (b) The initial individuals to serve as members of the board and the length of terms for which they are to serve; and
- (c) The qualifications and terms of office of members of the board. *Neb. Rev. Stat. § 18-3404*

Two or more municipalities may elect to enter into an agreement pursuant to the Interlocal Cooperation Act to create a single land bank to act on behalf of such municipalities, which agreement shall contain the information required by subsection (1) of *Neb. Rev. Stat. § 18-3404*.

- (3) A municipality may elect to join an existing land bank by entering into an agreement pursuant to the Interlocal Cooperation Act with a city of the metropolitan class or city of the primary class that has created a land bank pursuant to subsection (1) of *Neb. Rev. Stat. § 18-3404* or by joining an existing agreement pursuant to the

Interlocal Cooperation Act with the municipalities that formed a land bank pursuant to subsection (2) of *Neb. Rev. Stat.* § 18-3404. Agreements entered into or joined under this subsection shall contain the information required by subsection (1) of *Neb. Rev. Stat.* § 18-3404.

Each land bank created pursuant to the Nebraska Municipal Land Bank Act shall be deemed to be a public corporation acting in a governmental capacity and a political subdivision of the state and shall have permanent and perpetual duration until terminated and dissolved in accordance with *Neb. Rev. Stat.* § 18-3414.

The primary goal of any land bank shall be to facilitate the return of vacant, abandoned, and tax-delinquent properties to productive use.

If Created by a Single Municipality

If a land bank is created by a single municipality pursuant to subsection (1) of *Neb. Rev. Stat.* § 18-3404, the board of such land bank shall meet the following requirements:

- (a) The board shall consist of:
 - (i) Seven (7) voting members appointed by the chief executive officer of the municipality that created the land bank and confirmed by a two-thirds (2/3) vote of the governing body of such municipality; and
 - (ii) The following nonvoting members:
 - (1) The planning director of the municipality that created the land bank or his or her designee or, if there is no planning director, a person designated by the governing body of the municipality that created the land bank;
 - (2) One member of the governing body of the municipality that created the land bank, appointed by such governing body; and
 - (3) Such other nonvoting members as are appointed by the chief executive officer of the municipality that created the land bank and confirmed by a two-thirds (2/3) vote of the governing body of such municipality;

The seven (7) voting members of the board shall be residents of the municipality that created the land bank;

If the governing body of the municipality creating the land bank has any of its members elected by district or ward, then at least one voting member of the board shall be appointed from each such district or ward. Such voting members shall represent, to the greatest extent possible, the racial and ethnic diversity of the municipality creating the land bank;

The seven (7) voting members of the board shall have, collectively, verifiable skills, expertise, and knowledge in market-rate and affordable residential, commercial, industrial, and mixed-use real estate development, financing, law, purchasing and sales, asset management, economic and community development, and the acquisition of tax sale certificates;

The seven (7) voting members of the board shall include:

- (i) At least one member representing a chamber of commerce;
- (ii) At least one member with experience in banking;
- (iii) At least one member with experience in real estate development;
- (iv) At least one member with experience as a realtor;
- (v) At least one member with experience in nonprofit or affordable housing; and
- (vi) At least one member with experience in large-scale residential or commercial property rental.

A single voting member may satisfy more than one of the requirements provided in subdivision (1)(e) of *Neb. Rev. Stat. § 18-3405* if he or she has the required qualifications. It is not necessary that there be a different member to fulfill each such requirement.

If Created by More than One Municipality

If a land bank is created by more than one municipality pursuant to an agreement under the Interlocal Cooperation Act as described in subsection (2) or (3) of *Neb. Rev. Stat. § 18-3404*, the board of such land bank shall meet the following requirements:

- (a) The board shall consist of:
 - (i) An odd number of voting members, totaling at least seven (7), appointed by the chief executive officers of the municipalities that created the land bank, as mutually agreed to by such chief executive officers, and confirmed by a two-thirds (2/3) vote of the governing body of each municipality that created the land bank; and
 - (ii) The following nonvoting members:
 - (1) The planning director of each municipality that created the land bank or his or her designee or, if there is no planning director for any municipality that created the land bank, a person designated by the governing body of such municipality;

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- (2) One member of the governing body of each municipality that created the land bank, appointed by the governing body on which such member serves.

Such other nonvoting members as are appointed by the chief executive officers of the municipalities that created the land bank, as mutually agreed to by such chief executive officers, and confirmed by a two-thirds vote of the governing body of each municipality that created the land bank.

Each voting member of the board shall be a resident of one of the municipalities that created the land bank. If a land bank is created by a city of the metropolitan class or a city of the primary class, at least one voting member of the board shall be appointed from each of the municipalities that created the land bank;

The voting members of the board shall have, collectively, verifiable skills, expertise, and knowledge in market-rate and affordable residential, commercial, industrial, and mixed-use real estate development, financing, law, purchasing and sales, asset management, economic and community development, and the acquisition of tax sale certificates;

The voting members of the board shall include:

- (i) At least one member representing a chamber of commerce;
- (ii) At least one member with experience in banking;
- (iii) At least one member with experience in real estate development;
- (iv) At least one member with experience as a realtor;
- (v) At least one member with experience in nonprofit or affordable housing; and
- (vi) At least one member with experience in large-scale residential or commercial property rental.

A single voting member may satisfy more than one of the requirements provided in subdivision (2)(d) of *Neb. Rev. Stat. § 18-3405* if he or she has the required qualifications. It is not necessary that there be a different member to fulfill each such requirement.

Applicable to all Land Banks

The members of the board shall select annually from among themselves a chairperson, a vice-chairperson, a treasurer, and such other officers as the board may determine.

A public official or public employee shall be eligible to be a member of the board.

A vacancy on the board among the appointed board members shall be filled not later than six months after the date of such vacancy in the same manner as the original appointment.

Board members shall serve without compensation.

The board shall meet in regular session according to a schedule adopted by the board and shall also meet in special session as convened by the chairperson or upon written notice signed by a majority of the voting members. The presence of a majority of the voting members of the board shall constitute a quorum.

Except as otherwise provided in *Neb. Rev. Stat.* § 18-3405, and in *Neb. Rev. Stat.* § 18-3410, § 18-3417, and § 18-3418, all actions of the board shall be approved by the affirmative vote of a majority of the voting members present and voting.

Any action of the board on the following matters shall be approved by a majority of the voting members:

- (a) Adoption of bylaws and other rules and regulations for conduct of the land bank's business;
- (b) Hiring or firing of any employee or contractor of the land bank. This function may, by majority vote of the voting members, be delegated by the board to a specified officer or committee of the land bank, under such terms and conditions, and to the extent, that the board may specify;
- (c) The incurring of debt;
- (d) Adoption or amendment of the annual budget; and
- (e) Sale, lease, encumbrance, or alienation of real property, improvements, or personal property with a value of more than fifty thousand dollars.

Members of a board shall not be liable personally on the bonds or other obligations of the land bank, and the rights of creditors shall be solely against such land bank.

The board of a land bank created by a city of the metropolitan class that borders a county in which at least three cities of the first class are located shall adopt policies and procedures to specify the conditions that must be met in order for such land bank to give an automatically accepted bid as authorized in *Neb. Rev. Stat.* § 18-3417 and § 18-3418. The adoption of such policies and procedures shall require the approval of two-thirds (2/3) of the voting members of the board. At a minimum, such policies and procedures shall ensure that the automatically accepted bid shall only be given for one of the following reasons:

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- (a) The real property substantially meets more than one of the following criteria as determined by two-thirds of the voting members of the board:
 - (i) The property is not occupied by the owner or any lessee or licensee of the owner;
 - (ii) There are no utilities currently being provided to the property;
 - (iii) Any buildings on the property have been deemed unfit for human habitation, occupancy, or use by local housing officials;
 - (iv) Any buildings on the property are exposed to the elements such that deterioration of the building is occurring;
 - (v) Any buildings on the property are boarded up;
 - (vi) There have been previous efforts to rehabilitate any buildings on the property;
 - (vii) There is a presence of vermin, uncut vegetation, or debris accumulation on the property;
 - (viii) There have been past actions by the municipality to maintain the grounds or any building on the property; or
 - (ix) The property has been out of compliance with orders of local housing officials;
 - (b) The real property is contiguous to a parcel that meets more than one of the criteria in subdivision (11)(a) of this section or that is already owned by the land bank; or
 - (c) Acquisition of the real property by the land bank would serve the best interests of the community as determined by two-thirds of the voting members of the board. In determining whether the acquisition would serve the best interests of the community, the board shall take into consideration the hierarchical ranking of priorities for the use of real property conveyed by a land bank established pursuant to subsection (5) of section 18-3410, if any such hierarchical ranking is established.

Removal of Board Members

A member of the board may be removed for neglect of duty, misconduct in office, conviction of any felony, or other good cause as follows:

- (i) In the case of a land bank created pursuant to subsection (1) of section 18-3404, a board member may be removed by the chief executive officer of the municipality that created the land bank after such removal has been

approved by a two-thirds vote of the governing body of such municipality; or

- (ii) In the case of a land bank created pursuant to subsection (2) or (3) of *Neb. Rev. Stat. § 18-3404*, a board member may be removed by the chief executive officer of the municipality where the member resides after such removal has been approved by a two-thirds vote of the governing body of such municipality.

Such chief executive officer shall send a notice of removal to such board member, which notice shall set forth the charges against him or her. The member shall be deemed removed from office unless within ten days from the receipt of such notice he or she files a request for a hearing. Such request shall be filed with:

- (i) In the case of a land bank created pursuant to subsection (1) of section 18-3404, the city clerk of the city that created the land bank; or
- (ii) In the case of a land bank created pursuant to subsection (2) or (3) of *Neb. Rev. Stat. § 18-3404*, the city clerk or village clerk of the municipality where the member resides.

If a request for hearing is so filed, the governing body of the municipality receiving the request shall hold a hearing not sooner than ten days after the date a hearing is requested, at which hearing the board member shall have the right to appear in person or by counsel and the governing body shall determine whether the removal shall be upheld. If the removal is not upheld by the governing body, the board member shall continue to hold his or her office.

A land bank may employ such agents and employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation and benefits of such persons. (*Neb. Rev. Stat. § 18-3406*)

Land Bank Powers

The Land Bank pursuant to *Neb. Rev. Stat. § 18-3407* shall have the following powers:

- (a) To adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business;
- (b) To sue and be sued in its own name and plead and be impleaded in all civil actions;
- (c) To borrow money from private lenders, from municipalities, from the state, or from federal government funds as may be necessary for the operation and work of the land bank;

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- (d) To issue negotiable revenue bonds and notes according to the provisions of the Nebraska Municipal Land Bank Act, except that a land bank shall not issue any bonds on or after November 14, 2020;
 - (e) To procure insurance or guarantees from the state or federal government of the payments of any debts or parts thereof incurred by the land bank and to pay premiums in connection therewith;
 - (f) To enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers, including, but not limited to, agreements under the Interlocal Cooperation Act for the joint administration of multiple land banks or the joint exercise of powers under the Nebraska Municipal Land Bank Act;
 - (g) To enter into contracts and other instruments necessary, incidental, or convenient to the performance of functions by the land bank on behalf of municipalities or agencies or departments of municipalities, or the performance by municipalities or agencies or departments of municipalities of functions on behalf of the land bank;
 - (h) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the land bank;
 - (i) To provide foreclosure prevention counseling and re-housing assistance;
 - (j) To procure insurance against losses in connection with the real property, assets, or activities of the land bank;
 - (k) To invest money of the land bank, at the discretion of the board, in instruments, obligations, securities, or property determined proper by the board and name and use depositories for its money, except that a land bank shall not invest its money in any instrument, obligation, security, or property in which a direct or indirect interest is held by a member of the board or an employee of the land bank, by a board member's or an employee's immediate family, or by a business or entity in which a board member or an employee has a financial interest;
 - (l) To enter into contracts for the management of, the collection of rent from, or the sale of real property of the land bank;
 - (m) To design, develop, construct, demolish, reconstruct, rehabilitate, renovate, relocate, and otherwise improve real
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property or rights or interests in real property of the land bank;

- (n) To fix, charge, and collect fees and charges for services provided by the land bank;
- (o) To fix, charge, and collect rents and leasehold payments for the use of real property of the land bank for a period not to exceed twelve months, except that such twelve-month limitation shall not apply if the real property of the land bank is subject to a lease with a remaining term of more than twelve months at the time such real property is acquired by the land bank;
- (p) To grant or acquire a license, easement, lease, as lessor and as lessee, or option with respect to real property of the land bank;
- (q) Except as provided in subsection (8) of section 18-3408, to enter into partnerships, joint ventures, and other collaborative relationships with municipalities and other public and private entities for the ownership, management, development, and disposition of real property; and
- (r) To do all other things necessary or convenient to achieve the objectives and purposes of the land bank or other laws that relate to the purposes and responsibilities of the land bank.

Additional Powers and Authority

A land bank shall neither possess nor exercise the power of eminent domain.

A land bank shall not have the authority to (a) levy property taxes or (b) receive property tax revenue from a political subdivision pursuant to an agreement entered into under the Joint Public Agency Act.

A land bank may acquire real property or interests in real property by gift, devise, transfer, exchange, foreclosure, purchase, or otherwise on terms and conditions and in a manner the land bank considers proper.

A land bank may acquire real property or interests in real property by purchase contracts, lease-purchase agreements, installment sales contracts, or land contracts and may accept transfers from political subdivisions upon such terms and conditions as agreed to by the land bank and the political subdivision. Notwithstanding any other law to the contrary, any political subdivision may transfer to the land bank real property and interests in real property of the political subdivision on such terms and conditions and

according to such procedures as determined by the political subdivision.

A land bank shall maintain all of its real property in accordance with the laws and ordinances of the jurisdiction in which the real property is located.

A land bank shall not own or hold real property located outside the jurisdictional boundaries of the municipality or municipalities that created the land bank. For purposes of this subsection, jurisdictional boundaries of a municipality does not include the extraterritorial zoning jurisdiction of such municipality.

A land bank may accept transfers of real property and interests in real property from a land reutilization authority on such terms and conditions, and according to such procedures, as mutually determined by the transferring land reutilization authority and the land bank.

A land bank shall not hold legal title at any one time to more than:

- (a) Seven percent (7%) of the total number of parcels located in a city of the metropolitan class, and no more than ten percent of such parcels shall be zoned as commercial property;
- (b) Three percent (3%) of the total number of parcels located in a city of the primary class, and no more than five percent of such parcels shall be zoned as commercial property;
- (c) Five percent (5%) of the total number of parcels located in a city of the first class, and no more than five percent of such parcels shall be zoned as commercial property; or
- (d) Ten percent (10%) of the total number of parcels located in a city of the second class or village, and no more than five percent of such parcels shall be zoned as commercial property.

A land bank shall not acquire a parcel that is zoned as commercial property unless the parcel has been vacant for at least three (3) years.

Beginning on November 14, 2020, a land bank shall not enter into an agreement with any nonprofit corporation or other private entity for the purpose of temporarily holding real property for such nonprofit corporation or private entity, except that a land bank may enter into such an agreement for the purpose of providing clear title to such real property, but in no case shall such agreement exceed a term of one (1) year.

The real property of a land bank and the land bank's income and operations are exempt from all taxation by the state or any political subdivision thereof. (*Neb. Rev. Stat.* § 18-3409)

Land Bank Holding of Property, Transfer, and Disposition

A land bank shall hold in its own name all real property acquired by the land bank irrespective of the identity of the transferor of such property. (*Neb. Rev. Stat.* § 18-3410)

A land bank shall maintain and make available for public review and inspection an inventory of all real property held by the land bank.

A land bank shall determine and set forth in policies and procedures of the board the general terms and conditions for consideration to be received by the land bank for the transfer of real property and interests in real property, which consideration may take the form of monetary payments and secured financial obligations, covenants and conditions related to the present and future use of the property, contractual commitments of the transferee, and such other forms of consideration as determined by the board to be in the best interest of the land bank.

A land bank may convey, exchange, sell, transfer, grant, release and demise, pledge, and hypothecate any and all interests in, upon, or to real property of the land bank. A land bank may lease as lessor real property of the land bank for a period not to exceed twelve months, except that such twelve-month limitation shall not apply if the real property of the land bank is subject to a lease with a remaining term of more than twelve months at the time such real property is acquired by the land bank.

The municipality or municipalities that created the land bank may establish by resolution or ordinance a hierarchical ranking of priorities for the use of real property conveyed by a land bank. Such ranking shall take into consideration the highest and best use that, when possible, will bring the greatest benefit to the community. The priorities may include, but are not limited to, (a) use for purely public spaces and places, (b) use for affordable housing, (c) use for retail, commercial, and industrial activities, (d) use for urban agricultural activities including the establishment of community gardens as defined in *Neb. Rev. Stat.* § 2-303, and (e) such other uses and in such hierarchical order as determined by the municipality or municipalities.

The municipality or municipalities that created the land bank may require by resolution or ordinance that any particular form of disposition of real property, or any disposition of real property located within specified jurisdictions, be subject to specified voting and approval requirements of the board. Except and unless

restricted or constrained in this manner, the board may delegate to officers and employees the authority to enter into and execute agreements, instruments of conveyance, and all other related documents pertaining to the conveyance of real property by the land bank.

Land Bank Funding, Taxes Collected, Notice to County Treasurer

A land bank may receive funding through grants and loans from the municipality or municipalities that created the land bank, from other municipalities, from the state, from the federal government, and from other public and private sources.

A land bank may receive and retain payments for services rendered, for rents and leasehold payments received, for consideration for disposition of real and personal property, for proceeds of insurance coverage for losses incurred, for income from investments, and for any other asset and activity lawfully permitted to a land bank under the Nebraska Municipal Land Bank Act.

Except as otherwise provided in subsection (b) of *Neb. Rev. Stat. § 18-3411*, fifty percent (50%) of the real property taxes collected on real property conveyed by a land bank pursuant to the laws of this state shall be remitted to the land bank. Such allocation of property tax revenue shall commence with the first taxable year following the date of conveyance and shall continue for a period of five (5) years. Such allocation of property tax revenue shall not occur if such taxes have been divided under *Neb. Rev. Stat. § 18-2147* as part of a redevelopment project under the Community Development Law, unless the authority, as defined in *Neb. Rev. Stat. § 18-2103*, enters into an agreement with the land bank for the remittance of such funds to the land bank.

(b) A land bank may, by resolution of the board, elect not to receive the real property taxes described in subsection (a) of *Neb. Rev. Stat. § 18-3411* for any real property conveyed by the land bank. If such an election is made, the land bank shall notify the county treasurer of the county in which the real property is located by filing a copy of the resolution with the county treasurer, and thereafter the county treasurer shall remit such real property taxes to the appropriate taxing entities.

Land Bank Issue of Bonds

A land bank shall not issue any bonds on or after November 14, 2020. (*Neb. Rev. Stat. § 18-3412*)

However, any bonds issued prior to November 14, 2020 by a Land Bank for any of its corporate purposes, the principal and interest

of which are payable from its revenue generally were legally authorized, subject to the following:

- Any of such bonds shall be secured by a pledge of any revenue of the land bank or by a mortgage of any property of the land bank.
- The bonds issued by a land bank are hereby declared to have all the qualities of negotiable instruments under the Uniform Commercial Code.
- The bonds of a land bank and the income therefrom shall at all times be exempt from all taxes imposed by the state or any political subdivision thereof.
- Bonds issued by the land bank shall be authorized by resolution of the board and shall be limited obligations of the land bank. The principal and interest, costs of issuance, and other costs incidental thereto shall be payable solely from the income and revenue derived from the sale, lease, or other disposition of the assets of the land bank. Any refunding bonds issued shall be payable from any source described above or from the investment of any of the proceeds of the refunding bonds, and shall not constitute an indebtedness or pledge of the general credit of any municipality within the meaning of any constitutional or statutory limitation of indebtedness and shall contain a recital to that effect. Bonds of the land bank shall be issued in such form, shall be in such denominations, shall bear interest, shall mature in such manner, and shall be executed by one or more members of the board as provided in the resolution authorizing the issuance thereof. Such bonds may be subject to redemption at the option of and in the manner determined by the board in the resolution authorizing the issuance thereof.
- Bonds issued by the land bank shall be issued, sold, and delivered in accordance with the terms and provisions of a resolution adopted by the board. The board may sell such bonds in such manner, either at public or private sale, and for such price as it may determine to be in the best interests of the land bank. The resolution issuing bonds shall be published in a newspaper of general circulation within the municipality or municipalities that created the land bank.
- Neither the members of the board nor any person executing the bonds shall be liable personally on any such bonds by reason of the issuance thereof. Such bonds or other obligations of a land bank shall not be a debt of any municipality and shall so state on their face, nor shall any

municipality nor any revenue or any property of any municipality be liable therefor.

Land Bank Board Minutes, Records, Meetings, and Reports

The board shall cause minutes and a record to be kept of all its proceedings. Meetings of the board shall be subject to the Open Meetings Act. (*Neb. Rev. Stat.* § 18-3413)

All of a land bank's records and documents shall be considered public records for purposes of *Neb. Rev. Stat.* § 84-712 to § 84-712.09.

The board shall provide monthly reports to the municipality or municipalities that created the land bank on the board's activities pursuant to the Nebraska Municipal Land Bank Act. The board shall also provide an annual report to the municipality or municipalities that created the land bank, the Speaker of the Legislature, the chairperson of the Executive Board of the Legislative Council, the Revenue Committee of the Legislature, and the Urban Affairs Committee of the Legislature by March 1 of each year summarizing the board's activities for the prior calendar year. The reports submitted to the Legislature shall be submitted electronically.

(4) The annual report required under subsection (3) of *Neb. Rev. Stat.* § 18-3413 shall include, but not be limited to:

- (a) A listing of each property owned by the land bank at the end of the prior calendar year, including how long each such property has been owned by the land bank and whether such property was acquired utilizing the automatically accepted bid under *Neb. Rev. Stat.* § 18-3417 or § 18-3418;
- (b) A list of entities and individuals who received more than two thousand five hundred dollars from the land bank in the prior calendar year;
- (c) A list of financial institutions in which the land bank has deposited funds;
- (d) The percentage of total parcels located in each municipality which are held by the land bank; and
- (e) A statement certifying that all board members and employees of the land bank comply with the conflict of interest requirements in sections 18-3407 and 18-3415.

Dissolution of Land Bank

A land bank may be dissolved sixty (60) calendar days after a resolution of dissolution is approved in accordance with *Neb. Rev. Stat.* § 18-3414. For a land bank created pursuant to subsection (1)

of *Neb. Rev. Stat.* § 18-3404, the resolution of dissolution must be approved by two-thirds (2/3) of the members of the governing body of the municipality that created the land bank. For a land bank created pursuant to subsection (2) or (3) of section *Neb. Rev. Stat.* § 18-3404, the resolution of dissolution must be approved by a majority of the members of the governing body of each municipality that created the land bank. A governing body shall give sixty (60) calendar days' advance written notice of its consideration of a resolution of dissolution by publishing such notice in a newspaper of general circulation within the municipality or municipalities that created the land bank and shall send such notice by certified mail to the trustee of any outstanding bonds of the land bank. Upon dissolution of the land bank, all real property, personal property, and other assets of the land bank shall become the assets of the municipality or municipalities that created the land bank.

