

# Decision Making Model for Municipal Planners in the State of Texas

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An Applied Research Project  
(Political Science 5397)

Submitted to the Department of Political Science  
Texas State University

In Partial Fulfillment for the Requirements for the Degree of  
Masters of Public Administration

**April 2010**

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## **Abstract**

*Purpose.* The purpose of this research is to develop a practical ideal model for processing municipal land development applications for Texas cities, looking specifically at how best the public can be involved in the process while maintaining efficiency.

*Methodology.* To achieve this purpose, the literature will be reviewed to establish the basic elements that are required to develop the ideal model. Based on the findings of the literature, a survey will be administered to gauge the views and opinions of practicing city planners on how those elements should be utilized. Finally, those views and opinions will be compiled into a practical ideal model or “best practice”, which Texas cities can use to better process land development applications. *Results.* Overall, the research indicates that the public is best able to participate in the planning and development process through elected and appointed groups such as the city council, planning and zoning commissions, and zoning board of adjustment; while the city staff is best able to approve applications quickly and efficiently. Thus, the amount of decision-making authority each group should have in the processing of applications depends on the legal requirements and the technicality of the development project. *Conclusion.* The ideal model indicates that the amount of time and public participation an application should go through depends on how conceptual it is. Applications to approve the concept of development projects should be reviewed publicly by groups such as the City Council and Planning and Zoning Commission while applications that are more technical and less conceptual should only be reviewed administratively by the municipality’s staff of professional planners for compliance with the already approved concept.

## **About the Author**

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## **Chapter I**

### **Introduction**

The purpose of this research is to develop a practical ideal model for decision-making in processing municipal land development applications for Texas cities. This model focuses specifically on how administrators can maintain efficiency and keep the public involved in the process. To achieve this purpose, a literature review establishes the basic elements of law and precedent required to develop the ideal model. Subsequently, the results of a survey, which was based on the findings of the literature, uncover the opinions of practicing city planners about how they feel these elements should be utilized in the field. Finally, these expert opinions, coupled with the literature review, have led to the formation of a practical ideal model or “best practice” by which Texas cities may better process land development applications.

Every day, local government leaders look to their planning staff members to regulate land development within their jurisdictions in the most efficient and effective way possible. Cities in the state of Texas are regulated at the state level, so these staff members look first to state law for direction on how to administer these regulations. Political scientists characterize Texas’ laws granting local powers as a strong city/weak county system; meaning Texas law grants more power to municipal governments and limits the power of county governments ([texaspolitics.laits.utexas.edu](http://texaspolitics.laits.utexas.edu)). Accordingly, Texas cities predominantly administer land use and development standards within their jurisdictions as well as exercise some authority to regulate development in territories outside of their municipal boundaries for a prescribed distance.

However, state law does not provide cities with a canonized process of how to regulate development within their jurisdiction. Beyond granting authority to regulate land development and requiring public notification for certain development applications and time periods in which municipalities are required to act, Texas state law gives limited direction as to how a city government should process development applications. State law also provides limited direction as to which groups within the city should have decision-making authority in the development application processes.

This lack of direction has resulted in regulations that vary widely from city to city. For example, some cities have long, drawn out processes, which require applications to go through several elected and appointed groups that hold public hearings before the application can be approved. Though this type of process allows for significant citizen participation and policymaker input, it can discourage members of the development community from investing the time required to carry out developments in that community, making many worthy projects unfeasible. Conversely, other cities have a short process that requires only minimum input from appointed or elected groups, allowing developers to quickly move through the permitting process. This type of process can increase project feasibility by minimizing the time that the developer spends obtaining required permits for the development project. However, while this expedited process benefits developers, it limits public participation and may result in policy makers and members of the community feeling removed from the community development process.

Though most cities attempt to balance the two extremes in order to meet the needs of their communities, the differences create inconsistencies that hinder the effectiveness and efficiency of development in the state as a whole. Therefore, this research seeks to help establish an ideal model for cities to follow to regulate development applications, thereby improving the efficiency and effectiveness of development in the state of Texas.

To establish the foundation of the research leading to development of this ideal model, the history of planning and development regulation in the United States, and within the state of Texas in particular, is discussed in detail in chapter two. An exploration of the function and history of land use planning, and the establishment of the conceptual parameters of contemporary development regulations are an integral part of this chapter as well. Chapter two then moves on to discuss the current laws and regulations in the state of Texas concerning municipal powers in land planning and development. Although chapter two does not provide the extensive details of each law, an overview of current state laws establishes the legal boundaries within which municipalities must function. This chapter also establishes the elected, appointed, and professional groups that legally make decisions on development applications, from where their legal and perceived authority is derived, and to what extent they can and should incorporate the public in their decision-making process. Chapter two concludes with a discussion of the conceptual framework that outlines how to best navigate applications through the permitting process.