Conflicts of Interest

No member of the board or employee of a land bank shall acquire any interest, direct or indirect, in real property of the land bank, in any real property to be acquired by the land bank, or in any real property to be acquired from the land bank. No member of the board or employee of a land bank shall have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a land bank. No member of the board or employee of a land bank shall have any interest, direct or indirect, in any investment of the land bank. The restrictions in this subsection shall also apply to a board member's or employee's immediate family and to any business or entity in which the board member or employee has a financial interest. (*Neb. Rev. Stat.* § 18-3415)

The board shall adopt:

- (a) Rules addressing potential conflicts of interest; and
- (b) Ethical guidelines for members of the board and employees of the land bank.

Taxes or Special Assessments, Liens, Discharge, Procedure

Whenever any real property is acquired by a land bank and is encumbered by a lien or claim for real property taxes or special assessments owed to one or more political subdivisions of the state, the land bank may, by resolution of the board, discharge and extinguish any and all such liens or claims, except that no lien or claim represented by a tax sale certificate held by a private third party shall be discharged or extinguished pursuant to this section. To the extent necessary and appropriate, the land bank shall file in

appropriate public records evidence of the extinguishment and dissolution of such liens or claims.

To the extent that a land bank receives payments of any kind attributable to liens or claims for real property taxes or special assessments owed to a political subdivision on property acquired by the land bank, the land bank shall remit the full amount of the payments to the county treasurer of the county that levied such taxes or special assessments for distribution to the appropriate taxing entity. (*Neb. Rev. Stat.* § 18-3416)

Land Bank Authority When Property Sold for Taxes

At any sale of real property for the nonpayment of taxes conducted pursuant to sections 77-1801 to 77-1863, a land bank may:

- (i) Bid on such real property in an amount equal to the total amount of taxes, interest, and costs due on the real property. If a bid is given pursuant to this subdivision, the bid shall not receive any special treatment by the county treasurer and shall be accepted or rejected in the same manner as any other bid on such real property; or
- (ii) If a land bank is created by a city of the metropolitan class that borders a county in which at least three cities of the first class are located and if approved by a two-thirds vote of the board, give an automatically accepted bid on such real property in an amount equal to the total amount of taxes, interest, and costs due on the real property. If an automatically accepted bid is given, it shall be accepted by the county treasurer regardless of any other bids on such real property. An automatically accepted bid may be given only if the conditions for making such a bid prescribed by the board pursuant to subsection (11) of section 18-3405 have been met.

If a land bank's bid pursuant to subsection (1)(a) of *Neb. Rev. Stat.* § 18-3417 is accepted by the county treasurer, the land bank shall pay the county treasurer and shall be entitled to a tax sale certificate for such real property.

If a county holds a tax sale certificate pursuant to *Neb. Rev. Stat.* § 77-1809, a land bank may purchase such tax sale certificate from the county by paying the county treasurer the amount expressed on the face of the certificate and interest thereon at the rate specified in *Neb. Rev. Stat.* § 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date the tax sale certificate was first issued to the county to the date such certificate was purchased by the land bank.

A land bank that has acquired a tax sale certificate for real property under this section may:

- (i) Apply to the county treasurer for a tax deed for the real property described in the tax sale certificate. The land bank shall apply for such tax deed within the time period prescribed in subdivision (1)(a) or (b) of *Neb. Rev. Stat. § 77-1837*, whichever is applicable, and shall comply with all the requirements of *Neb. Rev. Stat. § 77-1801* to *§ 77-1863* relating to such tax deed; or
- (ii) Foreclose the lien represented by the tax sale certificate as authorized in *Neb. Rev. Stat. § 77-1902*. The land bank shall foreclose such lien within the time period prescribed in subdivision (2)(a) or (b) of *Neb. Rev. Stat. § 77-1902*, whichever is applicable. (*Neb. Rev. Stat. § 18-3417* – Note – latest amendment to this section became effective on May 7, 2025)

Land Bank Powers When Property Sold as Part of Foreclosure

At any sale of real property conducted as part of foreclosure proceedings under sections 77-1901 to 77-1941, a land bank may:

- (i) Bid on such real property in an amount that the land bank would be willing to pay for such real property. If a bid is given pursuant to this subdivision, the bid shall not receive any special treatment by the sheriff conducting the sale and shall be accepted or rejected in the same manner as any other bid on such real property; or
- (ii) If a land bank is created by a city of the metropolitan class that borders a county in which at least three cities of the first class are located and if approved by a two-thirds vote of the board, give an automatically accepted bid on such real property in an amount equal to the total amount of taxes, interest, and costs due on the real property. If an automatically accepted bid is given, it shall be accepted by the sheriff regardless of any other bids on such real property. An automatically accepted bid may be given only if the conditions for making such a bid prescribed by the board pursuant to subsection (11) of section 18-3405 have been met and only if the land bank has obtained written consent to the tender of an automatically accepted bid from the holder of a mortgage or the beneficiary or trustee under a trust deed giving rise to a lien against such real property. To obtain such written consent, the land bank shall send, by certified mail, a notice of its intent to make an automatically accepted bid to any such holder of a mortgage or beneficiary or trustee under a trust deed and

shall request that written consent be given within thirty days. If no response is given within such thirty-day time period, such holder of a mortgage or beneficiary or trustee under a trust deed shall be deemed to have given written consent.

If a land bank's bid pursuant to subdivision (1)(a) of *Neb. Rev. Stat.* § 18-3418 is accepted by the sheriff, the land bank shall pay the sheriff and shall be entitled to a deed to the real property in accordance with *Neb. Rev. Stat.* § 77-1901 to § 77-1941.

(2) If a sheriff attempts to sell real property as part of foreclosure proceedings under *Neb. Rev. Stat.* § 77-1901 to § 77-1941, there is no bid given at such sale equal to the total amount of taxes, interest, and costs due thereon, and the real property being sold lies within a municipality that has created a land bank, then such land bank shall be deemed to have bid the total amount of taxes, interest, and costs due thereon and such bid shall be accepted by the sheriff. The land bank may then discharge and extinguish the liens for delinquent taxes included in the foreclosure proceedings pursuant to *Neb. Rev. Stat.* § 18-3416. The land bank shall then be entitled to a deed to the real property in accordance with *Neb. Rev. Stat.* § 77-1901 to § 77-1941. If the acquisition of real property under this subsection would result in a land bank exceeding the total number of parcels that a land bank may hold legal title to pursuant to subsection (6) of *Neb. Rev. Stat.* § 18-3408, the acquisition of such property shall not be counted towards such limit. (*Neb. Rev. Stat.* § 18-3418)

Chapter 14 – Legal Basis for Planning and Zoning

Introduction

This chapter describes the constitutional provisions that are applicable to the land use planning and development process. Both the U.S. Constitution and the Nebraska Constitution have a strong influence. Obviously, the discussion in this *Handbook* cannot cover all of the nuances of the constitutional limitations on the land use planning and zoning process, but an attempt is made to provide the reader with a general sense of some of the limitations placed on local governments by both the federal and state constitutions.

In addition, significant U.S. Supreme Court cases, as well as recent Nebraska cases, related to planning and zoning are discussed in this chapter.

Constitutional Limits in Regulating Land Use

Individuals involved in the planning process must have some degree of knowledge and understanding of the federal and state constitutional limitations placed upon political subdivisions and local governments in the process of regulating land use.

Historically and before we examine the legal basis of planning, it is wise to revisit our form of government handed down to us by the U.S. Constitution. We were taught that the federal government was made up of three branches of government – the Executive Branch – to enforce the law, the Legislative Branch – make the law, and the Judicial Branch – to interpret the law. Our founding fathers ensured through the Constitution for a “separation of powers and checks and balances” so that no one branch of government could become more powerful than the other.

An examination of the Constitution begins with Article VI, Clause 2 of our Constitution. This is referred to as the “Supremacy Clause”. It is one sentence long, but its impact is immeasurable on planning. Simply stated it says:

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

The core message of the Supremacy Clause is simple: the Constitution and federal laws (of the types listed in the first part of the Clause) take priority over any conflicting rules of state law. This principle is so familiar that we often take it for granted. Still, the Supremacy Clause has several notable features. The Supremacy Clause contains the Constitution's most explicit references to what lawyers' call "judicial review" – the idea that even duly enacted statutes do not affect the rules of law for courts to the extent that the statutes are unconstitutional. The Supremacy Clause is also the basis of the "doctrine of preemption" – meaning if there is a federal law, a state may not conflict with it. While courts often apply the doctrine of preemption in interpreting federal laws, many statutes, both federal and state, have the doctrine of preemption expressly written within them. As an example, *Neb. Rev. Stat. § 28-829* invokes preemption on municipalities, counties, and other governmental entities from passing any law, ordinance or regulation relating to obscenity, or licenses or taxes respecting the obscene work, material, conduct or live performance as regulated under *Neb. Rev. Stat. § 28-807* to *§ 28-829*. Obviously, obscenity is a whole different subject than planning, but yet we regulate obscenity by adopting local ordinances and regulations regarding adult entertainment.

That is just the beginning of the U.S. Constitution having an impact on planning. The First Amendment's "freedom of religion" has led to the adoption in 2000 of Religious Land Use and Institutionalized Persons Act (RLUIPA). This Act prevents local governments from imposing land use regulations that substantially burden the exercise of religion by religious institutions. This includes zoning laws that may discriminate against religious assemblies or institutions compared to secular entities.

The Fifth Amendment to the U.S. Constitution has been a prime player in the development of the regulation of land use. The Fifth Amendment contains many provisions, but the two most important to planning are the "due process" clause and the "takings" clause. Simply stated, the due process clause provides:

"No person shall be deprived of life, liberty, or property, without due process of law."

The takings clause provides:

" . . . nor shall private property be taken for public use, without just compensation."

The Fourteenth Amendment to the U.S. Constitution applies the constitution protections afforded by the first ten amendments to the Constitution (Bill of Rights) to the states and adds the "equal protection" clause as well. The Fourteenth Amendment provides:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Some of the most frequently encountered constitutional and other statutory arguments used by landowners to limit governmental entities authority to affect private property rights are discussed below.

Ultra Vires

“Ultra vires” is a Latin term which, loosely translated, means “beyond the authority.” Under our constitutional framework found in Amendment 10 to the U.S. Constitution), the individual states have all power not specifically reserved by the federal government. Local government only has the power which has been delegated to it by the respective state through enabling legislation. In Nebraska this is known as “Dillon’s Rule.” Most states have passed a plethora of legislation enabling units of local government to enact many land use controls, including – zoning regulations; subdivision regulations; health, building, and safety codes; and historic preservation ordinances.

Thus, many times the first question to ask is whether a purported action of a local government in Nebraska has been statutorily authorized by the State of Nebraska. If not, the proposed action may constitute an “ultra vires” act. Traditionally, courts have been fairly generous in interpreting the permissible scope of land use enabling legislation. Often, any regulation that reasonably relates to controlling the impact of development will be considered by the courts to be authorized. Zoning regulations in Nebraska enjoy the presumption of validity, which shifts the burden of proving otherwise to the person or entity who challenges the regulation.

Takings and Inverse Condemnation

Both the state and federal constitutions prohibit governments from “taking” private property for public use without just compensation.

Most people are familiar with the typical “taking” situation where the local government condemns property for widening a road or for the construction of another public improvement. Under this scenario, the local government must pay the private property owner just compensation for taking that private property.

The more difficult scenario involves a “regulatory taking.” The courts have recognized that local governments cannot infringe upon private property rights with impunity if the local regulation “goes too far” in diminishing private property rights.

Due Process

Both the federal and state constitutions further prohibit the deprivation of life, liberty, or property without due process of law. There are two aspects of the “due process” clause.

Substantive Due Process

The first involves substantive due process, or due process in substance. Under this constitutional limitation, the action of the local government is judged on a “fairness” standard. Courts are not to act as “super-legislatures,” and if there is a rational basis for the local government’s action, traditionally courts will uphold that action by the local government.

Procedural Due Process

The second aspect of the due process clause is a matter of “process” or “procedure.” Since land use decisions oftentimes are made in a judicial or quasi-judicial setting, property owners whose rights are being affected have a right to a fair hearing. Such a fair hearing necessarily involves an impartial decision maker and the opportunity to be heard. Therefore, decision makers should not hear cases in which they have a conflict of interest. Further, decision makers such as planning commissioners, even though it may be a recommendation, should avoid discussing a matter outside of a public hearing, and as a result avoid the issue of “ex parte” contacts.

Equal Protection

The Fourteenth Amendment of the U.S. Constitution requires each state to provide equal protection to all of its residents under the laws of that state. Zoning and other land use regulations necessarily raise an equal protection problem because of the classification of land. Landowners often make two types of equal protection objections to zoning ordinances.

The first objection is a facial attack on the ordinance in which they argue that the text of the zoning ordinance violates equal protection because of its dissimilar treatment of similar property. Alternatively, property owners can also make “as-applied” arguments in which they object to the land use classifications designated on the zoning map. A property owner may argue that the ordinance itself correctly distinguishes between residential and commercial uses, but as applied by the zoning map, violates equal

protection. For example, the property owner may argue that the map improperly classifies his land as residential, and that commercial zoning would be more appropriate.

Typically, land use regulations will pass the “equal protection” test unless the regulation infringes upon a fundamental right, such as the freedom of interstate travel, or affects a “protected class” of individuals based upon their race, religion, sex, national origin, disability, age, gender preference, marital status, etc.

Taking of Private Property

Oftentimes courts mix and match different analyses under constitutional limitations. Courts often blur the lines between the tests to determine whether a “taking” violation has occurred and those tests applicable to substantive due process or equal protection arguments.

It is important to note that the Nebraska Constitution provides broader protection against “takings” than does the federal constitution. Under the Nebraska Constitution, not only does local government have to provide just compensation for property owners whose property has been taken, but local governments also are prohibited from damaging private property for public use without providing just compensation.

Significant U.S. Supreme Court Case Law, Past and Present

Most of the case law generated recently is focused on the “taking” clause of the federal and state constitutions. A brief review of land use litigation history provides a framework for the constitutional issues involved.

First Supreme Court Ruling of a “Taking” in Land Use Regulations

In *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922), the United States Supreme Court, for the first time, held that a land use regulation was unconstitutional under the “taking” clause of the U.S. Constitution. In this case, a coal company had conveyed all surface rights and property but reserved the right to remove subsurface coal. The state later adopted a statute that prohibited the mining of coal if any dwelling units would be endangered. The property owners who built homes on the land brought an action to prohibit the coal company from mining subsurface coal, using the argument that any further mining would increase the risk of cave-in for their dwelling units. The coal company contended that the statute was an unconstitutional “taking” of their property rights. The majority of the U.S. Supreme Court agreed and found the

statute to be an unconstitutional taking of the coal company's reserved mineral rights and, in a phrase that is often quoted, stated:

“Government could hardly go on if, to some extent, values incident to property could not be diminished without paying for every such change in the general law. . . [A]n implied limitation must have its limits. When it reaches a certain magnitude, in most, if not all, cases there must be an exercise of eminent domain and compensation.”

The Court recognized that a government can go “too far” in regulating private property rights under its land use regulations. In those circumstances, a taking will occur. The Court did not announce a test of how far is “too far,” but some of the following cases have helped define it.

Recent Supreme Court Ruling of a “Taking” in Land Use Regulations

In DeViller v. Texas, 601 U.S. 285 (2024), the United States Supreme Court applied the “takings” clause of the Fifth Amendment in a Texas case. The decision clarified that Texas law provides a cause of action for inverse condemnation, which can serve as the procedural avenue for claims under both the Texas Constitution and the Takings Clause. The Court explained that while constitutional rights often lack a built-in vehicle for enforcement, states are generally expected to honor those rights through established procedures. Since Texas law offers a legal path for property owners to seek compensation, there was no need for the Court to decide whether the Takings Clause itself creates such a cause of action. The Plaintiff and more than 120 petitioners owned property situated north of U.S. Interstate Highway 10 between Houston and Beaumont, Texas. The State of Texas undertook modifications to the highway, creating a three-foot median barrier designed as a dam to keep the road open during severe weather events. While the barrier succeeded in keeping the south side of the highway clear, it caused flooding on properties to the north during major storms – including Hurricane Harvey in 2017 and Tropical Storm Imelda in 2019. This recurring flooding resulted in significant property damage, displacement, loss of business, ruined crops and livestock, and destruction of family belongings. The Court held: (1) A property owner gains an irrevocable right to just compensation immediately upon a taking, due to the self-executing nature of the Takings Clause; (2) State officials have a responsibility to uphold the Constitution within their usual procedures; the system relies on the states’ good faith; (3) Federal courts should not assume that states will refuse to honor constitutional obligations, including those under the Takings Clause; and (4) the Texas’s inverse-condemnation process offers

property owners a vehicle for takings claims under both state and federal constitutions. (Nebraska law is in line with this ruling)

Zoning Upheld by the U.S. Supreme Court

Following the *Village of Euclid* case, it was more than 50 years before the Supreme Court again considered a “taking” question in a land use case. In *Penn. Central Transp. Co. v. New York City*, 438 U.S. 104 (1978), the United States Supreme Court upheld a historic landmark designation applied to prevent the construction of a high-rise tower over Grand Central Station. The designation under the historic preservation regulation of New York City imposed a severe restriction on the use of the landmark site to confer the benefits of historic landmark preservation on the general public. In its opinion, the Supreme Court interspersed its conclusion with equal protection, due process, and taking theories. The Court noted that it had never adopted a “set formula” for the takings clause. The Court easily dismissed arguments that the landmark law constituted a taking as applied to the railroad terminal. The regulation did not prevent the continued use of the property, nor did it preclude the possibility of a less intrusive structure located above on the terminal’s air space.

U.S. Supreme Court Clarification of “Takings”

Legitimate Governmental Objectives

In the early 1980s, the U.S. Supreme Court decided additional land uses cases which provided more certainty as to what constitutes a “taking.” In *Loretto v. TelePrompTer Manhattan CATV Corp.*, 458 U.S. 419 (1982), the Court adopted a “per se” or certain taking rule for permanent physical invasions of property. New York had passed a statute which authorized cable TV companies to install equipment on apartment buildings upon the payment of reasonable compensation. The Court held that a taking “per se” occurs when there is a permanent physical occupation authorized by a government without regard to the public interests it may serve, even though the physical interference is minimal. The Court made clear that the automatic taking rule did not apply to temporary invasions or to regulations that merely restrict the use of the property.

In those “regulatory” taking situations when land use is merely restricted, the Court announced a two-part rule in *Agins v. City of Tiburon*, 447 U.S. 55 (1980). In this case, the City had placed five acres of undeveloped land in an “open space” zone to implement a requirement of the state law for comprehensive plans. A property owner argued that “as applied” to his property, the ordinance

resulted in a taking without compensation. The Supreme Court held that a taking had not occurred and adopted the following test:

“The application of a general zoning law to particular property affects a taking if the ordinance does not substantially advance legitimate state interests or denies an owner economically viable use of his land. The question necessarily requires a weighing of private and public interests”.

Thus, land use regulations which substantially advance legitimate governmental objectives and do not deny any or all use of the land should not constitute regulatory takings.

Exactions

An “exaction” is some concession from the landowner demanded by a local government in return for approval of a permit.

“Nexus” Test

In 1987, the U.S. Supreme Court considered an exaction in Nollan v. California Coastal Commission, 483 U.S. 85 (1987). In this case, the Coastal Commission required the property owner to dedicate a public easement across its beach front as a condition attached to a permit to rebuild a beach front house. The Commission argued that it required the access easement because the new house would contribute to a wall of residential structures preventing the public from realizing that they had a right to enjoy the coastline. The Court held that a taking clearly would have occurred if the Coastal Commission had required the Nollans to dedicate an easement across its property and had not imposed the access requirement as a condition to its building permit. The question presented to the Court was whether requiring the access easement as a condition to a land use permit alters the outcome. The Court reaffirmed the two-part taking test adopted in *Agins*. The Court held that the condition to the building permit constituted a taking because there was no “nexus” or connection between the legitimate governmental interest and the easement. The Court held that the requirement of a dedication of a public easement parallel to the shoreline to permit the public to cross the property did nothing to break down the psychological barrier that the public would see from the street if a new home were to be constructed. In this case, the Court held that the “essential nexus is omitted.” A permit condition is not a taking if it serves the same legitimate governmental purpose that a refusal to issue the permit would serve. For example, the Court pointed out that the Commission could have imposed a height limitation on the house to preserve the view of the beach if it could prohibit the construction of the house to preserve the view.

“Rough Proportionality”

The *Nollan* case first announced this “nexus” test for exactions in 1987, and in 1994 the Supreme Court further refined the test for exactions. In *Dolan v. City of Tigard*, 512 U.S. 374 (1994) this Oregon town adopted a comprehensive plan noting that flooding had occurred on the creek near the Dolan property. The plan recommended that the flood plain be kept free of structures and preserved as a greenway to minimize flood damage. The plan for the downtown area also proposed a pedestrian path to encourage alternatives to cars for short trips in the business district. The Dolans had applied for a building permit to double the size of their hardware store, but the City had conditioned their building permit with the requirement that they dedicate roughly 10 percent of their property to the City. The land to be dedicated included land within the flood plain for the improvement of storm drainage and a 15-foot strip for the bike path. The Court held that the “nexus” as required by the *Nollan* case existed between the legitimate governmental purpose and the permit condition. However, the Court found that a taking occurred because the degree of the exactions demanded by the City’s permit conditions did not bear the required relationship to the projected impact of the Dolan’s proposed building. The Court adopted a “rough proportionality” test to determine whether a taking had occurred under the federal Constitution. The Court stated:

“No precise mathematical calculation is required, but the City must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.”

This *Dolan* case is important because its “rough proportionality” test elevates the level of scrutiny courts must give to exactions. Not only must exactions have the necessary connection as required by the *Nollan* case, but also must have some rough proportionality with the impact if the proposed development if the exaction is going to be a condition to a building permit. An individual property owner cannot be made concede more than what is necessary due to the impact of the development.

A Nebraska Precedent

Interestingly enough, the Court in the *Dolan* case cited, as one of the main precedents underlying its decision, a case arising out of Nebraska entitled *Simpson v. North Platte*, 206 Neb. 240, 292 N.W.2d 297 (1980). In this case, the Simpsons negotiated a lease for building a fast-food restaurant on some of their land. The Simpsons made application to the City of North Platte for a building permit. The City refused to review the building plans on

the ground that the Simpsons had not dedicated 40 feet of right-of-way for a public street that the City wanted to eventually build adjacent to the Simpson property, as required by a local ordinance. The City had not obtained the balance of the right-of-way for the new public street, but it was trying to condition the building permit for the Simpsons upon the dedication of the 40 feet of right-of-way next to the Simpson land. The City had argued that the requirement of the ordinance that a property owner dedicate right-of-way was a reasonable exercise of the City's police power intended for the purpose of promoting the public health, safety, and welfare. Courts generally have held that a city may, as a condition of approving a subdivision, require the dedication of right-of-way for both internal streets and such external streets that are required by reason of the development of the subdivision. The Court stated:

“The distinction, therefore, which must be made between an appropriate exercise of the police power and an improper exercise of eminent domain, is whether the requirement has some reasonable relationship or nexus to the use to which the property is being made or is merely being used as an excuse for taking property simply because at that particular moment the landowner is asking the City for some license or permit.”

The problem the City encountered in the Simpson case is that, although the comprehensive plan indicated a proposed extension of the street in question, no project was immediately contemplated. Furthermore, there was no evidence to indicate that the construction of the project sought by Simpson would create such additional traffic as to require going forward with the proposed street project. The Court found that the City merely wanted to “land-bank” the right-of-way it was trying to exact from Simpson for some future street project. There was no evidence of any connection between any traffic that would be generated by the Simpson construction project and the need for the new public street.

Deprivation of All Economically Viable Use

In 1992, the U.S. Supreme Court adopted a new categorical rule for cases of total deprivation of all economically viable use. In Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992), Lucas had bought two lots on a barrier island on which he intended to build homes. When the purchase was made, the lots were not subject to the state's coastal building permit requirement. In 1988, a Beach front Management Act was adopted which prohibited any permanent structures on the property. Lucas brought suit, claiming that the prohibition was a taking because the Act deprived him of all economically viable use of his property.

The Supreme Court reviewed the takings law history and concluded that there were at least two discrete categories of regulation that required compensation without a case-specific inquiry into the public interest served in support of the restraint. The first involves a physical invasion of the property; the other is a situation where regulation denies all economically beneficial or productive use of the land.

There are limited circumstances in which a regulation that affects a total taking can be upheld. Where a land use regulation deprives an owner of all economically productive use of the land, a taking will occur – with one exception. Only when the regulation which deprives all economically viable use of the land would do no more than duplicate the result that could have been achieved under the state laws of private nuisance can a land use regulation affect a total taking. For example, if, under a state’s law of private nuisance, the owner of a nuclear power plant could be prohibited from building a power plant on a fault line that was subject to frequent earthquakes, a local government could enact a regulation which would prohibit the construction of such a power plant on fault lines.

The *Lucas* case has created some confusion about the way in which courts should apply takings rules. Typically, land use regulations do not deprive an owner of all economically viable use of the land. Absent a physical invasion or a total deprivation of all economically viable use of the land, local governments can avoid violating the takings clause if the local regulation substantially advances a legitimate state interest.

Recent Nebraska and 8th Circuit Court of Appeals Case Law

As discussed in the preceding section regarding federal case law, a taking is defined as an interference of property by a governmental invasion, rather than an interference by a public program which promotes the public good. The Nebraska Supreme Court wrote that it considers federal and state case law as “coterminous” – having the same boundaries – with regard to takings cases (*Strom v. City of Oakland*, 255 Neb. 210, 583 N.W.2d 311 (1998)). However, in *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528 (2005) the U.S. Supreme Court addressed a challenge to a Hawaii statute that capped the rent oil companies could charge to dealers leasing company-owned service stations. Chevron, one of Hawaii's largest oil companies, argued that the rent cap constituted an unconstitutional taking of property. The case moved through the district and circuit courts, with both ultimately finding the statute unconstitutional using a "substantially advances" test drawn from *Agins v. City of Tiburon*, previously discussed above. The Supreme Court, in a unanimous

opinion ruled that the "substantially advances" test is not the appropriate standard for determining if a regulation constitutes a taking under the Fifth Amendment. Instead, this formula relates more to due process and does not properly evaluate whether compensation is required for government interference with private property under the Fifth Amendment. Therefore, past cases referencing the "substantially advances" test did not find compensable takings based solely on that standard. While the federal cases in the preceding section are comprehensive in analyzing general regulatory takings law, there are several important recent Nebraska cases that are highlighted and discussed in this section.

Zoning

In *Strode v. City of Ashland*, 295 Neb. 44, 886 NW2d 293 (2016) the Supreme Court held that a cause of action for inverse condemnation based on regulatory taking accrues when the injured party has the right to file a lawsuit due to a city's infringement or attempt to infringe on property rights. The case involved a challenge alleging inverse condemnation due to zoning regulations and a bridge load limit. A statute of limitations issue arose because the city had sent the Strode's a letter notifying them of a nonconforming use and its intent to take legal action. This triggered a 10-year statute of limitations for the Strode's claim. Strode's inverse condemnation action was barred by the statute of limitations and the bridge load limit did not constitute a "regulatory taking". Also, in *Rodehorst Brothers v. City of Norfolk Board of Adjustment*, 287 Neb. 779, 844 N.W.2d 755 (2014) the Supreme Court held that the application of city's ordinance governing discontinuance of a nonconforming use to the property owner's building was not a regulatory taking.

"Nexus" Test

Even if the government is acting within the bounds of its police power, there are two categories which are still compensable without a case-specific inquiry: (1) a case in which a landowner is denied all economically beneficial use of the land, or (2) where a landowner suffers a physical invasion of their property by the government. Nonetheless, the validity of zoning regulations is presumed in the absence of sufficient evidence to the contrary (*Bucholz v. City of Omaha*, 174 Neb. 862, 120 N.W.2d 270 (1963)). (The case is still good law in Nebraska).

While municipalities are authorized to restrict land uses through zoning and other measures under their police powers, this power has limits. For example, in *Simpson v. North Platte*, 206 Neb. 240, 292 N.W.2d 297 (1980), the Supreme Court of Nebraska held that

a city's action of conditioning a permit upon the applicant's dedication of their land was unconstitutional. The city was prohibited from conditioning a permit under a purported police power action without providing just compensation to the landowners. The Nebraska Supreme Court accused the city of "banking" the land for future use and said that strict enforcement of the ordinance would create an undue hardship on the landowners.

The landowners in *Simpson* obtained a fast-food restaurant lease to build on their land. Upon requesting a building permit, the city required the landowners to dedicate public right-of-way for a future, unplanned street project. The landowners refused to dedicate the land, and subsequently the city refused to grant them the building permit. The city argued that its actions were a legitimate exercise of their police powers to promote the health, safety, and welfare of the community. The Nebraska Supreme Court, however, said that this police power argument was a guise and that the city was required to provide just compensation for this taking. The Court wrote that there is a balance between appropriate police power and improper eminent domain by a city. This balance is determined by whether the action has some reasonable relationship or nexus to the purported government use of the property. The city may not condition a permit for the purpose of "banking" land for unscheduled possible future use. The case is still good law.

Conditional Rezoning

While a conditional grant of a permit was determined invalid in *Simpson v. North Platte*, conditional rezoning ordinances have been affirmed as acceptable by the Nebraska Supreme Court. In *Mainstreet Properties LLC v. City of Bellevue*, 318 Neb. 116, 13 N.W.3d 911 (2024), the Supreme Court first addressed that the city council's adoption of the rezoning ordinance was a legislative act. Main St Properties LLC (MSP) operated a U-Haul business in Bellevue, Nebraska. In 2012, MSP and the City entered a conditional zoning agreement, allowing MSP's property to be rezoned from a residential to a business district. The agreement restricted parking and storage of U-Haul vehicles north of the building's northern face. If MSP violated these terms three times, regardless of whether the violations were cured, the City had the right to rezone the property back to its prior classification. The City issued MSP written notices for zoning violations in October 2012, September 2014, April 2020, and June 2020, documenting U-Haul vehicles parked in restricted areas. MSP did not appeal the first three notices but did appeal the June 2020 notice to the board of adjustment, which upheld the violation. While the appeal was

pending, the city's planning commission and city council held hearings and ultimately approved Ordinance No. 4004, reversing the conditional rezoning and restoring the property to its previous status. The Supreme Court held that the City's legislative action to rezone the property was valid under the agreement, even without further notice after three violations. While the appeal was pending, the city's planning commission and city council held hearings and ultimately approved ordinance No. 4004, reversing the conditional rezoning and restoring the property to its previous status.

The test to determine whether a government action constitutes a taking is the denial of all economically viable use of land and/or interference by the government through a governmental physical invasion. A taking is not an interference in the promotion of the common good or to substantially advance a legitimate government purpose. This test has been construed under the United States Constitution; however, the Nebraska state constitution is broader and compensates for damage to property as well as total takings. As was decided in the First English Evangelical Lutheran Church of Glendale v. Los Angeles County, California, 482 U.S. 304 (1987) case, property owners can be awarded damages for temporary takings which result from damage to property.

Legitimate Government Purpose

Regarding any claimed legitimate government purpose related to zoning, generally a city may not "do with its zoning code what it cannot do through its . . . laws" (Gas 'N Shop v. City of Kearney, 248 Neb. 747, 539 N.W.2d 423 1995). In this case a convenience store sued the city for a zoning ordinance which required "separate and distinct" premises for off-sale liquor sellers. The Supreme Court held that this ordinance requirement was not rationally related to a legitimate government purpose of land use planning and/or zoning, and therefore it violated equal protection by creating a classification of convenience stores. The Court said that the city lacked a legitimate government purpose related to zoning, and the city must prove that the zoning ordinance is rationally related to a unique land-use purpose. The city, however, could not do this because other off-sale liquor sellers, i.e., grocery stores, were allowed to sell liquor from their premises. (The case is still good law in Nebraska.)

8th Circuit Court of Appeals

In a case involving a Minneapolis zoning ordinance that restricted the location of firearms dealers in the city. (Koscielski v. City of Minneapolis, 435 F.3d 898 (2006)) Mark Koscielski and Barbara

Bergstrom, operators of a firearms dealership, challenged Minneapolis city zoning ordinance. The ordinance required firearms dealers to obtain permits and operate only in certain zones, maintaining a distance from daycare centers and churches. After Koscielski's lease was canceled for redevelopment, he attempted to relocate in compliance with the ordinance but was unsuccessful. The City issued a cease and desist order when he moved into a prohibited zone without a variance. Koscielski filed suit, alleging violations of the Equal Protection, Due Process, and Takings Clauses. The Court found that equal protection claims require proof of different treatment from similarly situated persons, not rationally related to a legitimate government objective; that due process claims regarding land use must demonstrate that the government action is truly irrational, exceeding the threshold of arbitrary or capricious behavior; and takings claims must be ripe, which means pursuing adequate state procedures for compensation before seeking relief in federal court. On appeal, the Court held the zoning ordinance did not violate the Equal Protection Clause, as firearms dealers were not shown to be similarly situated to other businesses receiving favorable treatment, and no evidence of intentional discrimination was provided; the ordinance is not so irrational or egregious as to violate substantive due process rights, especially since there were vacant lots available that met zoning requirements; and the takings claim was not ripe for federal review because the plaintiffs had not first sought compensation through state procedures.

Annexation

Background Nebraska cases

Municipalities must exercise annexation powers in strict accord with the prevailing applicable statute. Annexing of adjacent land is a statewide concern; therefore, state statutes, not city ordinances, are controlling. It is interesting to note that the statutory requirements vary depending upon the classification (population size) of the municipality. A city may annex land which is "contiguous and adjacent" to the corporate limits. However, a city is prohibited from annexing land for the sole purpose of raising revenues (*Witham v. City of Lincoln*, 125 Neb. 366, 250 N.W. 247 (1933)) without accepting the corresponding responsibilities of providing services to the annexed land (*Millard Rural Fire District v. City of Omaha*, 226 Neb. 60, 409 N.W.2d 574 (1987)). Additionally, a municipality may only annex land which is urban or suburban in nature (as opposed to rural).

The fact that a city considers tax revenue in the annexation of land does not establish that the city annexed the land solely for revenue

purposes (*SID No. 57 v. City of Elkhorn*, 248 Neb. 486, 536 N.W.2d 56 (1995)). In this case, the sanitary and improvement district (SID) sued to enjoin the total annexation of a community and the partial annexation of a SID. The SID claimed that the sole purpose of the annexation was to increase revenue for the city. A municipality cannot annex land for revenue purposes only (*SID No. 95 v. Omaha*, 221 Neb. 272, 376 N.W.2d 767 (1985)). However, if a city assumes the responsibility and liabilities of the SID, this disproves any revenue claims by the SID because the city is providing necessary improvements and services to the newly annexed land.

In *SID No. 95 v. City of Omaha*, 221 Neb. 272, 376 N.W.2d 767 (1985) the Supreme Court held that the city assumed the SID's liabilities and service responsibilities in the annexed land, and that these facts therefore established that the city did not annex the land solely for revenue purposes. A party challenging an annexation has the burden to prove facts which establish that a city annexed land for the purpose of increasing tax revenues and that the annexation therefore is invalid. The fact that landowners' taxes increase does not prove that a city annexed for the purpose of increasing revenues.

The Nebraska Supreme Court discusses various annexing issues in *Johnson v. City of Hastings*, 241 Neb. 291, 488 N.W.2d 20 (1992) and *Swedlund v. City of Hastings*, 243 Neb. 607, 501 N.W.2d 302 (1993). In *Johnson*, farm owners and a public power district sued the City of Hastings to enjoin the annexation of a tract of land. The farmers sued because their land was within two miles of the tract and would be subject to city zoning and taxes if the tract was annexed (pursuant to *Neb. Rev. Stat. §16-901*). The Nebraska Public Power District, in *Johnson*, sued because it served customers on the tract and would subsequently lose their distribution services and earnings from those customers. In *Swedlund*, landowners sued the city to challenge the validity of an annexation and enjoin the city from enforcing an ordinance allowing a variance on a property. The Nebraska Supreme Court held that the annexed land was suburban or urban in nature and therefore subject to annexation. The plaintiffs in *Swedlund* also failed to prove that the annexation was motivated primarily for the purpose of raising revenue for the city and therefore the annexation was legitimate.

Cities may not annex rural land, and courts must determine whether land is urban or suburban, or rural in nature. The City of Hastings argued that even though land is agricultural, it may still be considered urban or suburban in nature. The Court agreed that just because land is agricultural does not necessarily classify it as

rural (citing *Omaha Country Club v. City of Omaha*, 214 Neb. 3, 332 N.W.2d 206 (1983)). The Court has held that, in determining whether land is agricultural, the Court must look at the nature of the use of the land in addition to its location (*Sullivan v. City of Omaha*, 183 Neb. 511, 152 N.W.2d 227 [1968]). Finally, while the requirement that the annexed land be “contiguous” to the corporate limits was not a major issue in *Swedlund*, the Nebraska Supreme Court commented that the two words “contiguous” and “adjacent” are synonymous and interchangeable. The Court noted that an accurate definition of the test is that the land must be contiguous by having two connecting boundaries which are substantially adjacent (citing *Village of Niobrara v. Tichy*, 158 Neb. 517, 63 N.W.2d 867 (1954)).

Recent Nebraska Cases

In *Darling Ingredients, Inc. v. City of Bellevue*, 313 Neb. 853, 986 N.W.2d 757 (2023), in 2019, the City of Bellevue reviewed an annexation package including several sanitary and improvement districts and unincorporated parcels, such as Area #9, owned by Darling and Krejci. The City adopted ordinances annexing these properties. Darling and Krejci argued the City exceeded its authority under Nebraska law and that the ordinance was motivated solely by revenue concerns. The Sarpy County District Court, after argument, determined its mandate was to consider the improper purpose challenge based on existing trial evidence. No retrial or new evidence was introduced. Upon review, the District Court found insufficient evidence that the City's annexation was solely revenue-driven and concluded the natural growth and development of the City was a legitimate purpose. The Court determined that annexation solely for tax revenue is improper, but the burden of proof lies with the challenger. Evidence showed that growth and development were motivating factors, and while revenue was considered, it was not the sole reason for annexation. The City's comprehensive plan, cost-benefit analysis, and service provisions supported legitimacy. Precedents confirm municipalities may consider revenue but must not annex exclusively for that reason.

In *County of Sarpy v. City of Gretna*, 309 Neb. 320, 960 N.W.2d 272 (2021), the City of Gretna, classified as a city of the second class in Nebraska, adopted ordinances in 2017 to annex nearly 3,000 acres contiguous to its borders and to extend its zoning jurisdiction. The annexed land included both developed and undeveloped parcels, multiple residential subdivisions, commercial properties, and agricultural land. Some parcels, such as Vala's Pumpkin Patch, operate as large commercial entities. Sarpy County contended that many parcels were agricultural

lands, rural in character, and thus not eligible for annexation according to Nebraska law. The Court outlined important principles for reviewing annexation cases:

- (1) Whether annexed land is “agricultural” and “rural in character” is a question of law, not fact;
- (2) Nebraska law prohibits only the annexation of agricultural lands that are rural in character, not all agricultural lands;
- (3) The character of the land depends on both its current use and its location, as well as plans for future development; and
- (4) The burden is on those challenging an ordinance to prove its invalidity.

After considering the land’s current use, location, market value, and future development potential, the Supreme Court concluded that the annexed territory was urban in character.

Board of Adjustment

Background Nebraska Case

Boards of adjustment are primarily administrative agencies which advance the will of the people and promote the health, safety, welfare, and morals of the public. Therefore, their decisions are not to be minimized by the judiciary (*Bowman v. City of York*, 240 Neb., 482 N.W.2d (1992)). The Nebraska Supreme Court wrote that it may only disrupt a board of adjustment decision if it is illegal or not supported by the evidence and therefore “arbitrary, unreasonable, or clearly wrong.” *Neb. Rev. Stat.* § 19-910 specifies that boards of adjustment have power to grant variances in certain limited circumstances in which the strict application of the statute or regulation would result in peculiar or exceptional difficulties or undue hardships. A board of adjustment may also allow a variance if it does not substantially detriment public welfare and/or impair the intent of the regulation in question.

There is little case law in Nebraska regarding ordinances and land use decisions by municipal boards of adjustment. The leading case on this topic was *Bowman v. City of York*. In this case, the landowners challenged a board of adjustment zoning decision in which the board granted a variance to York Cold Storage Company, which petitioned to build a warehouse one foot away from the plaintiffs’ residence. The plaintiffs’ property abutted land owned by York Cold Storage. There is a fifteen-foot setback requirement for land in York, yet York Cold Storage wanted to build a warehouse with only a one-foot setback and subsequently requested a fourteen-foot variance by the board of adjustment. The

board of adjustment granted the fourteen-foot variance to York Cold Storage, and the company built a warehouse one foot away from the Bowman residence.

York Cold Storage argued that its undue hardship was financial, in that if it could build a larger warehouse, it could employ more workers and therefore create more profit. The company claimed that this hardship affected the entire economic community of York. The plaintiffs countered that York Cold Storage only employed two additional people in the space between the one and fifteen-foot setback area, and the warehouse injured their garden, fruit trees, air space, and sunlight and created excessive noise in their residence. However, the board of adjustment voted in favor of the variance. The landowners subsequently sued.

The Nebraska Supreme Court wrote that a board of adjustment decision shall not be overruled on appeal unless it “is found to be illegal or from the standpoint of fact it is not supported by evidence or is arbitrary and unreasonable or is clearly wrong” (citing *Frank v. Russell*, 160 Neb. 354, 78 N.W.2d 306 (1955)). The result is, courts must still determine facts specifically within cases as to whether a variance or a board of adjustment decision is valid or invalid (*Weber v. City of Grand Island*, 165 Neb. 827, 87 N.W.2d 575 (1958)). In *Bowman* case, the Nebraska Supreme Court reversed the board of adjustment decision and ruled in favor of the Bowmans. The Court held that York Cold Storage and the City of York failed to prove that strict application of the setback requirement would create an undue hardship on them, which would entitle the variance.

With regard to the illegality of a variance, the Nebraska Supreme Court in *Bowman* refers and compares to *Frank v. Russell*, 160 Neb., 354 70 N.W.2d 306 (1955). In *Frank*, the Supreme Court reversed a grant of a setback variance to residential property because no substantial hardship was inflicted to the applicant. However, the Supreme Court accepted the plaintiffs’ claimed injury that the variance ruined the symmetry of their residential block and the neighbors’ view. The Court determined these constituted undue hardships and therefore the variance was invalid. In *Bowman v. City of York*, even though the purpose for the variance was York Cold Storage’s profitability, this does not outweigh the rights of the Bowmans. Note that York Cold Storage argued that their profitability hardship also affected the community because the company could employ more people. However, the Court rejected this argument and wrote that if it accepted this argument, any business expansion could unfairly justify a variance, thereupon making zoning regulations meaningless.

Recent Nebraska Case

In *Main Street Properties LLC v. City of Bellevue*, 318 Neb. 116, 13 N.W. 3d 911 (2024), Main Street Properties (MSP) operated a U-Haul rental business on its property. In 2012, MSP and the City entered into a conditional zoning agreement, which allowed conditional rezoning for business purposes. The agreement prohibited parking or storing U-Haul vehicles north of the building's north face and outlined remedies for violations, including the City's right to rezone the property after three violations, regardless of whether they were cured. The City issued notices of violation to MSP in 2012, 2014, April 2020, and June 2020, documenting U-Haul vehicles parked in restricted areas. MSP did not appeal the first three notices even though the Notice MSP advised that an appeal could be made to the City's board of adjustment. However, MSP appealed the fourth. While that appeal was pending before the board of adjustment, the City adopted a rezoning ordinance based on documented agreement violations. MSP then filed a petition in error with Sarpy County District Court. District Court granted the City Summary Judgement finding there was no genuine issue of material fact. MSP then appealed to the Supreme Court. The Court in its review clarified that jurisdiction for petition-in-error applies only to judicial functions, not legislative acts like rezoning ordinances and that challenges to legislative actions must be made through collateral attacks (such as injunctions), not by petition-in-error. The Court concluded that (1) the City's rezoning action was legislative and properly executed under the agreement with MSP; (2) that *Neb. Rev. Stat. § 19-909* did not bar the rezoning, and MSP had forfeited its right to contest the City's interpretation; and (3) that there was no genuine factual dispute regarding violations or notice, and no evidence showed the City acted arbitrarily or unreasonably.

Other Nebraska and Federal cases of Significance – Old and New

Premium Farms v. Holt County, 263 Neb. 415, 640 N.W.2d 633 (2002), Premium Farms, a general partnership, initiated a declaratory judgment action to determine the validity of Holt County's zoning regulation requiring confined livestock operations (CLOs) with over 1,000 "animal units" to obtain a conditional use permit. The Holt County District Court found certain portions of the zoning regulations exceeded the county's authority. Both parties appealed. The Supreme Court considered whether the farm building exemption in the relevant statute shielded farm buildings from all county zoning regulations or simply from county building permit requirements. The Court held

that farm buildings were exempt from permit requirements but not from all zoning regulations regarding land use. The exemption in Neb. Rev. Stat. § 23-114.03 does not exclude farm buildings from all county zoning regulations; it specifically exempts them from county building permit requirements. This exemption applies to buildings used for agricultural purposes on farmsteads of at least 20 acres, producing \$1,000 or more in farm products annually. Counties retain the authority to regulate land use, including operations like manure removal and setback requirements for CLOs, under other statutory provisions. The Supreme Court found Holt County's regulations requiring conditional use permits and setting manure and setback standards were within statutory authority.