The methodology used to conduct this research, and the survey of practicing planners in the state of Texas, is explained in chapter three. Subsequently, the results of

the research and the survey are provided in chapter four, as well as the developed practical ideal model. Finally, chapter five discusses the conclusions of the research, possible limitations and implications, and outlines opportunities for future research.

## **Chapter II**

### **The Function and History of Land Use Planning**

Municipalities regulate and encourage development in a process called planning in order to protect property values, encourage economic development, and keep cities safe and healthy (McMillen and McDonald 2002, 62). The challenge to this process is that municipalities must work within the confines of their statutory, constitutional, and charter limitations to fulfill their policy goals (Terry 2009, 3). Modern planning is expected to deliver the outcome of growth that is both sustainable and livable (Godschalk 2004, 5). Although this goal of both sustainability and livability may seem impossible, an understanding of the tools available, the history and legal precedents, and the components and process of municipal planning may assist planners in achieving this important goal.

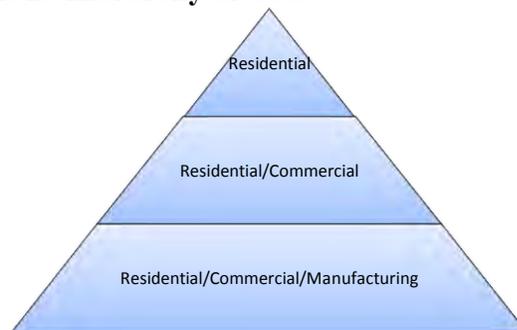
#### **Planning Tools**

Cities use planning regulatory tools such as zoning, subdivision regulations, and other ordinances as a means of carrying out city policy. All of this legislation must be founded on a comprehensive plan for the city. In other words, the town ordinances should reflect the goals and objectives put forth in the town plan (Laurian, et al. 2004, 471). Roeseler and McClendon explain that, “a zoning ordinance using the plan as an organizing concept arranges specific land uses in groups and seeks to define those groups as precisely as possible to avoid ambiguity in interpretation” (1986, 83). Thus, poorly

written codes designed to “cure” problems can inhibit rather than promote change (Boyce 1963, 250).

Historically, cities used a simple hierarchy of the land uses. In other words, cities permitted the least intense use, such as single-family residential developments, in all the districts, while restricting more intense uses, such as commercial and industrial, to fewer and fewer zoning districts. When Chicago first adopted a zoning ordinance in 1923, it adopted a very simple hierarchical model. This model included three permitted land uses, residential, commercial, and manufacturing. The residential zoning district sat at the top of the hierarchy because residential uses were the only permitted uses within this district. The commercial district allowed commercial uses and residential uses, making it the next step down in the hierarchy. The manufacturing district was at the bottom of the hierarchy because it allowed all uses from residential to manufacturing (McMillen and McDonald 2002, 62). See Figure 2.1.

**Figure 2.1: Chicago’s 1923 Hierarchy of Uses**



A good zoning ordinance contains three basic divisions: (1) enactment and interpretation, (2) district regulations, and (3) administrative provisions (DeChiara and Koppelman 1982, 643). Enactment and interpretation relates to the purpose of the

ordinance, its enactment into law, definitions of terms used, and similar items. District regulations include the actual regulations pertaining to each of the districts and the additional provisions affecting all districts. Administrative provisions are composed of administrative details such as enforcement, issuing of building permits, certificates of occupancy, and provisions for appeals and amendments (DeChiara and Koppelman 1982, 643).

Planning as a profession requires innovation. Thus, some new ideas for zoning depart from the traditional regulations of development first by use, then by design. An example is a type of zoning sometimes referred to as “form based”, which regulates the design of development first and the use second. Andres Duany and Elizabeth Plater-Zyberk, who are two leaders in this new planning movement, outline some important ideas in their 2001 article (2001, 40-41), “ The Traditional Neighborhood and Suburban Sprawl”:

- Buildings must be aligned along streets and squares. The current fashion of staggering or rotating buildings hinders the creation of public space defined by buildings.
- Trees along streets must also be aligned in a disciplined manner. This is particularly important to remedy space when overly large setbacks cannot be avoided. Picturesque plating patterns should be reserved for parks and squares, not for streets and avenues.
- Parallel parking must be provided on most streets. A layer of parked cars protects the pedestrians from cars psychologically. Parking lots, when they are needed should be placed to the rear of buildings to avoid the gaps that makes sidewalks uninteresting to use. House lots, if less than fifty feet wide, should be provided with alleys so that garage doors do not overwhelm the street facades.
- At intersections, the radius at the curb should not exceed fifteen feet. This maintains the viable pedestrian crossing distance and reduces the speed of automobiles making the turn.