In *NE Colorado Cellular v. City of North Platte*, decision of U.S. District Court for Nebraska (not reported in F.Supp.3d), this case examines the dispute between NE Colorado Cellular, Inc. (doing business as Viaero Wireless) and the City of North Platte regarding the City's denial of Viaero's request for a conditional use permit to build a telecommunications tower. Both parties have submitted motions for summary judgment, with Viaero claiming the City's decision violates the Telecommunications Act of 1996 (TCA), specifically sections regarding substantial evidence and discrimination among service providers. The City contends its actions were lawful and seeks dismissal of the complaint. Viaero Wireless, licensed by the FCC to provide commercial mobile radio services in Colorado and Nebraska, sought to improve coverage in North Platte by constructing a new telecommunications tower. After analysis, a suitable site was chosen at 1600 E. 5th Street, a vacant lot used for overflow parking. The site is zoned "B-2" Highway Commercial, which permits telecommunications towers upon approval of a conditional use permit reviewed by both the Planning Commission and City Council. In January 2014, Viaero applied for the permit, proposing a 100-foot tower, an equipment building, and a buried propane tank, all enclosed by a chain-link fence with barbed wire. The stated purpose was to enhance network capacity and coverage. On March 25, 2014, the Planning Commission conducted a public hearing, gathering input from local residents and Viaero representatives. The City Planning Administrator noted the commercial nature of the surrounding area. The Commission determined Viaero's application met siting standards and recommended approval to the City Council. The City Council convened a hearing on April 1, 2014, hearing testimony from residents both opposing and supporting the tower. Concerns raised included residential character, aesthetics, safety, and alternative tower locations. Ultimately, the City Council denied the permit, citing the tower's incompatibility with the

area's character and "most appropriate use" of the land, referencing resident testimony that described the area as predominantly residential. The Court reviewed the administrative record, including hearing testimony and visual evidence of the area. Most surrounding properties are commercial or industrial, with only a few residences nearby. Testimony supporting the residential nature of the area was limited and often contradicted by evidence showing commercial or industrial usage. Even aesthetic objections were general and not substantiated by specific, objective evidence. The Court found the City's denial was not supported by substantial evidence, as the area was predominantly commercial and industrial, not residential. Aesthetic concerns raised were too broad and lacked specificity. As such, the Court denied the City's motion for summary judgment and granted Viaero's motion.

In *Reed v. Town of Gilbert, Arizona*, 576 U.S. 155 (2015), the case centered centers on a church and its pastor who sought to place temporary signs announcing their services. They challenged a town sign ordinance that restricted the size, duration, and location of temporary directional signs, arguing that these limits violated their right to free speech. The church posted signs every Saturday to announce services held at various locations, removing them around midday Sunday. The town cited the church twice for exceeding time limits and failing to include event dates, confiscating one sign. Attempts to negotiate with the town failed, leading to legal action. The Court in its analysis determined: (1) that municipal governments cannot restrict expression based on its message, ideas, subject matter, or content; (2) that laws targeting speech based on its communicative content are generally unconstitutional and may only be justified if narrowly tailored to serve compelling state interests; (3) a regulation is content-based if it applies to speech because of the topic discussed or the message conveyed, requiring courts to consider whether distinctions are drawn based on the speaker's message; and (4) for any law restricting speech, especially those based on content, the government must prove a compelling interest and show the restriction is narrowly tailored to achieve that interest. The Court determined that municipalities may regulate signs through content-neutral measures regarding size, materials, lighting, and placement, but content-based distinctions are subject to strict scrutiny. The Supreme Court held that the sign code's content-based distinctions did not survive strict scrutiny. The town's interests in aesthetics and safety were not served in a narrowly tailored way, as other types of signs were not similarly restricted. The decision clarified that while cities may regulate sign-related

issues through content-neutral laws, content-based regulations threaten free speech and require compelling justification.

In City of Austin Texas v. Reagan National Advertising of Austin LLC, 596 U.S. 61 (2022), the case involved billboard owners who challenged the City of Austin's sign ordinance. The ordinance made a distinction between on-premises and off-premises signs – permitting the digitization of on-premises signs but prohibiting it for off-premises ones. In analyzing the facts the Court determined that: (1) the on-/off-premises distinction in the City's sign code regulates based on location, not the subject or idea expressed, making it content-neutral on its face; (2) not every regulation requiring examination of speech is content-based; (3) historical practices and existing precedents support the constitutionality of on-/off-premises distinctions; and (4) because the distinction is content-neutral, only intermediate scrutiny applies, requiring regulations to be narrowly tailored to serve significant governmental interests. The Court concluded that: (1) a regulation is only content-based if it targets speech for its topic or message; (2) Austin's sign ordinance was not automatically content-based simply because it required reading a sign's message to determine its application; rather, it drew a neutral, location-based distinction meaning the ordinance was subject to intermediate, not strict, scrutiny. The Court's decision clarified that not all regulations requiring a reading of speech are content-based under the First Amendment, particularly when they pertain to neutral, location-based distinctions.

In Courser v. Shelby County, Iowa, 139 F.4th (8th Cir. 2025), involved a Summit Carbon Solutions, LLC challenging Shelby County, Iowa ordinances regulating pipelines as preempted by federal and state law. Summit Carbon Solutions, LLC seeks to build an interstate pipeline through Iowa. Shelby and Story Counties enacted ordinances imposing regulations on pipelines, including setback and emergency response requirements. The federal Pipeline Safety Act (PSA) regulates hazardous liquid pipelines and preempts state safety standards. The U.S. District Court for the Southern District of Iowa had ruled in favor of Summit, permanently enjoining the Shelby and Story County from enforcing their ordinances. The 8th Circuit determined that the Counties' ordinances were preempted by the PSA and state law. The ordinances' setback requirements were deemed safety standards and thus preempted by the PSA. Emergency preparedness requirements in the ordinances were also found to be preempted by the PSA. The abandonment provision in the Shelby County ordinances were ruled preempted as the PSA extends to abandoned pipelines. The Court held that the ordinances

conflicted with state law regarding pipeline regulation and were therefore preempted by the PSA.

North Fork Wind LLC, et al. v. Knox County, Nebraska (Case # 4:24-cv-03150) is a case that is pending as of this writing in the U.S. District Court for Nebraska. The case centers on constitutional challenges – both state and federal – to zoning regulations in Knox County, Nebraska. The plaintiffs, North Fork Wind, LLC and several landowners, entered into agreements for a wind energy project, but subsequent changes to zoning regulations allegedly aimed to prevent its development. The plaintiffs are seeking relief against Knox County, its Planning Commission, Board of Supervisors, and individual members under 42 U.S.C. § 1983. North Fork Wind, a subsidiary of National Grid Renewables, identified Knox County as a suitable site for a 600-megawatt wind energy project as early as 2017. Knox County already hosts two smaller commercial wind farms: Crofton Bluffs (40 MW, established 2012) and Elkhorn Ridge (80 MW, established 2009). After extensive engagement and public comments, the county adopted new zoning requirements in November 2023 for such projects, including a 2,000-foot setback from non-participating dwellings, mandatory liability insurance, and compliance with safety standards. Between October 2023 and April 2024, North Fork Wind secured lease and easement agreements with landowners covering over 42,700 acres and began constructing meteorological towers under county permits. The developers invested \$19.3 million in preparing for the project. A local group, the "Wind Watchers," advocated for stricter setback requirements in May 2024. Public comments included concerns about health, costs, and property values. The Planning Commission amended the proposals, limiting further comment and recommended them to the Board of Supervisors, which held multiple hearings before voting for a 1.25-mile setback and insurance requirements. An additional clause required Knox County to be listed as an insured party. The plaintiffs claim the amendments were enacted specifically to regulate the North Fork Wind Project, making it economically impossible to proceed, and violating constitutional rights under the Fifth and Fourteenth Amendments as well as corresponding Nebraska constitutional provisions. The requested remedies include injunctions preventing enforcement, declaratory judgments voiding the amendments, and monetary damages. Defendants seek dismissal on procedural and substantive grounds, including failure to join an indispensable party, the presence of a nonjusticiable political question, grounds for federal abstention, lack of ripeness, and failure to state a valid constitutional claim. The Nebraska District Court analysis found the following:

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- The court finds no grounds for abstention, as federal courts regularly review zoning regulations and related constitutional questions.
 - Political question doctrine does not apply, as the case challenges specific procedures and impacts of the zoning amendments, not general authority or policy.
 - Defendant Kevin Mackeprang, a supervisor and project landowner, is dismissed as a party due to abstention from voting and lack of individual misconduct.
 - Plaintiffs sufficiently allege a vested property interest for purposes of standing and injury, particularly regarding investment in meteorological towers.
 - Contract Clause claims are not supported because the zoning ordinances affect land use, not the specific terms or enforceability of the contracts themselves.
 - Equal Protection claims do not stand, as the county's regulations are rationally related to public concerns and apply generally to all wind farms.
 - Claims regarding special legislation under the Nebraska Constitution are dismissed for similar reasons: the regulations serve a legitimate and reasonable public purpose.
 - Substantive Due Process claims fail as the regulations are not "truly irrational" or egregious under constitutional standards.
 - Procedural Due Process claims do not survive, as legislative zoning amendments do not require individualized notice or hearings.
 - Claims of unconstitutional vagueness are only valid to the extent the county may not have published the amendments according to state law.
 - The plaintiffs' Takings Clause claim under the Penn Central case will proceed based on substantial investment-backed expectations and economic impact. The court finds claims ripe, accepting that further efforts to apply for permits would be futile due to the county's intent to enforce the new regulations.
 - The court allowed the Takings Clause and state law publication claims to move forward, dismissing other constitutional challenges. Discovery will be bifurcated to first address whether plaintiffs have a vested property interest in using the land for a wind farm.

On March 14, 2025, the Court entered an Order dismissing Defendant Kevin Mackenprang, terminating him as a party; granted in part Knox County's motion to dismiss and denied it in part (see above bullets). The case was referred for case progression and bifurcated discovery. On June 30, 2025, Knox County filed a Motion for Summary Judgment which is still pending with the Court. The case in all likelihood is a long way from being over, and since this is a U.S. District Court there are the possibility of appeals to the 8th U.S. Circuit Court of Appeals and to the U.S. Supreme Court.

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Nebraska Planning Handbook Appendices

(Please note that these Appendices are intended as templates for use by cities, villages, and counties. They are not intended to be used verbatim as they are produced in this Handbook, but are to be reviewed by Planning Commissions, Boards of Adjustment, elected governing bodies, and administrative officials for their use in developing each entity's bylaws and administrative forms, notices, and communications.)

Appendix 1:

Example Planning Commission Bylaws

PLANNING COMMISSION BY-LAWS CITY (VILLAGE or COUNTY) OF _____, NEBRASKA

Article I: Objectives

The objectives and purposes of the Planning Commission of _____, Nebraska, are those set forth in (Section 19-901) [*for municipalities or*] (Section 23-114.01) [*for counties*] of *Nebraska Revised Statutes* and amendments and supplements thereto, and those powers and duties delegated to the Planning Commission by the (City Council) [*or*] (County Board) of _____, Nebraska, in accordance with Ordinance/Resolution Number _____.

Article II: Officers and Their Duties

Section 1. The officers of the Planning Commission shall consist of a Chair, a Vice Chair, and a Secretary.

Section 2. The Chair shall preside at all meetings and hearings of the Planning Commission and shall have the duties normally conferred by parliamentary usage on such officers.

Section 3. The Chair shall be one of the citizen members of the Commission. The Chair shall have the privileges of discussing all matters before the Commission and of voting thereon.

Section 4. The Vice Chair shall act for the Chair in his/her absence. The Chair shall be a citizen member of the Commission.

Section 5. The Secretary shall keep the minutes and records of the Commission, prepare with the Chair agendas for regular and special meetings, provide notice of meetings to Commission members, prepare and publish legal notice of hearings, attend to

correspondence of the Commission, and attend to such other duties as are normally carried out by a Secretary.

Article III: Election of Officers

Section 1. Nomination of officers shall be made from the floor at the annual organizational meeting, which shall be held on the ____ [day of month] of _____[month] each year, and the elections of officers shall follow immediately thereafter.

Section 2. A candidate receiving a majority of the vote of the entire membership of the Planning Commission shall be declared elected and shall take office.

Section 3. Vacancies in offices shall be filled immediately by regular election procedures.

Article IV: Meetings

Section 1. Meetings will be held on the ____ [day of month] of each month at _____[time] at the _____[location] or as set by the Chair.

Section 2. A majority of the membership of the Commission shall constitute a quorum, and the number of votes necessary to transact business shall be a majority of the entire membership of the Commission. Voting shall be by roll call. A record call shall be kept as a part of the minutes.

Section 3. Special meetings may be called by the Chair. It shall be the duty of the Chair to call such a meeting when requested to do so in writing by a majority of the members of the Commission. The notice of such a meeting shall specify the purposes of such a meeting and no other business may be considered except by unanimous consent of the Commission. The Secretary shall notify all members of the Commission in writing not less than five days in advance of such special meeting.

Section 4. All meetings in which official action is taken shall be open to the general public.

Article V: Order of Business

The order of business at regular meetings shall be:

- (a) Roll call
- (b) Reading of minutes of previous meeting
- (c) Communication and bills
- (d) Report of officers and committees
- (e) Old business
- (f) New business
- (g) Adjournment

Article VI: Committees

Section 1. The following standing committees may be appointed by the Chair:

- (a) Land Use Committee

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- (b) Thoroughfare Committee
 - (c) Public Facilities Committee
 - (d) Housing and Codes Committee
 - (e) Economic Development Committee
 - (f) Budget and Finance Committee
 - (g) Public Relations Committee

Section 2. The standing committees may be appointed for any length of time.

Section 3. Special committees may be appointed by the Chair for purposes and terms which the Commission approves.

Article VII: Employees

Section 1. The Commission may employ a Clerk to perform the duties of a Secretary and to perform such other duties as may be assigned to him/her by the Chair of the Planning Commission.

Section 2. The Clerk shall keep the minutes and records of the Commission, prepare with the Chair agendas for regular or special meetings, provide notice of meetings to Commission members, arrange proper and legal notice of meetings, attend to correspondence of the Commission and to such other duties as are normally carried out by a Secretary.

Section 3. The Commission may employ such staff and/or experts as it sees fit to aid the Commission in its work. Appointments shall be made by a majority vote of the entire membership.

Article VIII: Hearings

Section 1. In addition to those required by Law, the Commission may at its discretion hold public hearings when it decides that such hearings will be in the public interest.

Section 2. Notice of such hearings shall be published in the official newspaper of the (municipality) [or] (county) or in a newspaper of general circulation at least ten days before the time of public hearings.

Section 3. The case before the Commission shall be presented in summary by a designated member of the Commission and parties in interest shall have privileges of the floor.

Section 4. A record shall be kept of those speaking before the Commission.

Article IX: Subpoena Power

Section 1. The Commission shall be empowered to issue subpoena, including subpoena duces tecum, in the name of the Commission requiring the attendance and testimony of witnesses and if necessary, the production of records, books, and documents; to administer oaths to parties and witnesses; and to take their sworn testimony or their unsworn statements. If a witness shall refuse to appear or to comply with the requirements of a subpoena to testify, or to produce records, books, or documents when required to do so, the Commission may certify to the District Court of such refusal.

Section 2. The subpoena power of the Commission may be exercised by the applicant filing with the Secretary of the Commission a Praecipe for the issuance of the subpoena or subpoena duce tecum. The Praecipe shall state the name and last known address of the person to be subpoenaed, the date, time and place the person is to appear and give testimony or produce the records, books, or documents so subpoenaed.

Section 3. The Commission Secretary shall prepare the Subpoena with the information required in Section 2. The Subpoena shall be served either personally by any person not interested in the matter before the Commission or by registered or certified mail not less than ten (10) days before the time specified in the Subpoena for compliance. The person making personal service shall make a return showing the manner of service to the person for whom the subpoena was issued.

Article X: Amendments

These By-Laws may be amended by a two-thirds vote of the entire membership of the Planning Commission.

ADOPTED this ____ day of _____, 20____.

Chair

Secretary

Appendix 2:

Example Board of Adjustment Rules and Procedures

BOARD OF ADJUSTMENT RULES AND PROCEDURES

CITY (VILLAGE or COUNTY) OF ____, NEBRASKA

Rule 1: Notice

Legal notice of all matters to come before the Board of Adjustment requiring such legal notice shall be given as required by law. In addition, the Board will endeavor to give written notice to owners of property under appeal at least one (1) week before the date of the public hearing. In addition, the Board will make reasonable effort to inform the public of appeals through the news media.

The Board will meet regularly on the _____ of each month. At each such scheduled meeting the Board will conduct its normal business and will take action on items of business after the necessary public hearings have been held on all items currently before the Board.

The Board shall begin its regular meeting at _____ in _____ of the City/Village/ County in _____, Nebraska.

Rule 2: Agenda

An agenda of the matters to come before the Board will be prepared by the Zoning Administrator and mailed to all Board members and known interested parties. Items not on the agenda will not be heard by the Board unless, by unanimous vote of the members present, it determines that an emergency exists and that the public interest dictates that the matter be heard.

The matters shall be heard in the order that the items appear on the agenda.

Rule 3: Nature of Testimony; Duty of Appellant

The role and function of the Board of Adjustment is to make judicial determinations in zoning matters in relation to interpreting the zoning laws of the (City) [or] (County) of _____ and the granting of zoning variances and exceptions, all to be in accordance with the jurisdictional basis and limitations as provided by Section ____ of the _____ Zoning Ordinance.

All appeals to the board shall state the jurisdictional basis upon which the appeal is being made and shall state the name of the real party or parties in interest.

Testimony before the Board shall be relevant to the jurisdictional basis upon which the appeal is made.

The appellant must state facts sufficient to permit the Board to find in favor of the appellant, with the jurisdictional limitations of the Board as provided by Article _____ of the Zoning Ordinance/Resolution. The appellant shall clearly indicate the manner in which the asserted facts fit into the jurisdictional framework of the Board.

The Board may ask questions of persons testifying. There shall, however, be no cross-examination or direct questioning in front of the Board between proponents and opponents.

Rule 4: Presentation of Testimony

The appellant must present his or her testimony first. Those seeking information or opposed to the applicant shall then be called upon to present their testimony. Each person should first state his or her name and address. Such individual should then present the reasons why the appeal should be granted or should not be granted, in relation to the Board's jurisdictional framework as provided in Article _____ of the Zoning Ordinance/Resolution.

Any person may testify in their own behalf or may be represented by an attorney or may be represented by a close relative, a friend, or by a neighborhood representative when in the judgment of the Chair of the Board such representative is knowledgeable of the factual basis for the appeal and has been authorized in writing to act as a representative.

All parties presenting testimony are requested to avoid repetition of statements and are requested to present their position as briefly as possible.

The Board may call upon staff assistance or comments from the proper (City) [or] (County) official or employee at any time during the proceedings.

Rule 5: Subpoena of Witnesses

The Board of Adjustment shall be empowered to issue subpoena, including subpoena duces tecum, in the name of the Commission requiring the attendance and testimony of witnesses and if necessary, the production of records, books, and documents; to administer oaths to parties and witnesses; and to take their sworn testimony or their unsworn statements. If a witness shall refuse to appear or to comply with the requirements of a subpoena to testify, or to produce records, books, or documents when required to do so, the Board of Adjustment may certify to the District Court of such refusal.

The subpoena power of the Board may be exercised by the applicant filing with the Secretary of the Board a Praecipe for the issuance of the subpoena or subpoena duce tecum. The Praecipe shall state the name and last known address of the person to be subpoenaed, the date, time and place the person is to appear and give testimony or produce the records, books, or documents so subpoenaed.

Section 3. The Board Secretary shall prepare the Subpoena with the information required in Section 2. The Subpoena shall be served either personally by any person not interested in the matter before the Board or by registered or certified mail not less than ten (10) days before the time specified in the Subpoena for compliance. The person making personal service shall make a return showing the manner of service to the person for whom the subpoena was issued.

Rule 6: Duties of Board Chairman

The Board Chair, or Vice Chair in the Chair's absence, shall be in charge of Board meetings and shall be responsible for directing the order of the Board meetings, for directing persons testifying before the Board to limit their testimony to matters having relevance to the jurisdictional basis upon which an appeal has been made, and for directing the development of facts in support of any final action taken by the Board.

Rule 7: Withdrawal or Referral

Any matter which has been advertised for public hearing may be withdrawn or deferred prior to preparation of the agenda before the meeting. Once the agenda had been prepared, items may be withdrawn or deferred only for good cause, with approval of the Chair or Vice Chair if the Chair is out town and not available.

Rule 8: Final Action

As required by law, four affirmative votes are required for final action on any matter. "Final action" shall be defined to mean any vote on a main motion which results in a favorable or unfavorable disposition of an appeal, including a finding of lack of jurisdiction. All subsidiary votes and procedural votes may be determined by the majority vote of the quorum present at any meeting.

The Board shall develop factual findings in support of the final action on an appeal and shall indicate the basis upon which such action was made. The Board's decision, together with the supportive facts developed by the board, shall be filed in the office of the (City) [or] (County) Clerk within seven (7) days of such final action.

A vote on final action on a matter not receiving four or more votes either for or against said matter shall be deemed to have received neither approval or disapproval and shall, without further order of the Board, be continued from regular meeting to regular meeting and shall be heard and voted upon once at each meeting until such time as it shall receive three votes either for or against.

Rule 9: Special Meetings

Special meetings of the board may be called by the Chair, Vice Chair, or three members of the Board of Adjustment, as otherwise permitted by law.

Rule 10: Amendment or Suspension of Rules

These rules may be amended by an affirmative vote of three members after at least 30 days notice to all Board members.

Any and all rules may be suspended as to any matter before the Board, as otherwise permitted bylaw, by three affirmative votes of the Board.

ADOPTED by the Board of Adjustment on this ____ day of _____, 20__.

Board Chair

Approved as to form:

(City) [or] (County) Attorney

Appendix 3:

Information Required for Preliminary Plat

A preliminary plat shall be based on a legal description of the property as shown by the land records in the office of the Register of Deeds. A preliminary plat shall meet the design standards set forth in the subdivision regulations. Plats shall be drawn at a scale to clearly show all necessary information.

The preliminary plat of a subdivision shall show, or be accompanied by, the following information:

1. Copies of the plat and one (1) reduced copy of the plat which is 8 1/2" x 11"
2. Name of the subdivision, legal description, and owners of property
3. Name of the subdivider, engineer, landscape architect, and surveyor
4. Scale specified and graphic scale depicted
5. North arrow and date
6. Names of adjoining property owners or subdivisions
7. The locations and dimensions in feet (and hundredths of feet) for the property lines, lot lines, and building setback lines
8. Names and dimensions of all existing and proposed street rights-of-way and pavement widths
9. The locations and sizes of existing and proposed utility lines, including water and sewer lines, and any other utility installations, including underground natural gas, electrical, or telephone lines adjacent to or within the proposed subdivision, or the locations of the nearest available such utilities
10. Existing and proposed topographic contours (preliminary grading plan) at two (2) foot intervals if the average slope is less than five (5) percent and at five (5) foot intervals if the average slope is five (5) percent or more. The location of existing trees with trunks twelve (12) inches in diameter or greater, measured two (2) feet above the ground. Clumps of trees may be identified as groups of trees without precisely locating each tree.

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11. A preliminary drainage report, including calculations of the quantity of storm water runoff of the proposed tract before development and a preliminary estimate of the location and amount of storm water runoff after full development of the site, including the location and direction of proposed surface water drainage shown on the preliminary grading plan, as well as the size and capacity of any proposed detention or retention areas
 12. An indication of any area subject to flooding as determined by the flood hazard insurance maps of the jurisdiction
 13. Location and dimensions of any proposed sites, parks, or other lands reserved or required to be reserved for public use in accordance with the Comprehensive Plan and the subdivision regulations
 14. Proposed and existing easements, dedications, and reservations of land
 15. A legend stating the total acreage, the number of lots, a computation of lot density, and the total lineal feet of streets and alleys
 16. A map indicating plans for the development of the entire area if the proposed plat is a portion of a larger holding intended for subsequent development, including preliminary engineering plans for all improvements for the entire holding
 17. A vicinity map included on the preliminary plat showing the geographic relationship of the proposed subdivision to the surrounding street system, prepared at a scale of no less than one (1) inch equals two thousand (2,000) feet

Appendix 4:

Information Required for Final Plat

The applicant/developer shall prepare and submit a final plat at a scale of not less than one-inch equals one hundred feet (1" = 100'). The plat shall be prepared under the supervision of, and certified by, a land surveyor registered in the State of Nebraska. The plat, including all signatures, shall be drawn with permanent black ink on reproducible mylar. The final plat of a subdivision shall show, or be accompanied by, the following information:

1. Two (2) reproducible mylar copies of the plat
2. Copies of the plat and one (1) reduced copy of the plat which is 8 1/2" x 11" or 8 1/2" x 14" in size
3. Name of the proposed subdivision
4. Name(s) of the owners(s) of the subdivision
5. Name of the land planner, surveyor, or engineer who prepared the final plat
6. Date, north arrow, and graphic scale
7. Location by specific legal description indicating boundary lines with accurate lengths, angles, and bearings, based upon an accurate traverse, boundary lines having been determined by a balanced and closed survey conducted in the field
8. Tract boundary lines, rights-of-way of all streets, alleys, and other rights-of-way, property lines of all lots and other sites with dimensions given in feet and hundredths of a foot
9. Location, dimensions in feet (and hundredths of a foot) of all easements together with the purpose of each
10. Radii, central angles, tangents, lengths of arcs, curvature angles at street intersections, and a complete street traverse of each street within and on the perimeter of the plat
11. The minimum permitted floor elevation for buildings on each lot subject to flooding

-
12. Accurate location, size, type, and material of all monuments, an indication whether such monuments were found or set, and the elevation of at least one such monument based on USGS datum.
 13. All lot and block numbers
 14. Building setback lines
 15. Accurate outlines of any area to be dedicated or reserved for public use, dedicated areas for storm water management or acquisition with the purposes indicated thereon, and any area to be reserved by covenant or deed restriction for the common use by the owners in the subdivision
 16. A storm water management plan providing quantities of surface drainage and methods for complying with engineering standards
 17. Signature by the surveyor certifying that the final plat accurately represents a survey made by him/her and under his/her direct supervision, that any changes from the description appearing in the last record transfer of the land contained in the final plat are so indicated, that all monuments shown thereon actually exist or will be installed and their position is correctly shown and that all dimensional and geodetic data are correct
 18. Certification signed and notarized by all parties holding title interest in the land contained in the final plat and consenting to the preparation and recording of the plat as submitted, consenting to all dedications noted thereon, and indicating that the title to all land contained in the final plat is free and unencumbered.

Appendix 5:

Preliminary Plat Checklist

CITY (VILLAGE or COUNTY) OF _____, NEBRASKA

Name of Preliminary Plat:

Location of Plat:

This checklist is designed to aid in the efficiency of plat approval. All proposed plans must meet specifications and requirements set forth in the Subdivision Regulations, Zoning Regulations, and Comprehensive Plan of _____.

Requirements of Preliminary Plat:

- ☐ Legal description, acreage and proposed name of subdivision
- ☐ Names and addresses of owners/applicants
- ☐ Name of person(s) who prepared plat, and data thereof
- ☐ Names of adjacent property owners
- ☐ Name of engineer or surveyor
- ☐ Names of utility companies to be involved
- ☐ North arrow and graphic scale of at least one hundred feet (100') to an inch (1")
- ☐ Date prepared
- ☐ A small scale key or vicinity map adequately covering the area within a half mile radius of the subdivision
- ☐ Sheet number and total number of sheets
- ☐ Existing and proposed tentative contour lines at least five foot (5') intervals, or less (within and adjacent to subdivision)
- ☐ Boundary lines of area to be subdivided and their bearings and distances, lot lines, and lot numbers
- ☐ Is proposed use of preliminary plat in accordance with permitted zoning? Is a zoning action required?
- ☐ Location and widths, other dimensions, and names of the proposed streets, alleys, roads, utility and other easements, parks, and other open spaces or reserved areas within

proposed subdivision and two hundred feet (200') thereof, with access route depictions showing:

- Right-of-way width (according to current Comprehensive Plan and street design standards)
- Paving width (according to current Comprehensive Plan and street design standards)
- Length of cul-de-sacs, if proposed, normally not longer than six hundred feet (600') and terminating with a turn-around having a diameter of not less than one hundred feet (100')
- Approximate grades
- Tangent length
- Angle of intersection
- Curve data and interior angle
- Street name or number

☐ Locations of lot lines and utilities on and adjacent to the tract, showing:

- Proposed connections to existing utilities
- Easements, where necessary, at least sixteen feet (16') wide, for utilities across lots or centered on rear or side lot lines
- All utilities, drainpipes, water courses, railroads, and buildings in the proposed subdivision and within fifty feet (50') thereof

☐ Layout of proposed blocks (if used) and lots, showing:

- The approximate dimensions of each
- The lot and block numbers in numerical order
- The length of blocks, which should be not less than six hundred feet (600') and not greater than thirteen hundred and twenty feet (1,320')
- Pedestrian crosswalks, which should be not less than ten feet (10') wide
- Lot dimensions and lot area conforming to the requirements of the Zoning Ordinance, but in no case the width being less than sixty feet (60'), nor the depth less than one hundred feet (100'), nor the area less than six thousand square feet (6,000 s.f.) when served by a public sewer

☐ Total acreage of land to be subdivided and square feet in each lot, with total lot acreage meeting requirements set forth in specific district regulations (that is, a division of land into two [2] or more lots is considered a subdivision and the smallest parcel created should not exceed ten [10] acres)

☐ Public areas for schools, parks, playgrounds or any other public uses

☐ All existing and proposed easements with locations, widths, and distances

☐ All existing and proposed sidewalks, pedestrian ways, and bikeways

☐ Location of all existing structures on or adjacent to the subdivision, including any other interest the owner has in land surrounding the preliminary plat

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- ☐ Minimum building set-back lines
 - ☐ Erosion and sediment control plan
 - ☐ The general location of proposed water mains and sanitary sewers and a statement describing same
 - ☐ The drainage of the land including proposed storm sewers, ditches, culverts, bridges and other structures
 - ☐ Proposed building lines, if different than the yard requirements established in the Zoning Ordinance
 - ☐ Certified accurate survey by engineer or professional land surveyor
 - ☐ Planning Commission approval block
 - ☐ All plans and other information conform to the jurisdiction's general requirements and minimum standards of design

Additional Information (to be shown on Preliminary Plat or on accompanying sheets):

- ☐ Filing fee
- ☐ Twenty (20) copies and a reproducible tracing of Preliminary Plat at a scale of at least one hundred feet to an inch (100' = 1") and required supplementary material filed with (City) [or] (County) Clerk
- ☐ Submit plat three (3) weeks prior to the meeting of the Planning Commission
- ☐ Copy of application, site plan, preliminary plat, etc., distributed to proper agencies and authorities for review:
 - (City) [or] (county) engineer
 - Health department
 - Parks and recreation
 - Traffic engineering
 - Law enforcement office
 - School district
 - Utility companies
 - Building and safety
 - Other
- ☐ Any required landscape screens
- ☐ Copies of proposed deed restrictions, if any
- ☐ Sketch plan of larger tract and future concepts of development, if part of a larger tract that will be subdivided in the future
- ☐ Draft of a subdivision agreement detailing the installation and financing of the public improvements

If Plat is Located Within a Floodplain:

- ☐ Hydrological and grade information to determine frequency and extent of inundation of flood waters
- ☐ Location of proposed use and type of use in relationship to floodplain
- ☐ Areas of habitation and employment to include:
 - Location, size, and floor elevation(s) of any structures
 - Location and elevations of parking areas
 - Use, location, and elevations of open space
- ☐ Limits of the floodplain
- ☐ Amount of fill material brought into the floodplain
- ☐ A certificate that grading will not result in any increase in the floodplain

Applicant's Signature: _____ Date: _____

Appendix 6: **Final Plat Checklist**

CITY (VILLAGE or COUNTY) OF __, NEBRASKA

Name of Final Plat:

Location of Plat:

This checklist is designed to aid in the efficiency of plat approval. All proposed plats must meet specifications and requirements set forth in the Subdivision Regulations, Zoning Regulations, and Comprehensive Plan of _____.

Requirements of Final Plat:

- ☐ Name of subdivision on each sheet
- ☐ Complete drawing on one sheet if possible
- ☐ Drawn in ink or photographed on Mylar
- ☐ Signatures in black opaque ink
- ☐ Blank margin of one (1) inch and single line border
- ☐ The plat shall be drawn to the scale of one hundred feet (100') to one inch (1")
- ☐ Number and total number of sheets, including index of sheets if more than two sheets
- ☐ Accurate legal description of subdivision boundary
- ☐ Vicinity map

Certificates and Acknowledgments:

- ☐ Owner's acknowledgment and offer of dedication by all parties having titled interest or liens upon the lands
- ☐ Surveyor's certificate with legal description written in meets and bounds
- ☐ Planning Commission approval certificate
- ☐ Acknowledgment by notary
- ☐ (City Council) [or] (County Board) approval and acceptance certificate
- ☐ Certificate of approval by (City) [or] (County) Engineer
- ☐ One (1) copy of any private restrictions or covenants affecting the subdivision or any part thereof

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- ☐ Certification by the (Mayor) [or] (Chair of the County Board) and the (City) [or] (County) Clerk that plat is approved for recording by County Clerk
 - ☐ Certification that the subdivider has complied with one of the following alternatives:
 - Improvements have been installed in accordance with requirements of the subdivision ordinance
 - A security bond or certified check filed with the (city) [or] (county)
 - Subdivision Improvements Agreement along with sufficient surety has been filed
 - ☐ All affidavits, certificates, acknowledgments, endorsements, dedications, and notary seals as are required by law and the provisions of the Zoning Ordinance
 - ☐ Certificate to be signed by the County Treasurer stating there are no regular or special taxes due or delinquent against the property described in the plat or the date which the plat is recorded by the Register of Deeds

Data Required on the Final Plat:

- ☐ Accurate boundary lines, with dimensions and angles, which provide a survey of the tract, closing with an error of not more than one foot (1') in three thousand feet (3,000')
- ☐ Meets or exceeds the “minimum standards of surveys”
- ☐ Location and description of monuments
- ☐ Lot numbers, square footage, outlots, block dimensions, and frontage dimensions
- ☐ Lot, outlot, and block identification system
- ☐ Location, type, material, and size of all markers
- ☐ Accurate dimensions for any property to be dedicated or reserved for public, semi-public, or community use
- ☐ Areas reserved for public use, clearly identifying which are private and which are public
- ☐ If park land is for use of public, it must have an outlot letter and be included in the dedication
- ☐ If park land is private, this must be stated, and maintenance agreement must be provided
- ☐ Purposes for which lots other than residential use are dedicated or reserved must be indicated
- ☐ Minimum building set-back lines
- ☐ Locations and names of adjoining subdivisions and streets, adjoining unplatted properties with names and addresses of adjoining owners of unplatted properties
- ☐ Abutting streets, cul-de-sacs, and alleys, whether public or private, must include the following:
 - Right-of-way and paving widths (according to current Comprehensive Plan and Subdivision Regulations)
 - Length and interior angle of horizontal curves

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- Centerline
 - Location
 - Centerline radii
 - Names
 - Tangent lengths
- ☐ Locations, widths, and purposes of all easements (according to Subdivision Regulations, easements shall meet the sixteen foot [16'] width requirement)
 - ☐ Location and identification of all section corners
 - ☐ Total number of lots, outlots, and total number of acres in subdivision, with the total subdivision and each lot in that subdivision meeting required acreages as set forth in the corresponding zoning district regulations
 - ☐ Cross-sections, profiles, and grades of streets, gutters, curbs, and sidewalks; with locations of all “in-street utilities,” drawn to standards
 - ☐ Protective covenants, when required
 - ☐ Any interest in the land surrounding the plat
 - ☐ Changes in zoning that may have been made

Required on Drawing Sheets:

- ☐ Name of subdivision
- ☐ Sheet number and total number of sheets comprising the subdivision
- ☐ Scale
- ☐ North arrow and graphic scale
- ☐ Date
- ☐ Location of subdivision (first sheet only)

Documents Required:

- ☐ Filing fee
- ☐ Tax payment status form
- ☐ Special assessment status form
- ☐ Certificates of Title or Title Opinion
- ☐ Private restrictions or covenants, if necessary
- ☐ Twenty (20) copies and one reproducible tracing of Final Plat
- ☐ Final Plat submitted at least three (3) weeks prior to Planning Commission meeting
- ☐ Other documents, including grading, drainage, utility plan, and landscape/tree plans, go to proper agencies and authorities for review:
 - (City) [or] (county) engineer
 - Health department
 - Parks and recreation department
 - Traffic engineer

-
- Law enforcement office
 - School district
 - Utility companies
 - Building and safety department
 - Other

- ☐ Subdivision agreement detailing the installation and financing of the public improvements
- ☐ Staking bond if lots have not been staked

Conformance with Approved Preliminary Plat:

- ☐ Meets and bounds description
- ☐ Street alignments
- ☐ Lot dimensions and configurations
- ☐ Street names

Appendix 7:

**Typical Subdivision Improvements
Required to be Provided by Developers**

Section 1. Required Improvements, General

The subdivider shall design and construct improvements using standards not less than the standards outlined in this Ordinance. All such plans shall be approved by the Planning Commission and City Council upon recommendation of the City Engineer.

The work shall be done under the supervision and inspection of the City and shall be completed within the time limitations established herein. The minimum requirements for materials shall be in accordance with the standard specifications of the City currently in force or as approved by the City Engineer. Standards applicable to health and sanitation as required by the Nebraska Department of Environmental Quality and the Nebraska Department of Health shall be the minimum standards required thereof.

All inspection costs and costs for required tests shall be paid by the subdivider.

Section 2. Required Improvements, Monuments and Markers

Concrete monuments shall be located at all quarter-section points or other reference points tied to the federal land survey on the boundaries of or within the area being platted.

Section 3. Required Improvements, Monument Construction

Monumentation shall meet or exceed the “Minimum Standards for Surveys” as adopted by the Professional Surveyors Association of Nebraska in February 1989. These standards are as follows:

The surveyor shall establish or confirm the prior establishment of permanent monuments at each corner on the boundary lines of the parcel being surveyed. Monuments shall be solid and substantially free from movement. In such cases where the placement of a permanent monument at the true corner is impractical because of instability or is likely to be destroyed, the surveyor shall set a corner accessory monument and show its relationship by dimension to the true corner.

The monuments set shall be constructed of material capable of being detected by commonly used magnetic locators. These monuments shall consist of an iron pipe or steel rod with a minimal diameter of five-eighths inch (5/8") and minimal length of twenty-four inches (24"). When extenuating circumstances dictate, the surveyor may use such monuments (i.e., nail and washer) that have a probability of permanence. Where a corner or a line falls on or within a wall, column line, or other physical feature, and the placement of a monument is not feasible, the wall, column line, or physical feature shall become the monument by reference thereto. In addition, monuments shall be set at all block corners, lot corners, deflection points and points of curvature, except in cases where it is deemed clearly unreasonable or infeasible by the City Council.

Section 4. Required Improvements, Street Grading

All streets shall be graded to a minimum fifteen feet (15') back of the curb or edge of pavement to within six inches (6") of the street grade established in the approved final plat construction plans and specifications.

Section 5. Required Improvements, Pavement Construction

Minimum requirements for pavement construction shall be in accordance with the standard specifications of the City or as approved by the Planning Commission and City Council.

Higher design standards may be required by the Commission and City Council to provide adequately for unusual soil conditions or extra-ordinary traffic volumes or other abnormal characteristics.

All streets shall be paved in accordance with the standards specifications.

Section 6. Required Improvements, Minimum Pavement Widths

Pavement widths shall be measured from back of curb to back of curb. Minimum pavement or surface widths shall be provided in accordance with standard specifications of the City or as approved by the Planning Commission and City Council.

Section 7. Required Improvements, Curbs and Gutters

Curbs and gutters shall be required for all streets within the boundaries of the subdivision unless excepted by the Commission in accordance with the terms of this Ordinance.

Curbs and gutters shall be designed and constructed in accordance with standard specifications of the City.

Section 8. Required Improvements, Street Signs

At least one (1) street sign shall be installed at each street intersection within or on the perimeter of the subdivision and shall be located in the northeast corner thereof, whenever possible, and within the area between the street and sidewalk at a point approximately six inches (6") from said sidewalk or its intended location. Street name signs of a type in use throughout the City shall be provided and installed by the City.

Section 9. Required Improvements, Culverts

Culverts shall be constructed and installed whenever necessary as determined by the Commission to provide adequate drainage in accordance with recommendations of the City Engineer.

Section 10. Required Improvements, Sidewalks

Sidewalks shall be provided in conformance with standard specifications of the City and shall be constructed of Portland cement concrete or other acceptable material as approved by the Commission. Sidewalk thickness shall not be less than four inches (6"). The subdivider need not install such sidewalks until building construction is completed on a lot-by-lot basis to avoid damage by heavy equipment. Sidewalks shall be constructed on any undeveloped lot within six (6) months, by the owner, after a directive from the City.

Section 11. Required Improvements, Street and Walkway Lighting

The City shall provide and install streetlights at each entrance (street or sidewalk) into a subdivision and at each street intersection within the subdivision and at such intermediate points as necessary. New subdivision lighting shall utilize underground wiring and easements for such wiring shall be indicated on the plat.

Section 12. Required Improvements, Landscape Screens

Landscape screens as required by the City shall be installed at the subdivider's expense as a buffer for the protection of residential properties along major streets, railroad rights-of-way, and land uses which are substantially different from that proposed in the subdivision.

Section 13. Required Improvements, Drainage

A drainage system shall be designed and constructed by the subdivider to provide for the proper drainage of surface water of the subdivision and the drainage area of which it is a part. The following requirements and improvement plans shall be provided:

1. Drainage Report

A subdivision plat other than an administrative subdivision, as herein defined, shall not be considered for final approval until the subdivider shall submit a drainage report prepared by a registered professional engineer or surveyor as to the existing and proposed drainage conditions. A preliminary report shall be included on the preliminary plat. The final report in conformance with the City's storm sewer design standards shall be attached to the final plat and shall include an evaluation of the ability of the proposed water courses, drainage tiles, storm sewers, culverts and other improvements pertaining to drainage or flood control within the subdivision to handle the run-off which would be generated by the development of the land within and above the subdivision and the impacts of such drainage on downstream drainage systems.

A. The preliminary plat report shall include:

- (1.) preliminary estimates of the quantity of storm water entering the subdivision naturally and upon full development of lots within the subdivision;
- (2.) existing conditions of the watershed that may affect the proposed subdivision, such as soil type, drainage channels, obstructions and the like; and
- (3.) a preliminary grading plan illustrating proposed drainage management.

B. The final plat drainage report shall contain:

- (1.) calculations of the quantity of storm water entering the subdivision naturally and estimates of such storm water upon full development within the subdivision based on the proposed zoning;
- (2.) quantities of flow at each pick-up point;

(3.) estimates and type of temporary erosion control measures necessary to control erosion during construction; and

(4.) a description of an adequate drainage system within the subdivision and its design capacities based on a ten (10) year storm.

2. Drainage Requirements

The subdivider shall provide adequate drainage facilities within the subdivision, including storm sewers determined to be necessary by the Commission upon recommendation of the City Engineer. If storm sewers are not necessary, all open ditches shall be graded and all pipes, culverts, intersection drains, drop inlets, bridges, headwalls, gutters, and similar or related installations necessary to provide adequate surface water drainage, shall be constructed and installed in accordance with plans approved by the Council upon recommendation by the City Engineer.

3. Drainage System Standards

All streets shall be provided with an adequate storm drainage system of curbs, gutters, and storm sewers or side ditches in conformance with the City's storm sewer design standards.

Curb drainage inlets shall be provided at appropriate intervals along streets with curbs and gutter drainage. Where inlets connect to storm sewers a drain inlet structure and a protective grating shall be installed.

All streets having curbs and gutters on which storm water flows across intersections shall be provided with concrete cross gutters at such intersections.

All off-street drainage swales and ditches shall be protected by drainage easements noted on the final plat. Where water courses would cross lots diagonally, the subdivider shall straighten such course and shall substantially follow lot lines.

4. Storm Drain Responsibility

The subdivider shall be responsible for the entire cost and expense for the construction of all storm drain systems; provided, however, that the City, through the City Council, may agree to contribute to and pay up to one-half the difference in cost as determined at the time of approval between the storm drain system requiring a

storm drain thirty-six inches (36") in diameter and one requiring a storm drain over thirty-six inches (36") in diameter for plats located within the city limits, or to be annexed with final plat approval. The City contribution shall be limited to the available funds appropriated for such purposes in the current fiscal year's budget, provided if requests for such subsidies exceed available funds appropriated for such purposes, the City Council may establish, by resolution, a system of priorities upon which to base City contributions. The dollar amount of City participation for a particular subdivision shall be determined by the City Council as of the date of acceptance of the final plat of such subdivision and shall be set forth in the ordinance approving and accepting such final plat. The City's agreement to make such a contribution shall lapse if the storm drains are not constructed by the subdivider within two years after the date of acceptance of the final subdivision. The subdivider shall be responsible for the installation and maintenance of open ditches for surface drainage where permitted.