- High-capacity streets within urbanized areas should have the geometry of avenues, not of highways. Highways are unpleasant for pedestrians and deteriorate the adjacent building value, while avenues are compatible with buildings and people. Highways should be reserved for the countryside and be built without strip development.

All of the above ideas and concepts have led to the diverse development tools found in use today. Specific tools and the extent to which they are used remain at the discretion of the policymakers of the community. Since the residential property owners in a municipality represent the greatest number of potential votes, their views and concerns often dominate policy debates (Durchslag 2001, 647). Policymakers also look to the city's staff of planners to provide direction and insight on various policy options. Other participants in the policymaking process include: regional and state planning agencies, other city departments such as utilities and transportation, political parties, citizen groups, and state and federal agencies (Harmon 1970, 451). Policymakers create policy by navigating between the desires and opinions of all of the afore-mentioned groups in conjunction with applicable laws and legal precedent.

### **Legal Challenges and Current State Statutes**

Since the inception of land use controls, interested parties have challenged their legality. Though courts have upheld the legality of land use controls, they have limited the application of these controls through various decisions. State legislators have also created statutes to address problems and to protect the rights of all parties involved.

These controls, in the form of zoning regulations, can create many hazards. Sometimes simple ordinances created to solve a straightforward problem or address a

“minimum need” can create problems because, “[i]n isolation, each may seem reasonable when considering only the narrow purpose or specific objective to which the regulation is addressed. However, in practice, standards often have unintended effects on developments, which may result in costly distortions” (Bertaud and Malpezzi,394). It is important for ordinances to be properly enacted because cities must always be aware of the possibility of a legal challenge (Quirk 2006, 21).<sup>1</sup>

Historically, many have legally challenged the concept of governmental land use control. These challenges center on the constitutional questions of due process, equal protection, and seizing private property without just compensation. Due process means that all citizens are guaranteed a “course of legal proceedings according to rules and principles that have been established”( <http://www.findlaw.com/casecode/supreme.html>). The assertion of Ambler Realty in *Ambler Realty Company v. Village of Euclid*, heard by the U.S. Supreme Court, was that enacting land use control through zoning infringed on the right of the company to due process and equal protection. The company claimed that the village’s new zoning ordinance caused the company’s property to lose value and the lawsuit questioned the village’s right to enact such an ordinance in the first place (<http://www.findlaw.com/casecode/supreme.html>).

This case became one of the most pivotal Supreme Court cases in U.S. history involving a community’s right to control land development. The Court approved zoning as long as the regulations were designed to protect public welfare. The Court asserted that this power was derived from the “Police Power” of the state that allows foregoing due

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<sup>1</sup> In recent memory the City of Kyle was involved with the lawsuit with the Austin Homebuilders Association and the NAACP over their residential building standards.

process and equal protection in favor of the community's health, safety, welfare, and morality. This decision legitimized the "fundamental idea" of controlling land use, but the legal debate was far from over (<http://www.findlaw.com/cascode/supreme.html>).

The 5<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution assert that the state cannot take possession of private property without compensation. This concept is commonly referred to as the constitutional prohibition on government "taking". In *Penn Central transportation Company v. City of New York*, heard by the Supreme Court in 1978, the company asserted that the city's "Historic Landmark" designation of the Grand Central terminal (a property owned by the complainant) constituted a "taking". Penn Central asserted that the city reduced the property value when it denied a proposed redevelopment of the site based on Grand Central's "Historic" status (<http://www.findlaw.com/cascode/supreme.html>). The U.S. Supreme Court held that since the historic designation did not inhibit any and all new construction but only construction that would not "harmonize in scale, material and character with the terminal", the designation did not constitute a "taking" (<http://www.findlaw.com/cascode/supreme.html>). This ruling further broadened the scope of zoning authority.

Nine years later, in the 1986 case of *Nolan v. California Coastal Commission*, the Supreme Court found that another ordinance did indeed constitute a "taking" and was unconstitutional. The Nolan case was filed due to a dispute between the Nolan Family's desire to build a new home on their beachfront property and the California Coastal Commission's desire to increase public beach access. The California Coastal

Commission would not approve the Nolan’s building permit unless the property owners granted a public access easement across their property to allow access to the adjacent public beach. The Supreme Court held that the Commission could not require dedication of such an easement unless the development was changing access in some way, but, since the Commission could not draw that parallel, the requirement constituted a “taking” (<http://www.findlaw.com/cascode/supreme.html>).