Section 14. Required Improvements, Sanitary Sewage Disposal

A sanitary sewer system shall be designed and constructed by the subdivider for all lots in the proposed subdivision. The following requirements shall apply:

1. Type of Improvements

Within the corporate limits of the City, a sanitary sewer collection system, including all pipes and manholes, shall be provided, and said collection system shall be connected to the public sewage system in accordance with plans acceptable to the Commission and City Council.

Within the jurisdictional areas of the City but outside the corporate limits, if a proposed subdivision is so located with regard to an adequate public sewer, either existing or to be existing within one (1) year from the date of application for final plat approval, that said sewer is located within five hundred feet (500') of the proposed subdivision or can be reached if the cost of installing lateral and connecting sewers from all lots shown upon said plat, exclusive of connections from individual structures, is equal to or less than one hundred fifty (150) percent of the cost of installing a private sewage collection and disposal system for all lots, then adequate lateral and

connecting sewers to said public sewer system shall be constructed.

If the subdivision is not located relative to a public sewer system, a private collection and treatment system acceptable to the City Council and appropriate to the Nebraska Department of Health and Nebraska Department of Environmental Quality may be used. If on-site disposal is proposed, the subdivider shall document that acceptable percolation rates do exist on each lot, and such lots shall be adequately sized to allow for the installation and safe operation of such systems.

2. Standards

When applicable, improvement plans for a permanent sewage system shall be provided, showing pipe sizes, gradients, type of pipe, invert and finished grade elevations, location and type of manholes, treatment facilities if applicable, and the location, type, and size of all lift or pumping stations.

Design standards of said system shall be subject to the approval of the City in accordance with the following standards:

- A. At least eight-inch (8") sewer lines will be installed.
- B. At least four-inch (4") service connections from the sewer line to the property line of each lot will be installed with the location marked.
- C. Manholes will be provided at all interceptor and lateral junctions, at the end of each line, and at all changes in direction, grade, and size.

Design standards of said system shall be in general compliance with the requirements of the Nebraska Department of Health and Human Services – Regulation and Licensure.

Section 15. Required Improvements, Water System

A water distribution system shall be designed and constructed by the subdivider to provide adequate water service to all lots in the proposed subdivision. The following requirements shall apply:

1. Type of Improvement

Within the corporate limits of the City, a water distribution system, including all pipes, fire hydrants,

valves, and other appurtenances shall be provided, and said distribution system shall be connected to the public water system in accordance with plans acceptable to the Commission and City Council.

Within the jurisdictional area of the City but outside the corporate limits, if a proposed subdivision is so located with regard to an adequate public water supply line, either existing or proposed within one (1) year from the date of application for final plat approval, that said water line is located within five hundred feet (500') of the proposed subdivision or can be reached if the cost of connecting to said water line and installing an adequate distribution system to all lots shown upon said plat, exclusive of connections from individual structures, is equal to or less than one hundred fifty (150) percent of the cost of installing an individual water supply system for all lots, then adequate connecting lines to said public water system shall be constructed.

If the subdivision is not so located relative to a public water line, individual wells may be installed.

2. Standards

When applicable, improvement plans for a permanent water system shall be provided, showing pipe sizes, type of pipe, locations of fire hydrants and valves, and, if applicable, supply facilities, booster pumps, elevated or ground level storage tanks, and other appurtenances.

Design standards of said system shall be subject to the approval of the City in accordance with the following standards:

- A. The minimum main or pipe size shall be determined by the type of uses to be served and the provision of adequate fire flow capacities. Generally, water lines shall be at least six inches (6") in diameter.
- B. The maximum distance between fire hydrants shall be determined by the City, but generally any portion of the proposed subdivision shall be within two-hundred-fifty feet (250') of a fire hydrant.
- C. Gate valves on cross-connecting water lines shall be so located that no single break in the distribution system shall require more than five hundred feet (500') to be out of service in high value districts or eight hundred feet (800') in other districts.

Valves or cross-connecting mains shall be so located that a break in the secondary distribution system will not necessitate shutting down major distribution lines.

Design standards of the water distribution system shall be in compliance with the requirements of the Nebraska Department of Health and Human Services – Regulation and Licensure.

Section 16. Required Improvements, Over-Sized and Off-Site Improvements

The utilities, street pavement, and other improvements required for the proposed subdivision may be required to be over-sized or extended to serve nearby land or anticipated future development. This determination shall be made by the Planning Commission and City Council in consultation with the Utilities Department and the City Engineer.

Section 17. Required Improvements, Cost of Over-sized Improvements

Minimum street pavement widths for streets shall conform to the standards established by the City. Minimum utility sizes shall be determined by the standards of the City with regard to providing service to the subdivision in question. Where pavement widths or larger pipe or main sizes are deemed necessary by the Planning Commission and City Council, the City or the Utilities Department shall bear the extra cost of providing such greater width or larger pipe or main sizes. The subdivider shall be required to pay for that part of the construction costs for the arterial streets, trunk sewers, or water lines which are serving the proposed subdivision as determined by the Planning Commission and City Council. The City or the Utilities Department shall pay the remainder of the costs.

Section 18. Required Improvements, Extensions to Boundaries

The subdivider may be required to extend the necessary improvements to the boundaries of the proposed subdivision at his/her expense to allow for service to future anticipated developments on adjoining lands, as determined by the Planning Commission and City Council.

Section 19. Required Improvements, Off-Site Extensions

If streets or utilities are not available at the boundary of the proposed subdivision or within the distances or costs established in Sections 16 and 17 of this Ordinance and the

Planning Commission determines that extensions across undeveloped areas are not warranted, the subdivider, if he/she wishes to proceed with the development, shall pay the cost of such off-site improvements and provide for appropriate off-site easements prior to the approval of the final plat. Such improvements shall be available for connections by subdividers of adjoining lands.

Appendix 8:

Typical Subdivision Financing Arrangements

Section 1. Improvement Financing, General

In order to provide consistent information concerning the financing of required subdivision improvements; to establish an equitable division of costs between the developer and city; and to ensure orderly, cost-effective growth in the City, the City Council shall adopt a comprehensive subdivision improvements financing policy.

In general, the City will require that the developer pay for the following services and improvements indicated as part of the subdivision process:

- A. All costs associated with the preparation and revisions to the preliminary plat, including but not limited to, surveying, preliminary grading, drawings, and related services.
- B. Unless otherwise agreed to by the City in an improvements (assessment) district (Section 5 below), the developer shall pay for all preparation of all items related to the final plat and those improvements and related costs specified in the list of improvements required to be provided by the developer.

Section 2. Subdivision Improvements Guarantees

Prior to the final plat approval, but after approval of all improvements plans and specifications, the subdivider shall complete all improvements required for the subdivision. Final plat approval shall not be given until the dedication of all appropriate improvements and acceptance thereof by the City Council.

In lieu of requiring the completion of all improvements prior to the final plat approval, the City Council may enter into an agreement with the subdivider whereby the subdivider shall guarantee to complete all improvements required by this Ordinance and approved by the Commission and City Council in a manner satisfactory to the City Council. To secure this agreement, the subdivider shall provide, subject to the approval of the City Council, one (1) or more of the guarantees set forth in Sections 3 and 4 below.

Section 3. Surety Performance Bond

The subdivider shall obtain a performance bond from a bonding company authorized to do business in the State of Nebraska. The bond shall be payable to the City and shall be in an amount to cover one hundred ten percent (110%) of the cost of all improvements, as estimated by the subdivider and accepted by the City Council upon recommendation by the City Engineer. The duration of the bond shall be until such time as the improvements are accepted by the City Council in accordance with Section 6 of this Ordinance.

Section 4. Escrow Account

The subdivider shall deposit cash, or other instrument readily convertible to cash at face value, either with the City Council or in escrow with a bank. The use of any instrument other than cash and, in the case of an escrow account, the bank with which the funds are to be deposited, shall be subject to the approval of the City Council. The amount of the deposit shall be an amount equal to one hundred ten percent (110%) of the estimated cost of all required improvements as estimated by the subdivider and accepted by the City Council upon recommendation of the City Engineer.

In the case of an escrow account, the subdivider shall file with the City Council an agreement between the bank and himself guaranteeing the following:

- A. That the funds of said escrow account shall be held in trust until released by the City Council and may not be used or pledged by the subdivider as security in any other matter during that period.
- B. That in the case of a default on the part of the subdivider to complete said improvements, the bank shall immediately make the funds of said account available to the City Council for use in completion of the improvements.

Section 5. Improvement (Assessment) District

The developer may request the City to create Improvement (Assessment) Districts to allow for the financing of improvements within the subdivision. Depending on the City's financial condition, the City may or may not grant the subdivider's request. In the event the City creates assessment districts, the subdivider shall deposit with the City funds equal to twenty percent (20%) of the cost of improvements as

determined from engineers' estimates prior to the City's receipt of bids and awarding of contracts. The City may finance up to eighty percent (80%) of the cost of construction of said improvements.

Section 6. Time Limits

Prior to the granting of final plat approval, the subdivider and the City Council shall agree upon a deadline for the completion of all improvements. Such deadline shall not exceed two (2) years from the date of final plat approval, provided, however, the City Council may extend that deadline up to one (1) additional year where the subdivider presents substantial reason for doing so and provides any additional performance surety made necessary due to inflation or increased cost of completing the improvements.

Section 7. Installation of Improvements

Developers may select either method or combination of methods listed below to comply with the minimum improvement requirements:

- A. They may install the required improvements upon acceptance and approval of plans and specifications by the City staff, the City Engineer, and City Council.
- B. They may submit a petition or petitions requesting the City to construct streets, sanitary sewers, and water mains in the proposed subdivision by the district method. In that event, the developer shall have plans and specifications prepared and pay all costs for same, approved by the City staff, City Engineer, and City Council, for all such improvement districts. The City shall assess the costs of such improvements to the adjacent properties as provided by law.

Section 8. Plan Review Reimbursement

The subdivider or Sanitary and Improvements District shall reimburse the City such costs incurred by the City for plan review, plan check, and plan approval as to conformance with approved City standards and specifications, but such costs shall not exceed one percent (1%) of the total contracted cost for improvements in the subdivision.

Section 9. Failure to Complete Improvements

If any portion of the required improvements shall fail to be completed and accepted for dedication in compliance with

Section 10 below within the required time period, either for reason of non-completion or for reason of substandard and unacceptable construction, the City Council shall accept one (1) of the following sections:

- A. Where improvements have been guaranteed under Section 3 of this Ordinance, the bond shall be forfeited to the City.
- B. Where improvements have been guaranteed under Section 4 of this Ordinance, the City Council shall declare whatever security has been pledged as a guarantee to be forfeited.

Where the City Council is not already in possession of said security, it shall immediately take the actions necessary to obtain it. Upon receipt of the security, the City Council shall use such to finance the completion of the improvements or rebuilding of substandard improvements. Unused portions of the surety shall be returned to the subdivider without interest.

Section 10. Inspection and Certification

The City Engineer or other authorized person shall regularly inspect construction of required improvements for defects. Upon completion of the improvements, the City Engineer or other authorized person shall file with the City Council a statement either certifying that the improvements have been completed in the specified manner or listing defects in those improvements which do not meet the requirements of the approved improvement plans and specifications.

Upon completion of the improvements, the subdivider shall file with the City Council a statement stipulating the following:

- A. All required improvements are complete.
- B. The improvements are in compliance with the minimum standards specified by the Planning Commission and City Council.
- C. The subdivider knows of no defects from any cause in the improvements.
- D. The improvements are free and clear of any encumbrances or lien.

If the City Engineer or other authorized person has certified that the improvements are complete and free from defect, the City Council shall accept any dedication of improvements. The City Council may, at its discretion, accept the dedication

of any portion of the improvements, provided that all statements and agreements specified above have been received for that portion of the improvements.

Section 11. Reduction of Guarantees

In those cases where improvement guarantees have been made under Section 2 of this Ordinance, the amount of the guarantee may be reduced upon acceptance in compliance with Section 2 of the dedication of a portion of the improvements.

Section 12. Release of Guarantees

Upon acceptance, in accordance with Section 10 of this Ordinance, the City Council shall authorize the release of the performance bond or the remaining portion of the escrow.

Section 13. Operation and Maintenance

It is the intention of the City to provide no services other than planning, zoning, and subdivision regulations administration to the jurisdictional area beyond the corporate limits of the City. Therefore, it shall be the obligation of the subdivider to present to the Planning Commission and City Council a precise approach for the operation and maintenance of improvements in the subdivision. Said approach may include formation of districts, homeowners associations, or other methods to operate and maintain such improvements. Said approach shall be binding on the subdivider in a form, agreement, or contract acceptable to the City Council.

Appendix 9:

Example Regulations for Erosion Control

The following are example regulations for erosion control that might be used by counties and communities. Sources for these example regulations are various regulations that have been proposed and adopted in communities and counties in Nebraska, Iowa, and Minnesota.

Prior to the adoption of erosion and sedimentation regulations, it is necessary for the community or county to have an “Erosion and Sedimentation Control Manual” prepared. Such “manual” should be prepared by an engineer and should be designed specifically for the community or county. Assistance also may be sought from the local natural resources district (NRD). The city, village or county attorney would be responsible for preparing this document in legal form before use.

CONSTRUCTION SITE EROSION AND SEDIMENTATION REGULATIONS

Purpose and Intent

The purpose of these regulations is to prevent excessive erosion and to reduce the amount of sedimentation and other pollutants from entering and clogging storm sewers, filling ditches and waterways, covering roads and other abutting properties while adding silt over other resources and occurring as the result of uncontrolled construction site storm water runoff which may also cause a threat to public health, safety and welfare.

It is the intent of these regulations to provide minimum requirements for erosion and sedimentation control for all land disturbing construction activities within the jurisdiction of _____ in order to reduce the amount of sedimentation and erosion by managing storm water runoff.

Jurisdiction

These regulations shall apply to all land within the jurisdiction of _____. Any person, persons, firm, corporation, or business proposing to develop land within this jurisdiction shall apply to the Administrator for approval of required plans as specified within these regulations.

Definitions

For the purposes of these regulations, the following words and phrases shall have the meanings specifically ascribed by this section:

Administrator: The governmental employee designated to administer and enforce these regulations.

Agricultural Use: The use of land for the production of livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, bees or apiary products, and horticultural or nursery stock including sod, fruit, vegetables, forage or cash grain crops.

Conservation or Control Measures: Structural and vegetative practices used to minimize erosion or to control sediment.

Cut or Excavation: The removal, stripping or disturbance of soil, earth, sand, rock, gravel or other similar substances from the land surface.

Debris or Sediment Basin: A barrier or dam constructed across a waterway or at other suitable locations to retain silt, sand, gravel, rock or other materials.

Designer: The professional engineer, architect, or landscape architect who designs the applicant's erosion and sediment control plan.

Developer: A person, firm, corporation, sole proprietorship, partnership, state agency or political subdivision engaged in a land disturbance activity.

Discharge Volume: The quantity of runoff discharged from the land surface as the result of a rainfall event.

District: The _____ Natural Resources District.

Diversion: A channel with or without a supporting ridge on the lower side constructed across or at the bottom of a slope.

Drainage Conveyance: Any path, including ditches, streams, overland flow channels, and storm sewer systems, traveled by water.

Erosion: The wearing away of the land surface by water, wind, ice or gravity.

Erosion, Critical Area: A severely eroded, sediment producing area that requires special management to establish and maintain vegetation in order to stabilize soil conditions.

Erosion and Sedimentation Control Plan (Plan): A written plan for the temporary and permanent control of soil erosion and sediment as the result of a land disturbing activity.

Excavation: See "Cut or Excavation."

Extraterritorial Jurisdiction: The unincorporated area within 2 miles of a first class city, or within one mile of a second class city or village.

Fill or Filling: The placing of any soil, sand, gravel, rock or other substance on the ground surface or excavation.

Governing Body: A county board of commissioners, county board of supervisors, city council, or village board.

Grade, Existing: The vertical location of the existing ground surface prior to any alteration of the surface through grading, excavation, or filling.

Grade, Finished: The final grade or elevation of the ground surface conforming to the proposed plan.

Grading: Any alteration of the ground surface through excavation, filling or shaping.

Gross Aggregate Area: The acreage of all land located within the property boundary containing the land disturbing activity.

Infiltration: The process by which rainfall or surface runoff percolates or penetrates into the underlying soil.

Issuing Authority: The _____.

Land Disturbing Activity: Any man-made change of the land surface as a result of, but not limited to, excavating, filling, grading, removing vegetative cover, dredging, tilling or the transporting of land.

(Land Disturbing Activity, Alternate): Any man-made change of the land surface as a result of, but not limited to, excavating, filling, grading, removing vegetative cover, dredging, tilling or the transporting of land, and the physical disturbance resulting from agricultural use of the land surface that may result in excessive erosion or sedimentation as the result of activities including clearing, grading, excavating, transporting, tilling and filling land or grazing by domestic livestock.

Landowner: Any individual or a group of individuals holding title or having an interest in a parcel of land.

Land User: Any person or persons operating, leasing, renting, or otherwise using a tract of land with authorization of the landowner(s).

Off-Site: Located outside the property boundary described in the permit application for the land disturbance activity.

On-Site: Located within the property boundary described in the permit application for the land disturbance activity.

Peak Flow Discharge Rate: The maximum rate at which a unit volume of storm water is discharged.

Permit: The written authorization of the Administrator to the applicant to begin and continue a land disturbing activity.

Person: Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, State agency, municipality, or other political subdivision of this State, any interstate body or any other legal entity.

Plan: See “Erosion and Sedimentation Control Plan.”

Plan, Erosion and Sedimentation Control: See “Erosion and Sedimentation Control Plan.”

Runoff: The rainfall, snow melt, or irrigation water flowing over the ground surface.

Sediment: Solid material, mineral or organic, that has been moved by any form of erosion and deposited in a location other than its origin.

Sedimentation, Excessive: The rate or amount of sedimentation from a development site or from agricultural land that results in any observable detrimental effect or damage to adjoining lands, waters, or atmosphere.

Silt Traps or Filters: Staked straw bales or silt fencing systems that function as a filter and a velocity check to trap fine-grained sediment while allowing the passage of storm water runoff.

Site: The entire area included in the legal description(s) of the land upon which the land disturbing activity is to take place as stated in the permit.

Slope: The degree of deviation of a surface from the horizontal. Stabilization: The process of establishing a stable cover of vegetation, mulch or other ground cover including the installation of temporary or permanent structures to minimize the movement of sediment by wind, water, ice, or gravity.

Non-Vegetative Structural Practices: Soil and water conservation measures as identified in the Erosion and Sedimentation Control Manual.

Surface, Impervious: A surface that releases the rainfall as surface runoff during a large portion of a rainfall event such as rooftops, sidewalks, parking lots, and street surfaces. Wind erosion is also included in this definition.

Surface, Pervious: A surface which allows rainfall to infiltrate such as lawns, cultivated fields, woodlands and other vegetated surface.

Vegetation, Natural: Naturally established plants or the propagation of new plants over an area by naturally occurring processes.

Watercourse: Any natural or artificial path in which surface water flows continuously or intermittently and includes adjacent land which is subject to flooding.

Wetlands: Land transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. To be classified as a wetland, there must be a predominance of hydric soils, the area must be inundated or saturated by surface or ground water with a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions and the land, must have an environment capable of supporting a prevalence of hydrophytic vegetation.

Prohibited Activities

Except as provided for herein, it shall be unlawful for any person to begin any land disturbing activity without an approved permit from the proper city or town.

Scope and Exclusions

Scope - Exclusions

These regulations shall apply to any land disturbing activity by any person on any land within _____.

These regulations do not apply on sites pertaining to agricultural activities where the Administrator determines that such land disturbing activity is unlikely to cause soil erosion and the movement of sediments into surface waters or onto land.

Waste and Material Disposal

All waste and unused building material shall be disposed of in a timely manner and not allowed to be carried away by runoff.

Tracking

Each site shall contain graveled access drives and parking areas of sufficient width and length to prevent sediment from being tracked onto any roadway. Any sediment reaching a roadway through tracking by vehicles shall be removed by street cleaning, other than flushing, before the end of the working day.

Drain Inlet or Culvert Opening Protection

All storm drain inlets and culvert openings shall be protected from infiltration by a straw bale, filter fabric, or an equivalent barrier.

Roadside Ditch Siltation and Erosion Protection

Roadside ditches shall be protected from siltation from a land disturbing activity. Any siltation into roadside ditches shall be removed and the ditch restored to its original condition and erosion controls installed.

Any public or private body involved in a land disturbing activity within a public right-of-way, along or within a roadside ditch, shall restore the ditch to its original or better condition and shall install the necessary controls to prevent erosion after the job is completed.

Erosion Control for Individual Lot Development

Except as provided hereafter within these regulations, construction of single-family residences shall also be controlled for erosion when they are constructed by, or under contract with, the owner for the owner's occupancy.

Any person who desires to build improvements on an individual platted lot shall install slot fences two feet (2') back of the curb and at all low spots where water runs off the site in order to confine soil movement within the boundaries of the property.

Access to the property shall be established and maintained so that soil is not carried or washed onto public streets or roads.

These control measures are to remain until the site has been adequately protected to sufficiently to prevent erosion. It shall be a violation of these regulations if it is found, by site inspection, that these requirements are not being adequately provided for, and all work on and occupancy of the premises shall cease until all site erosion control measures are in place.

Application Procedure

Permits

Prior to a land disturbing activity as delineated within these regulations, an application for a sediment control permit shall be prepared on forms provided and submitted to the Administrator.

The application shall be accompanied by a sedimentation control plan.

All maps, drawings, and supportive computations shall bear the signature and seal of the professional engineer, architect, or landscape architect who is licensed in the State of Nebraska who was responsible for the design.

Plan Requirements

plan shall show the stages. The plan shall include all of the following for the entire tract of land to be disturbed:

- A vicinity map showing the proposed development in relation to roadways, location and dimensions of utilities, structures, lakes, streams, channels, and ditches on and immediately adjacent to the site.
- A site plan showing: (a) soil types, (b) existing and proposed topography shown at an interval of not more than five feet, (c) existing vegetation, (d) existing and proposed water courses,
(e) flood plains and floodways, (f) critical erosion areas, and (g) features of the proposed development.
- A plan showing temporary and permanent vegetative and structural practices which specify the conservation measures to be used during clearing, grading, filling, construction, and permanent development. Their proposed operation and location within the development shall be described.
- A schedule of estimated starting and completion dates of each stage of land disturbing activities and conservation measures, including final stabilization completion date.

All plans, maps, and other drawings submitted with the application shall comply with the “Erosion and Sedimentation Control Manual.”

Additional Requirements

Where the Administrator deems that special soil erosion and sedimentation control problems are likely, the Administrator may require, in addition to other information, the following:

- A detailed description of: (a) a maintenance program for sediment control facilities, (b) vegetative establishment on exposed soils, (c) method and frequency of removal and disposal of waste materials from control facilities, and (d) disposition of temporary structural measures.
- Soil borings and tests.
- Other engineering studies, computations, schedules, and supporting data.

Plan Review and Approval

The Administrator shall review the proposed plan and may request comments and information from other departments or reviewing agencies. Upon finding the plans adequate to control erosion and sedimentation on the site, the Administrator shall issue the permit. The Administrator shall have ten (10) working days after receiving a complete application or after receiving required additional information in which to act on the application. Should the plan be disapproved, the Administrator shall inform the applicant the reasons for the disapproval.

As a condition of approval and issuance of the permit, the Administrator may require the applicant to provide a performance bond, letter of credit, or a local cashier's or certified check, in the amount of fifty dollars (\$50) for a tract of ten acres or less or one hundred dollars (\$100) per acre for tracts over ten acres, to guarantee a good faith execution of the plan and permit conditions. Upon certification of completion and compliance for the project, the performance bond will be returned.

General Design Standards

All plans shall conform to the standards of the "Erosion and Sedimentation Control Manual" hereby adopted and as amended hereafter, as the minimum acceptable practice specifications and planning procedures.

The following design procedures shall be utilized by the designer and anyone involved in the implementation of the plan for erosion and sediment control:

- Topsoil to be stockpiled, protected, and re-spread over areas stripped of vegetation or regraded.
- Whenever feasible, natural vegetation shall be retained, protected, and supplemented.
- The duration of exposure to the elements of the disturbed area shall be kept to a minimum.
- Disturbed soil shall be stabilized as quickly as feasible.
- Temporary vegetation or mulching shall be used to protect exposed critical erosion areas.
- Permanent vegetation, mulching, and structural erosion control facilities shall be installed as soon as possible.
- Cut and fill slopes shall be designed to retain finished grades.
- Cuts and fills and other permanent structures shall not

adversely affect adjoining property, nor shall fills encroach upon natural or constructed water courses which affect other property owners.

- All necessary measures shall be exercised to control dust and wind erosion.

Implementation and Maintenance

Implementation

There shall be no grading, clearing, excavation, trenching, filling, or other land disturbing activities as described within these regulations, until approved conservation measures have been installed.

All conservation measures shall apply to the construction site, including, but not limited to, street and utility installations and the protection of individual lots.

Maintenance

All persons implementing the provisions of these regulations and all subsequent owners of the property shall maintain all measures, devices, and plantings in effective working condition.

Inspection and Enforcement

Inspections

The Administrator shall make periodic inspections of the site(s) during construction to evaluate the land disturbing activity for which a permit has been issued to make a determination if the work is being conducted according to the approved site Erosion and Sedimentation Control Plan and to determine if the measures of erosion control are effective.

The Administrator may make subsequent inspections to the site(s) to determine the effectiveness of the installed measures and to determine whether all of the measures, devices, and plantings are being properly maintained.

Nothing within these regulations shall be construed as to prohibit the Administrator from inspecting any site exempted from these regulations and directing the abatement of any nuisance erosion or sedimentation.

The Administrator shall have the power to enter at a reasonable time upon any property, public or private, for the purpose of investigating and inspecting land disturbing activities.

No person shall refuse entry or access to the Administrator requesting entry for the purpose of inspection, nor shall any person obstruct, hamper, or interfere with the Administrator while carrying out his or her official duties.

Enforcement

Should the Administrator determine that the person engaged in the land disturbing activity has failed to comply with the Plan, the Administrator shall serve that person with a written notice to comply. The notice shall specify the measures necessary to comply with the Plan and shall specify the time within which these measures must be completed. Should the person fail to comply within the time specified it shall be deemed to be a violation of these regulations and the permit shall be voided and revoked.

Upon completion of the land disturbing project, the designer shall certify in writing that the work has been completed in accordance with the Plan.

Following a final inspection, the Administrator may issue a notice of compliance and grant a certificate of occupancy.

Penalties

Should there be a violation of any provision of these regulations, the person or persons responsible for such violation, or the owner of any property upon which such violation occurs or the agent, designer, contractor or any other person who commits, or takes part in or assists in any violation or who maintains the site in violation, shall, upon conviction, be punished by a fine not to exceed one hundred (100) dollars for each offense. Each and every day that such violation continues after written notice of the violation shall constitute a separate offense.

Where any violation to these regulations exists, the appropriate authorities, in addition to other remedies, may institute injunction, mandamus, or other appropriate action or proceedings necessary to correct, enjoin, or abate such violation or to prevent the occupancy of the premise.

Appeals

Any person aggrieved by action of the Administrator shall have the right to appeal and may petition the governing body for a hearing. The appeal shall be filed in writing within fifteen (15) days of official notification of the determination of the Administrator. The petitioner shall state clearly the grounds on which the appeal is based.

Validity

If any section, subsection, sentence, clause, or phrase of these regulations is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of these regulations.

Effective Date

These regulations shall take effect and be in full force the day after its passage.

Adopted this _____ day of __, 20_____.

Approved: _____

Attest: _____

Appendix 10:

Example Forms for Planning and Zoning Administration

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AGREEMENT FOR CREATING A JOINT PLANNING COMMISSION

**AGREEMENT CREATING A JOINT PLANNING
COMMISSION**

THIS AGREEMENT is made and entered into by and between the county and municipalities which on its effective date are, or thereafter become signatories hereto;

WITNESSETH:

WHEREAS, there is demonstrated need to establish and maintain cooperation in area planning with _____ County; and

WHEREAS, the Interlocal Cooperation Act of the State of Nebraska (*Neb. Rev. Stat. §§ 13- 801 to 13-827*) authorizes the joint exercise of powers, privileges, and authority by agreement of two or more public agencies of any power common to them; and

WHEREAS, it is the desire of the parties hereto signed to become members of and participate in the _____ County Joint Planning Commission hereby established;

NOW, THEREFORE, in consideration of the execution of this agreement by other cities eligible to membership in the Commission established hereby, the parties hereto agree as follows:

1. Purpose of Agreement. The purpose of this Agreement shall be to provide for the participation by the County of _____ as a member of the _____ County Joint Planning Commission (hereinafter referred to as the Commission) jointly with the other municipalities which become parties hereto in accordance with the by-laws of said commission which are attached hereto, incorporated herein as a part of this Agreement.
2. Agency to Administer the Agreement. The Commission as constituted by this Agreement is designated as the agency to administer this Agreement.
3. Powers of Commission.
 - a. It shall be the function and duty of the Commission to make and adopt regional plans and individual plans for the physical, social, and economic development of the member municipalities including any area outside their boundaries but within their statutory authority which, in the Commission's judgment, bears relation to the planning of a municipality or country.
 - b. The Commission is further hereby designated as the Planning Commission for the individual member municipalities and the county with all the powers and duties granted to their Planning Commissions by Law, except that a municipality or county in addition may continue to maintain its own separate Planning Commission with similar powers and duties if it desires.

-
- c. The commission shall make official planning and development recommendations to the separate or collective member governmental bodies as requested or as deemed appropriate by the Commission. Its duties shall include the review of proposed subdivisions when such review is requested by the concerned member governmental body.
 - d. The commission shall recommend to the appropriate public officials programs for public structures and other capital improvements and for the financial thereof. It shall be the function and duty of the Commission to further consult and advise with public officials and agencies, civic organizations, public utility companies, educational, professional and other organizations and with citizens with relation to the promulgation and implementation of the plan. The Commission shall have the power to delegate authority to any of the above named groups to conduct studies and make surveys for said Commission if it deems expedient.
 - e. The Commission shall have the power, in its own name, to make and enter into contracts with public and private bodies in furtherance of the objectives of this agreement; to receive contributions, bequests, gifts or grant funds from public or private sources; to expend the funds appropriated to it by its member governmental bodies; to employ agents and employees; to acquire, hold and dispose of property, and to receive for its own use and purposes any funds or moneys. Any contribution, bequest, gift or grant funds to the work of the Commission may be designated for special as well as general purposes. The Commission may make arrangements consistent with its program to conduct or sponsor special studies or planning work for any public body or appropriate agency, and may receive grants, remuneration, or reimbursement for such studies or work.

4. Membership of the Commission

- a. The membership in the Commission shall be constituted in the manner hereinafter listed:
- b. The county and municipalities are entitled to the aforesaid membership only after becoming signatories to this Agreement. Membership in the Commission may also be granted to counties or municipalities not listed above upon their execution of this Agreement; in that case, the number of members shall be allotted to each additional signatory in accordance with the Commission's official decision. All Commission members shall be appointed by action of the respective Governing body they represent in the manner provided by Law for counties and municipalities. Vacancies shall be filled in like manner. All members may, after a public hearing before the respective appointing governmental body, be removed by a three-fourths vote of that body, for inefficiency, neglect of duty or malfeasance in office or other good and sufficient cause.
- c. All members of the Commission shall serve as such without compensation and shall hold no other municipal or county office. Members may, however, serve on municipal or county Planning Commissions. Insofar as is possible, the member governmental bodies shall appoint their Commission representatives from different professions or occupations. The term of each member shall be three years, except that approximately one-third of the first Commission shall serve for the term of one year and approximately one-third shall serve for the term of two years. All members shall hold office until their successors are appointed. Provided, however, when for any reason members of the

_____County Joint
Planning Commission discontinue serving as members on local municipal and county
Planning Commissions they may, at the discretion of the appointed governmental body,
also be removed from membership on the County Joint Planning Commission and a
new member appointed.

5. Parties, Termination. Any party to this Agreement may cease to be a part hereto and may withdraw from membership in the Commission through the adoption by its governing body of a resolution of intention to withdraw and by giving the Commission written notice of its intention to withdraw at least thirty (30) days before the effective date thereof. Any party to this Agreement which fails to pay its established proportionate share of the costs as provided in Section 9 of the Agreement shall be considered to have withdrawn from the Commission and shall cease to be a party hereto.
6. Agreement. Termination. If at any time only one governmental body retains membership in the Commission the Agreement shall terminate. The Agreement may also be rescinded by mutual consent of all member governmental bodies.
7. Disposition of Assets on Termination. Upon termination of this Agreement any money or assets in possession of the Commission after payment of all liabilities, costs, expenses and charges validly incurred under this Agreement shall be returned to the parties in the proportion to their contributions determined as of the time of termination.
8. Effective Date of Agreement. This Agreement shall be effective upon its execution by at least one county and municipality within that county.
9. Membership Payments. The signatory parties agree to provide funds for the operation of the Commission. The Commission shall prepare an annual budget to be presented to the signatory parties for their approval.
10. Amendment. This Agreement may be amended at any time by the written agreement of all parties to it.

Executed by the undersigned counties and municipalities upon the respective dates set forth after their signatures:

_____ (Name; title; county or municipality)	_____ Date
_____ (Name; title; county or municipality)	_____ Date
_____ (Name; title; county or municipality)	_____ Date

AGREEMENT TO FORM JOINT PLANNING COMMISSION

_____ COUNTY JOINT PLANNING AND ZONING DEPARTMENT

THIS AGREEMENT is made and entered into by and between the county and incorporated communities which on its effective date are, or thereafter become signatories hereto:

WHEREAS, there is a demonstrated need to establish and maintain cooperation in planning and zoning administration within and adjacent to _____ County; and

WHEREAS, the Interlocal Cooperation Act of the State of Nebraska (*Neb. Rev. Stat. §§ 13-801 to 13-827*) authorizes the joint exercise of powers, privileges, and authority by agreement of two or more public entities of any power common to them; and

WHEREAS, cities of the first and second class, villages, and counties are authorized under state law to provide for planning and zoning administration; and

WHEREAS, it is the desire of the parties hereto signed to provide for joint planning and zoning administration.

NOW, THEREFORE, in consideration of execution of this agreement by the county, cities, and villages participating, the parties hereto agree as follows:

1. Purpose of the Agreement. The purpose of the agreement is to provide for joint assistance with regards to comprehensive planning, zoning, and subdivision regulation administration. The agreement is to be effectuated by the establishment of a _____ County Joint Planning Department and the staffing of the Department, herein after referred to as "Department."
2. Agency to Administer the Agreement. The agreement will be administered by a special committee composed of the following: _____ County Board of Commissioners and the chair of each participating Planning Commission.
3. Party's Termination. Any party to this agreement may cease to be a party hereto and may withdraw from participation in the joint project by the adoption by its legislative body of a resolution of intention to withdraw and by giving other parties to this agreement at least sixty (60) days notice before the termination date.
4. Termination of Agreement. The agreement may be rescinded by mutual consent of all signatories. If at any time all but one subdivision of government withdraws from the agreement the agreement shall terminate.
5. Disposition of Assets on Termination. Upon termination of this agreement any money or assets in possession of the office created by this agreement after payment of all liabilities, costs, expenses and charges validly incurred under this agreement shall be returned to the parties in proportion to their contributions determined as of the time of termination.
6. Effective Date of Agreement. This agreement shall be effective upon its execution by at least one incorporated community and _____ County.

-
7. Financial Contribution. The funds for operating the _____ County (Joint) Planning and Zoning Department will be provided by _____ County.
8. Amendments. This agreement may be amended at any time by the written agreement of all parties to it.

Executed by all of the undersigned counties and municipalities upon the respective dates set forth after their signatures:

(Name; title; county or municipality)

Date

(Name; Title, county or municipality)

Date

(Name; Title, county or municipality)

Date

**NOTICE OF PUBLIC HEARING
ON PROPOSED COMMUNITY COMPREHENSIVE PLAN
FOR _____, NEBRASKA**

Notice is hereby given that the duly appointed Planning Commission of the City (Village) of _____, Nebraska, will hold a public hearing in the town hall of the City (Village) of _____, at _____ PM (CST or MST) on the ____ day of _____, 20____.

Said hearing is for the purpose of presenting a proposed community comprehensive plan, including, among other elements, a future land use plan, a community facilities plan, a street plan, and a plan for future annexation. The purpose is to hear all persons with written or oral comments for or against said proposals. Any party may appear in person or be represented by agent or attorney.

Copies of said community comprehensive plan are on file with the city (village) clerk and may also be seen in the following locations:

1. _____
2. _____
3. _____

This notice given in pursuance to and under the authority of Nebraska State Statutes.

By the _____ Planning Commission

Date _____

Chair

City (village or County) Clerk

**NOTICE OF PUBLIC HEARING
ON PROPOSED ZONING ORDINANCE
FOR _____, NEBRASKA**

Notice is hereby given that the duly appointed Planning Commission of the City (Village) of _____, Nebraska, will hold a public hearing in the town hall of the City (Village) of _____ at _____ PM (CST) on the _____ day of _____ 20____.

Said hearing is for purpose of presenting a proposed zoning ordinance, including the text, schedules of district regulations, and the official zoning map, and for hearing all persons with written or oral comments for or against said proposed ordinance. Any party may appear in person or be represented by agent or attorney.

Copies of said zoning ordinance are on file with the city (village) clerk and may also be seen in the following locations:

1

2.

3.

This notice given in pursuance to and under the authority of *Nebraska State Statutes* § 19-901.

By _____ Planning Commission

Chair

Date _____

City (Village or County) Clerk

COMPREHENSIVE PLAN

RECOMMENDATION FOR ADOPTION OF COMPREHENSIVE PLAN

WHEREAS, the duly appointed Planning Commission of the City (Village) of _____, Nebraska, with the assistance of its consultant, _____ of _____, Nebraska, has prepared a comprehensive plan for the City (Village) of _____, Nebraska; and

WHEREAS, the Planning Commission has given public notice as required by the Nebraska State Statutes, of a hearing to be held on the ____ day of _____, 20____, at _____ PM (CST) in the _____ on the proposed comprehensive plan; and

WHEREAS, the public hearing has been held pursuant to said notice and all statements received at the hearing have been duly considered by the Planning Commission;

BE IT NOW AND THE SAME IS HEREBY RESOLVED BY THE PLANNING COMMISSION OF THE CITY (VILLAGE) OF _____, NEBRASKA, THAT

1. The comprehensive plan as prepared by the Planning Commission of _____, Nebraska, be adopted by the Commission as the official comprehensive plan for the City (Village) of _____, Nebraska.
2. The comprehensive plan be recommended to the city council (village board) for their approval and adoption as the official comprehensive plan for the City (Village) of _____, Nebraska.

The adoption of this resolution moved by _____ and seconded by _____, and upon a roll call vote as follows:

_____	_____	_____
_____	_____	_____
_____	_____	_____

The motion declared passed and the resolution adopted this ____ day of _____, 20____.

ATTEST:

_____	_____
Secretary	Chair

ZONING ORDINANCE

**RECOMMENDATION FOR ADOPTION OF ZONING
ORDINANCE/RESOLUTION**

WHEREAS, the duly appointed Planning Commission of the City (Village) of _____, Nebraska, with the assistance of its consultant, _____ of _____, Nebraska, has prepared a zoning ordinance for the City (Village) of _____, Nebraska, consisting of a text, schedules of district regulations, and the official zoning map; and

WHEREAS, the Planning Commission has given public notice, as required by *Neb. Rev. Stat.* § 19-901, of a hearing to be held the _____ day of _____, 20_____, at _____ PM (CST), in the town hall on the proposed zoning ordinance; and

WHEREAS, the public hearing has been held pursuant to said notice and all statements received at the hearing have been duly considered by the Planning Commission;

BE IT NOW AND THE SAME IS HEREBY RESOLVED BY THE PLANNING COMMISSION OF THE CITY (VILLAGE) OF _____, NEBRASKA, THAT:

1. The zoning ordinance as prepared by the Planning Commission and _____ of _____, Nebraska, be adopted by the commission as the official zoning ordinance for the City (Village) of _____, Nebraska; and
2. The zoning ordinance be recommended to the city council (village board) for their approval and adoption as the official zoning ordinance for the City (Village) of _____, Nebraska.

The adoption of this resolution moved by _____ and seconded by _____, and upon a roll call vote as follows:

_____	_____	_____
_____	_____	_____
_____	_____	_____

The motion declared passed and the resolution adopted this _____ day of _____, 20____.

ATTEST:

_____	_____
Secretary	Chair

SUBDIVISION REGULATION ORDINANCE

**RECOMMENDATION FOR ADOPTION OF SUBDIVISION REGULATION
ORDINANCE/RESOLUTION**

WHEREAS, the duly appointed Planning Commission of the City (Village) of _____, Nebraska, with the assistance of its consultant, _____ of _____, Nebraska, has prepared a subdivision regulation ordinance for the City (Village) of _____, Nebraska; and

WHEREAS, the Planning Commission has given public notice of a hearing to be held the on the ____ day of _____, 20____, at _____PM (CST) in the town hall on the proposed subdivision regulation ordinance; and

WHEREAS, the public hearing has been held pursuant to said notice and all statements received at the hearing have been duly considered by the Planning Commission;

BE IT NOW AND THE SAME IS HEREBY RESOLVED BY THE PLANNING COMMISSION OF THE CITY (VILLAGE) OF _____, NEBRASKA THAT:

1. The subdivision regulation ordinance as prepared by the Planning Commission of _____, Nebraska, be adopted by the Commission as the official subdivision regulation ordinance for the City (Village) of _____, Nebraska; and
2. The subdivision regulation ordinance be recommended to the city (village) council for their approval and adoption as the official subdivision regulation ordinance for the City (Village) of _____, Nebraska.

The adoption of this resolution moved by _____ and seconded by _____, and upon a roll call vote as follows:

_____	_____	_____
_____	_____	_____
_____	_____	_____

The motion declared passed and the resolution adopted this ____ day of _____, 20____.

ATTEST:

Chair

Secretary

Jurisdiction: _____ Permit Number: _____ Value of Improvement _____
Zoning Classification _____

APPLICATION FOR ZONING/BUILDING PERMIT

DIRECTIONS: Please fill in the following required information accurately and completely. On the back of this page or on an attached sheet, draw the shape of the property with dimensions. Show all existing and proposed buildings, including dimensions from the buildings to the lot lines. THIS APPLICATION IS NOT ACCEPTABLE UNLESS ALL REQUIRED INFORMATION IS FURNISHED.

Name: _____ Phone: _____

Address: _____

Contractor and address: _____

Complete legal description of property: _____

Street address of construction site: _____

Type of and proposed use of structure or building proposed: _____

Dimensions of structure: _____ Dimensions of property: _____

Distance structure will be from:

A. Front property line or edge of right-of-way: _____

B. Rear property line: _____

C. Side property line: _____

D. Side property line: _____

Value of proposed structure or building: _____

Approximate start date for construction: _____

Approximate finish date: _____

Improvement to be assessed to the following party:

If the structure is an apartment building or a commercial or industrial building, indicate how many off-street parking spaces will be provided: _____.

The above requested information is, to the best of my knowledge, true and accurate. It is understood and agreed that any error, misstatement or misrepresentation of fact, either with or without intention on my part, such as might, if known, cause a refusal of this application, or any alteration or change in plans made without the approval of the Zoning Administrator subsequent to the issuance of this permit, shall constitute sufficient grounds for the revocation of this permit. This permit is valid for one (1) year. By this signature, the Zoning Administrator, or Planning Commissioner, is authorized to enter upon the property described for the purpose of inspection.

Signed: _____ Date: _____

Approved ☐ Disapproved ☐

Planning and Zoning Administrator

Date: _____

Jurisdiction: _____ Permit Number: _____ Value of Improvement _____
Zoning Classification _____

APPLICATION FOR ZONING/BUILDING PERMIT

_____ PLANNING AND ZONING DEPARTMENT

DIRECTIONS. Fill in the following information as accurately and completely as possible. On the back of this page or on an attached sheet indicate, by drawing, the shape and dimensions of the land, shape and dimensions of all existing and proposed buildings, and distances from buildings to lot lines. THIS APPLICATION IS NOT ACCEPTABLE UNLESS ALL REQUIRED INFORMATION IS FURNISHED.

Name: _____ Phone: _____

Address:

Contractor and address:

Complete legal description of property:

Location of construction site from town if in rural area:

Street address of construction site if in town:

Type of structure or building proposed:

Proposed use of building:

Dimensions of structure: _____

Dimensions of property: _____

Distance structure will be from:

A. Front property line or edge of right-of-way: _____

B. Rear property line: _____

C. Side property line: _____

D. Side property line: _____

E. Center of nearest street intersection: _____

Area of the property in acres or square feet: _____

Value of structure: _____

Approximate start date for construction: _____

Approximate finish date: _____

Improvement to be assessed to the following party:

If the structure is a residence, how far will it be from the nearest feed lot? _____

If the structure is an apartment building or a commercial or industrial building, indicate how many off-street parking spaces will be provided: _____

ATTACH A DRAWING OF THE PROPOSED STRUCTURE.

The above requested information is, to the best of my knowledge, true and accurate. It is understood and agreed that any error, misstatement or misrepresentation of fact, either with or without intention on my part, such as might, if known, cause a refusal of this application, or any alteration or change in plans made without the approval at the Zoning Administrator subsequent to the issuance of the zoning/building permit, shall constitute sufficient grounds for the revocation of such permit. This permit is valid for one (1) year from the approval date.