This particular case led to two more rulings that created a legal precedence known as “rough proportionality”. Rough proportionality dictates that conditions and regulations placed on a property must be “roughly proportional” to the “alleged evils” the regulations were designed to address (<http://www.findlaw.com/cascode/supreme.html>).

### **Development Laws in the State of Texas**

Two chapters in the State of Texas Local Government Code specifically address land use and development. Chapter 211 deals with zoning controls, creates the authority by which cities set up planning and zoning commissions, as well as zoning boards of adjustment, and establishes the ground rules that cities must follow. The subdivision of land, addressed in Chapter 212, sets the framework for how land is bought and sold, and ultimately, how land developers make a profit.

#### *Chapter 211 of the Texas Local Government Code*

Section 211.001 establishes zoning, “for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance”. Chapter 211 goes on

to establish more general guidelines regarding establishing zoning districts as well as describing the requirements associated with conforming to a comprehensive or long range plan for a community.

Cities with the necessary population to qualify for “home-rule”<sup>2</sup> are required to establish a zoning commission to, “recommend boundaries for the original zoning districts and appropriate zoning regulations for each district”. Sections 211.007 and 211.0075 do not allow a governing body<sup>3</sup> to have a public hearing or make a decision on a zoning case until they first receive a preliminary report from a zoning commission public hearing.

Section 211.008 of the chapter establishes the Board of Adjustment, “to make special exceptions to the terms of the zoning ordinance that are consistent with the general purpose and intent of the ordinance and in accordance with any applicable rules contained in the ordinance”. This section further establishes procedures for appealing zoning and administrative decisions. The chapter ends by detailing rights associated with legal non-conforming uses<sup>4</sup> as well as additional regulations for municipalities that have populations greater than 500,000 and other regulations for municipalities that have populations greater than 290,000.

#### *Chapter 212 of the Local Government Code*

Chapter 212 of the local government code outlines requirements associated with subdivision of land or platting including required utility improvements, road

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<sup>2</sup> Home rule status describes a city to adopt a charter that is not inconsistent with state law as compared to a general law city that has to follow establish its government as strictly established in state law.

<sup>3</sup> Typically the city council

<sup>4</sup> Commonly called grandfathered

infrastructure, and engineering as conditions of approval of a subdivision or plat. For plats that require an extension of utilities or right of way<sup>5</sup>, the chapter requires a public meeting. Unfortunately, this chapter does not grant the groups that conduct the public hearing complete discretion on the proposed plat, but instead requires a public hearing. Some plats can be approved without a public hearing if they amend a commercial plat or if the plat creates four or fewer lots and does not require extension of utilities or dedication of right of way. Amending plats for residential developments requires a public hearing, but discretion for the decision-making body conducting the hearing is limited to conformance with current subdivision regulations (section 212.009).

Chapter 212 empowers individual communities to decide whether the council or the commission should conduct the required public hearing, or if a public hearing is warranted for plats that may be approved without a public hearing by state law. State law allows the city council, as the governing body of the municipality, to appoint a Planning and Zoning Commission and a Zoning Board of Adjustment to address planning, zoning, and other development issues. The size, responsibilities, and requirements of these groups vary from city to city. It is important to remember that, in Texas, once a city reaches a population threshold of 5,000 residents, the city can become a home-rule city by adopting a charter that “cannot be inconsistent with state law” (Quirck 2006, 4). The provision to allow cities to create their own charter gives the municipalities that meet the population requirement a wide legal scope within which to organize themselves. State law provides few guidelines for how city councils should retain, or pass on, decision-making authority

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<sup>5</sup> i.e. require participation of the community’s infrastructure

to the planning and zoning commission or zoning board of adjustment. In regard to zoning, for example, the city council is required to make the final decision on zoning maps and comprehensive plan changes. State law recommends, but does not require a supermajority vote to overturn a “recommendation” from the Planning and Zoning Commission (Quirk 2006, 4). Municipalities may utilize citizen appointed committees, commissions, and boards in different ways, but these entities are becoming an increasingly important aspect of citizen involvement in local affairs (McDonald 2000, 27). State law identifies the city council, planning and zoning commission, zoning board of adjustment, and the city’s staff as having decision-making authority. The law also further specifies these groups as the vehicle by which the public should formally participate in the development process.