Signed: _____ Date: _____
Applicant

FOR OFFICE USE ONLY

Paid in the amount of \$ _____

Date application disapproved: _____

Disapproval signature (Administrator or Municipal Clerk):

Reason for disapproval:

Date application approved: _____

Approval signature (Administrator or Municipal Clerk)

**APPLICATION FOR CONSTRUCTION
AND/OR
OCCUPANCY COMPLIANCE CERTIFICATE**

CITY (VILLAGE) OF _____, NEBRASKA

Applicant: _____ Date: _____

Address: _____ Application No.: _____

_____ Phone: _____

I hereby request: ☐ a Construction Compliance Certificate
 ☐ an Occupancy Compliance Certificate

to ☐ build / ☐ alter buildings or structures on the following described premises:

Improvements proposed:

Lot or tract area: _____ Estimated cost: _____

Front yard setback: _____ Zoning district: _____

Side yard setback: _____ Height: _____

Rear yard setback: _____ Off-street parking stalls: _____

Signs: _____ Off-street loading area: _____

Principal use:

Accessory use:

Other information:

I certify that the above information is true and accurate and that the above construction and use will comply with the zoning ordinance in all respects.

Signed: _____ Date _____
Applicant

Please: Attach a drawing of premises showing location of building(s) (North to top of sheet)

FOR USE BY ADMINISTRATIVE OFFICER

☐ Special exception. ☐ Variance required. Describe: _____

☐ Construction compliance certificate is hereby: ☐ Denied ☐ Granted

Certificate No.: _____ Date: _____ Fee: _____

If denied, reason for denial: _____

Signed: _____
Administrative Officer

**CONSTRUCTION AND OCCUPANCY
COMPLIANCE CERTIFICATE**

CITY (VILLAGE) OF _____, NEBRASKA

Certificate No.: _____ Date: _____

This certifies that the use and/or occupancy of the following described building or land complies with all applicable provisions of the _____ Zoning Ordinance:

Owner:

Use:

Location:

Signed: _____
Administrative Officer

Application to be processed for: _____
Date submitted _____
Date notice sent _____
Application no. _____
Date of public hearing _____ Filing fee \$ _____
Abutting property owners' list received: Yes: _____ No: _____
Treasurer receipt no. _____
PC recommendation: ☐ To Approved ☐ To Disapprove Date: _____
Certificate of ownership received _____
Governing body action ☐ Approved ☐ Disapproved Date _____
Date advertised _____
School board Notice Sent _____

(Above for office use only)

**APPLICATION FOR A CHANGE OF ZONING CITY (VILLAGE) OF
_____, NEBRASKA**

Items on these sheets must be filled out completely in duplicate before acceptance of this application for processing. Please print or type.

1. Applicant's name: _____
2. Applicant's home address and ZIP Code: _____

3. Telephone (home): _____ (business): _____
4. Present use of subject property: _____
5. Desired use of subject property: _____
6. Present zoning: _____
7. Requested zoning: _____
8. Legal description of property to be rezoned: _____
9. Area of subject property (square feet or acres): _____
10. Indicate uses of adjoining properties (note the zoning district designation and the actual use of the properties):
North: _____ South: _____
East: _____ West: _____
11. If exhibits are furnished, please describe and enumerate. If possible, furnish a plot or site plan showing existing and proposed structures, easements, water courses, curb cutbacks, etc.
12. The zoning administrator, who may be accompanied by others, is hereby authorized to enter upon the property during normal working hours for the purpose of becoming familiar with the proposed situation.

_____ Signature of owner	Date _____
_____ Authorized Agent	Date _____

JUSTIFICATION
(You must justify your request.)

Questions 1 through 10 must be answered completely. Use additional sheets if needed.

1. Explain how this request is compatible with the future land use elements of the Comprehensive Plan.

2. What type of development does the Comprehensive Plan recommend for this general area?

3. Can soil conditions support the kinds of development in the proposed zoning district? What is the soil classification of the area?

4. Is the proposed zoning district in the floodplain hazard area as delineated under the federal flood insurance program?

5. Provide reasons to support the need for the proposed zoning in this area.

6. How would the proposed district conform with adjacent zoning districts?

7. What is the general character of the area? Describe.

8. What type of sewer and water system will be used?

9. Does the change affect any proposed public projects?

10. How will the proposed zoning district affect traffic in the area?

NOTICE TO APPLICANT AND ADJOINING PROPERTY OWNERS

Section _____ of the _____ Zoning Ordinance requires the applicant to submit the following information which must accompany this application before it can be considered by the Planning Commission and City Council/County Board:

1. The legal description and local address of the property;
2. The present zoning classification and the zoning classification requested for the property;
3. The existing use and proposed use of the property;
4. The names and addresses of the owners of all property within three hundred (300) feet of the property for which the change is requested;
5. A statement of the reasons why the applicant feels the present zoning classification is no longer valid; and
6. A drawing showing the location, dimensions, and use of the applicant's property and all property within three hundred (300) feet thereof, including streets, alleys, railroads, and other physical features.

FOR USE BY ADMINISTRATIVE OFFICIAL

Fee received: _____

Request sent to City Council/County Board: _____

Referred to Planning Commission: _____

Referred to the School Board: _____

Board of education recommendation to Commission: _____

Hearing notice given: _____ Hearing held: _____

Planning Commission recommendation to council: _____

Hearing notice given: _____ Hearing held: _____

City Council/County Board action: _____

APPLICATION FOR ZONING VARIANCE

CITY (VILLAGE) OF _____, NEBRASKA

INSTRUCTIONS:

- A. Fill out application form completely. Please print or type. Use additional sheets if necessary.
- B. Please sign the application form.
- C. Filing fee is \$_____. Make check payable to _____.
- D. Contact the _____ Planning and Zoning Administrator if you have any questions.

1. Property owner's name: _____ Phone: _____

2. Property owner's address: _____

3. Legal description of property to which this application pertains:

Location and/or address of the property: _____

4. For what section(s) or provisions of the zoning or subdivision regulations are you seeking a variance?

5. What are you proposing to do that requires you to seek board action?

6. What is the date you acquired your property? _____

7. What is the unique condition under which you are requesting this variance?

8. Was this unique condition created by your own action(s)?

9. Do you feel the granting of this variance will adversely affect the rights of adjacent property owners or residents? Explain.

10. Does the strict application of the provisions of the zoning or subdivision regulations from which you are seeking a variance constitute an unnecessary hardship? Explain.

11. Do you feel the granting of this variance will adversely affect public health, safety, morals, convenience, prosperity, or general welfare of the community/county? Explain.

-
12. Do you feel the granting of this variance will be in any way contrary to the general spirit and intent of the zoning or subdivision regulations? Explain.

13. The zoning administrator, who may be accompanied by others is authorized to enter upon the property during normal business working hours for the purpose of becoming familiar with the proposed situation.

Applicant's Signature

Date

APPLICATION FOR VARIANCE FROM ZONING ORDINANCE REQUIREMENTS

CITY (VILLAGE or COUNTY) OF _____, NEBRASKA

Applicant: _____ Date: _____

Address: _____

Application No. _____ Phone _____

Application is hereby made to the board of adjustment for variance from the requirements of Section _____ of the City Code/County Zoning Regulations, to permit:

Property location: _____

Improvements proposed:

Lot or tract area: Estimated cost: _____

Front yard: _____ Zoning district: _____

Side yard: _____ Height: _____

Rear yard: _____

Off-street parking spaces: _____

Signs: _____

Off-street loading: _____

Principal use:

Accessory use: _____

Other information: _____

Attach supporting data required by sections: _____

Signed: _____ Date _____

Applicant

NOTICE TO APPLICANT

Section _____ of the _____ Zoning Ordinance requires the applicant to submit the following information which must accompany this appeal before it can be considered by the board of adjustment.

For variances from the zoning ordinance, a written application must demonstrate:

-
1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district;
 2. That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;
 3. That the special conditions and circumstances do not result from the actions of the applicant; and
 4. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of land, structures or buildings in other districts shall be considered grounds for the issuance of a variance.

APPLICATION FOR A CONDITIONAL USE PERMIT
CITY (VILLAGE or COUNTY), NEBRASKA

Instructions:

1. Fill out application form completely. Please print or type. Use additional sheets if needed.
2. Filing fee: _____ Make check payable to _____ City/County Treasurer.
3. Contact _____, County Zoning Administrator, if you have any questions.
4. Submit a list of property owners within 1,000 feet, prepared by a certified abstractor.

1. Applicant's name:

2. Applicant's address:

3. Telephone (business): _____ (home): _____

4. Present use of property:

5. Desired use of property:

6. Present zoning:

7. Legal description of property:

8. Under what provisions of the zoning regulations are you seeking this permit?

9. Explain in detail what you propose to do: _____

10. How are adjoining properties used? Indicate both zoning district designations and actual uses.

North: _____ South: _____

East: _____ West: _____

11. This authorizes the County Zoning Administrator to enter upon the property during normal working hours for the purpose of becoming familiar with the proposed situation. The

Administrator may be accompanied by members the County Board of Supervisors or the County Planning Commission.

Owner's Signature

REQUEST FOR AMENDMENT TO THE ZONING ORDINANCE/RESOLUTION

CITY (VILLAGE or COUNTY) OF _____, NEBRASKA

Applicant: _____ Date: _____

Address: _____ Application No.: _____

_____ Phone: _____

I wish to (☐ build), (☐ alter buildings or structures), or (☐ change the use of the land or structures) at the following described premises:

The following change in the zoning ordinance is hereby requested:

☐ Change the zoning of the subject property from its present classification

to the following proposed zoning classification:

☐ Amend the text or district regulations as follows:

to permit the following improvement or use:

The applicant also shall furnish a plat of the area containing the property for which a zoning change is sought and including all lots within 300 feet of the property lines of the subject property. The plat shall show existing and proposed zoning.

I certify that the above information and that required by section _____ of the _____ Zoning Ordinance, as submitted herewith, is, to the best of my knowledge, true and accurate.

Signed: _____
Applicant

RECORD OF BOARD OF ADJUSTMENT ON APPLICATION FOR A VARIANCE

CITY (VILLAGE or COUNTY) OF _____, NEBRASKA

Case Number: _____ Applicant's Name: _____

Date of Hearing: _____

This sheet is a record of the decisions of the _____ Board of Adjustment regarding this case and is to be considered filed in the office of the Board of Adjustment at 8:00 AM on the first day following this action. Appeals of these decisions may be made by any affected party to District Court within 15 days of the time this action is filed in the office of the Board of Adjustment.

The Board MAY consider a request for a variance because of HARDSHIP
due to: A: Exceptional narrowness of lot
B: Exceptional shallowness of lot C:
Unusual shape of lot
D: Exceptional topographic conditions of lot
E: Other extraordinary AND exceptional situation or condition

If the Board is convinced that one or more of the causes of hardship (listed above) do exist, a motion to consider the request for a variance is in order. The cause(s) of the hardship should be identified in the motion to consider. If the Board is NOT convinced that one or more of the causes of hardship (listed above) exist, a motion to deny the request for a variance is in order.

Motion to Approve/Deny a Request for a Variance:

Motion by: _____ Second by: _____

Votes in Favor: _____ Votes Opposed: _____ Votes Abstaining: _____

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

MOTIONS OF BOARD OF ADJUSTMENT ON GRANTING A VARIANCE

CITY (VILLAGE or COUNTY) OF _____, NEBRASKA

Case Number: _____ Applicant's Name: _____

Date of Hearing: _____

This sheet is a record of the decisions of the _____ Board of Adjustment regarding this case and is to be considered filed in the Office of the Board of Adjustment at 8:00 AM on the first day following this action. Appeals of these decisions may be made by any affected party to District Court within 15 days of the time this action is filed in the Office of the Board of Adjustment.

In order to grant a variance from the zoning regulations, the Board must find that:

- A. The strict application of the regulations would produce undue hardship;
- B. Such hardship is not shared generally by the other properties in the same zoning district and the same vicinity;
- C. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and
- D. The granting of such variance is based upon reasons of demonstrable and exceptional hardship, as distinguished from variations for the purposes of convenience, profit, or caprice (whim, notion, impulse, fad).

The Board also must find that:

- E. No variance shall be authorized unless the Board finds that this condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

Alternative Motions to Deny a Variance:

- A. I move that this variance be denied because of the Board finding that statement(s) A ___, B ___, C ___, and/or D ___, is/are not supported by the evidence offered at the hearing and that it would be improper and illegal for this board to grant this variance.

Motion by: _____

Second by: _____

Votes in Favor:

Votes Opposed:

Votes Abstaining:

B. I move that this variance be denied because the condition or situation is of such general and recurring nature and that a recommendation be sent to the Planning Commission requesting that they consider appropriate changes in the zoning regulations.

Motion by: _____ Second by: _____

Votes in Favor:	Votes Opposed:	Votes Abstaining:
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Motion to Approve a Variance:

I move that all of the conditions exist for granting the following variance (state the variance to be granted):

This motion to approve this application for a variance is based on the findings that the following demonstrable and exceptional hardship does exist.

Further, statements A, B, C, and D on the preceding page have been found to be supported by the evidence offered at the hearing, and the Board also finds that this request is not of such a general and recurring nature that changes should be made to the zoning regulations.

Motion by: _____ Second by: _____

Votes in Favor:	Votes Opposed:	Votes Abstaining:
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

NOTICE OF HEARING BEFORE THE BOARD OF ADJUSTMENT

CITY (VILLAGE or COUNTY) OF _____, NEBRASKA

To: _____ Application No.: _____

Address: _____ Date: _____

This is to notify you that your petition for _____
pertaining to the property located at _____
will come before the Board of Adjustment for consideration on the ____ day of _____,
20____, at _____ (AM) (PM) in the _____,
at _____, Nebraska.

Very truly yours,

Secretary, Board of Adjustment

NOTICE OF DECISION OF THE BOARD OF ADJUSTMENT

CITY (VILLAGE or COUNTY) OF _____, NEBRASKA

Application No.: _____

To: _____ Date: _____

Address: _____

You are hereby notified that the Board of Adjustment, on the _____ day of _____, 20____, (☐ granted) (☐ denied) your appeal for (☐ special exception to) (☐ variance from) the zoning ordinance.

The conditions of approval are:

The reasons for denial are:

.

Very truly yours,

Secretary, Board of Adjustment

For an appeal that is granted, the applicant hereby agrees to all conditions specified above. The applicant further agrees that, if the specified conditions are not fulfilled within the specified time frame, approval of this appeal shall become null and void.

Dated this _____ day of _____, 20_____.

Signature of Applicant

APPLICATION FOR SUBDIVISION

CITY (VILLAGE or COUNTY) OF _____, NEBRASKA

Items 1 through 14 must be filled out completely before acceptance of this application for processing.

1. Subdivision name: _____

2. Owner's name:

3. Owner's home address:

4. Telephone number (home:) _____ (business:) _____

5. Developer's name:

6. Developer's address:

7. Engineer's name:

8. Engineer's address:

9. Present use of subject property: _____

10. Desired use of subject property: _____

11. Present zoning: _____

12. Legal description of property:

13. Area of subject property (square feet and/or acres): _____

14. Please describe and enumerate exhibits (e.g., a plat or site plan showing existing and proposed structures, easements, water courses, curb cutbacks, etc.): _____

Signature of Applicant

Signature of authorized agent:

Date submitted: _____ Filing fee (\$): _____ Preliminary plat approved
(date): _____

Final plat:

Planning Commission recommendation:	☐ Approved	☐ Disapproved	Date: _____
Council action:	☐ Approved	☐ Disapproved	Date: _____
School Board:	☐ Approved	☐ Disapproved	Date: _____

NOTICE OF VIOLATION OF ZONING ORDINANCE

CITY (VILLAGE or COUNTY) OF _____, NEBRASKA

Date: _____

Dear _____:

An inspection of the property located at _____ has revealed a violation of Section _____ of the Zoning Ordinance for the _____ Zoning district.

Form of violation:

Compliance action required by:

Please take the necessary steps to correct the violation by the _____ day of _____, 20_____. An inspection of the above stated property will be made following this date.

Section _____ of the Zoning Ordinance states, in part: “_____” any persons or persons responsible for or who assists in the violation of these regulations shall be punished by a fine not to exceed \$100.00 for each offense. Each and every day that such violation continues shall constitute a separate offense.”

Sincerely,

Zoning Administrator

FINAL NOTICE OF VIOLATION OF ZONING ORDINANCE

CITY (VILLAGE or COUNTY or COUNTY) OF _____, NEBRASKA

Date: _____

Address: _____

Dear _____:

Our records indicate that a letter from this office, dated _____, notified you that your property located at _____ is in violation of Section _____ of the City Code/County Zoning Regulations. That letter indicated the nature of the violation and what action was necessary to correct the matter. Ample time was given to bring the property into compliance.

An inspection was made of the property on _____, following your compliance deadline. This inspection revealed that no corrective action has been taken.

This letter is to give notice that should the stated corrective action not be taken by the _____ day of _____, 20____, by you and/or others assisting in the violation will be turned over to the City (Village or County) Attorney for prosecution in the _____ County Court.

Sincerely,

Zoning Administrator

MEMO TO ATTORNEY FOR PROSECUTION OF ZONING VIOLATION

Date: _____

To: City (Village or County) Attorney

Please commence prosecution in County Court for the following individual and/or corporation:

Name: _____

Address: _____

In my duties as Zoning Administrator and enforcing officer of the _____ Zoning Ordinance, I have investigated this case and do affirm that _____ has violated section(s) _____ of the _____ zoning district of the _____ Zoning Ordinance.

I also affirm that all necessary written notices of violation were given to the named party. Copies of files and actions of this Department are attached.

Respectfully,

Zoning Administrator

cc: Defendant _____

LETTER TO VIOLATOR ON ZONING REGULATIONS (Junk, Nuisance)

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

_____, 20____

Dear _____:

_____ Zoning Regulations prohibit the storage of inoperable unlicensed vehicles in any zoning districts except where such storage is an allowed use.

Your property, located at _____, is in the “_____” _____ zoning district, where storage of such vehicles is not a permitted use of land; therefore, this is a violation of the zoning laws.

Please have all unlicensed and/or inoperable vehicles removed from your property by the _____ day of _____, 20____. An inspection of your property will be made during the week of _____, 20____ to determine if this violation continues.

If you believe that you are not in violation of the _____ Zoning Regulations or if you intend to bring your property into compliance but cannot meet this deadline, please contact this office to review the situation and we will attempt to arrange a short extension of time.

Please understand that this is the only notice of violation and call for compliance you will receive. Should it be found that the violation continues to exist, the next communication will involve formal legal action in accordance with Nebraska State Statutes. You should also be advised that each and every day your violation continues to exist after your receipt of this letter can constitute a separate offense. The penalty for non-compliance can be as high as \$100 per day for each day of violation after receipt of this notification.

If you wish to discuss any aspects of your case, please call _____ to make an appointment at a time that will work for both of us.

Sincerely,

Zoning Administrator

Enclosures: Copies of applicable regulations

cc: County Commissioners (or council/board
members)
County (or city/village) Attorney

**LETTER REQUIRING CORRECTIVE ACTION FOR VIOLATION OF ZONING REGULATIONS
(Mobile Home Removal)**

CITY/VILLAGE/COUNTY LETTERHEAD

_____, 20____

Re: _____

Dear _____:

This is to confirm our telephone conversation allowing an extension of the deadline for the removal of the mobile home until the _____ day of _____. 20____, on the _____ property.

Sincerely,

Zoning Administrator

cc: City Council/Village Board/ County Board of
Commissioners City/Village/County Attorney

**LETTER REQUIRING CORRECTIVE ACTION FOR VIOLATION OF ZONING REGULATIONS
(Conditional Use Permit – CAFO)**

_____, 20__

Dear _____:

We have no record in our office of a Conditional Use Permit for an animal feedlot being located on the property located at _____. Plat records indicate that you currently own this property.

_____ Zoning Regulations state that a Special Use Permit is required for the confined feeding of animals in buildings, lots, or pens which are not used for the raising of crops or the grazing of animals. This includes, among other things, the confined feeding of: (1) livestock for other than the farm operator, or (2) livestock when not in conjunction with the farming operation, or (3) over 150 feeder or fat cattle, or (4) over 150 cows, and (5) over 500 swine, including the farrowing of pigs.

A livestock waste disposal system which is approved by the Nebraska Department of Water, Environment, and Energy (NDWEE) and a license from them to operate a feedlot is also required.

A recent drive-by inspection of your property revealed drainage from a livestock waste holding area into the county ditch, which then drained through a culvert onto neighboring property. The waste holding area should contain sufficient capacity, and there can be no runoff of waste which is carried into any roadway ditch.

These are possible violations of the zoning regulations that must be corrected.

If it is your intention to continue the feeding operation, it will be necessary to have county approval as well as that of the NDWEE. An application for a Special Use Permit is enclosed. Please complete and submit this to this office along with a list of owners of property within 300 feet of the property. The list is to be certified by a registered land abstractor.

If you have any questions, please call for an appointment, as I am often away from the office.

Sincerely,

Zoning Administrator

Enclosures

cc: _____ County Attorney

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State Statute Excerpts

(Including statutory changes made up to and through the First Session 2025 of Nebraska's One Hundred Ninth Legislature, First Session)

( Means there was legislation introduced in 2025 to amend the section.)

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3–309. Zoning Regulations; Requirements; Reasonable

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3–314. Transferred to § 3–319.01

3–315. Repealed by Laws 2013, LB 140, § 23, eff. Sept. 6, 2013

3–316. Repealed by Laws 2013, LB 140, § 23, eff. Sept. 6, 2013

3–317. Repealed by Laws 2013, LB 140, § 23, eff. Sept. 6, 2013

3–318. Repealed by Laws 2013, LB 140, § 23, eff. Sept. 6, 2013

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- 3–319. Zoning Regulations; Provide for Administration and
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 - 3–328. Judicial Review; Costs
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-

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17-408. Repealed by Laws 1967, Ch. 74, § 6

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**ARTICLE 25. UNIFORM PROCEDURE FOR ACQUIRING PRIVATE PROPERTY FOR
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Neb. Rev. Stat. § 25-2501 to § 25-2506 deal with the uniform procedure for acquiring private property for public use (eminent domain/condemnation).

CHAPTER 43. INFANTS ARTICLE 26. CHILD CARE

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CHAPTER 49. LAW

**ARTICLE 14. NEBRASKA POLITICAL ACCOUNTABILITY AND DISCLOSURE ACT
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49-1466. Dissolved Candidate Committee; Unexpended Funds; How Treated

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- 49-1467. Person; Independent Expenditure Report; when Filed; Contents; Late Filing Fee; Violation; Penalty
- 49-1468. Contribution or Expenditure Made by a Dependent Minor; Contribution Controlled by Another; How Reported
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- 49-1469.05. Businesses and Organizations; Separate Segregated Political Fund; Restrictions
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