### **Components of Decision Making in Development Applications**

For the purpose of this research, the roles of the city council, planning and zoning commission, zoning board of adjustment, and city staff are viewed as components of a practical ideal model in processing land development applications. These groups may directly or indirectly represent the citizens of the community, including the developers. Johnson (2008, 19) explains, “[t]he partnership between citizens and planning officials attempts to add value to the (development) process through consideration of diverse views”. As previously discussed, the purpose of this paper is to create an ideal model for the role each of these different groups should or should not play in the development process. Therefore, the following section is a discussion of the literature that exists concerning the role of these groups in the development process.

### *The Role of the City Council*

The city council incorporates the greatest amount of public participation because council meetings are attended by the most citizens, and the council is responsible for appointing the other citizen boards. A city council member's political power stems from winning an election, as well as from the attention his or her voice is given by the media (Garcia 2000, 380). As Garcia stipulates, "The planner gives advice from a particular perspective; the elected official has to balance all viewpoints" (2000, 380). Though the council as a whole has decision-making authority, an individual member of the council does not. The power of the individual is based solely on the support they garner from the rest of the council (Posivack 2006, 17).

Council members need to understand planning guidelines, the zoning and subdivision ordinances, as well as the city's comprehensive plan (Paine 2006, 15). However, council members must be careful not to dedicate too much of their time and resources to planning issues. The council members are responsible for making policy decisions for utilities, budgeting, economic development, and other city services as well as being aware of legal disclosure, conflicts of interest, the media, and their constituents (Gilley 2006, 15). They simply do not have the time to commit all their time to planning issues without neglecting their other responsibilities.

Most importantly, a council is responsible for communicating policy to the planning and zoning commission, zoning board of adjustment, and city staff. A council's ability to communicate policy depends on the council's skill as policy makers, but also on the type of legislative and organizational structures in place to aid in the process.

Currently, there is not a clear study that determines the most effective structure to allow a council to work with their commission, board of adjustment, and planning staff.

### *Role of the Planning and Zoning Commission*

The planning and zoning commission derives its roots from the Hartford Plan Commission of 1907. That commission was created to address the need for government intervention in the planning process (Foglesong 1986, 225). The city council appoints the planning and zoning commission and the commission is required to follow the provisions of the State of Texas Open Meetings Act<sup>6</sup>. Although, less people generally attend planning and zoning commission meetings, their meeting agendas are typically much shorter, allowing more time for open discussion of the merits of a particular application.

Some municipalities grant the planning and zoning commission the full measure of decision-making authority (within the confines of state law), while other municipalities grant the decision-making authority on development applications to the city council with the planning and zoning commission acting in an advisory role. Since the planning and zoning commission is dedicated exclusively to development issues, the commission can devote more time to deliberation on development issues. Also, since the commission is dedicated to development issues, the members of the community with more expertise in development policies are more likely to attend these meetings. The more decision-making authority the commission exercises, the less time and resources the council has to commit to development issues.

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<sup>6</sup> The Texas Open Meetings Acts sets guidelines by which elected and appointed bodies have to follow to assure that the public has an opportunity to participate in their meetings.

Philadelphia Mayor Michael Nutter encouraged this idea when he proposed transforming the Philadelphia Planning Commission from an advisory board into a “real force in shaping the city” (Swope 2008, 19). Conversely, many policymakers feel that controversial decisions should be made by those directly elected rather than by persons who were appointed. A moderate approach grants the planning and zoning commission decision-making authority for less important items and allows the council to address more controversial items.

The planning and zoning commission is important largely because it is through this body that the first public hearings on a development application occur. Sampson describes the commission as:

...professional planners and land use experts... largely responsible for creating the ‘vision’ within a municipalities comprehensive plan and formulating the regulatory structure of a zoning ordinance or land development code, it is before citizen boards, usually operating in a quasi-judicial capacity, that the tensions and conflicts of land use regulation most often plays out ( 2007, 877).

Many states understand the importance of the role of the planning and zoning commission and have passed legislation to try to remove bias from this body (Anderson and Luebbering 2006, 64).

Section 211.007 of the Texas Municipal Code provides home-rule and general law cities the power to “appoint a zoning commission to recommend appropriate zoning regulations to the city council” (Quirk 2006, 4). Furthermore, planning and zoning commissions must adhere to all of the notification requirements of a public hearing; thus, many cities have the commission make decisions or recommendations to the council concerning development plats (Quirk 2006, 10). Since state law leaves the planning and

zoning commission's role in the planning process up to the city council, the commission must be structured so that it fulfills all its roles while supporting council policy.

### *The Role of the Zoning Board of Adjustment*

On occasion, because of the size, shape, topography, or other abnormal feature of a parcel, strict adherence to the regulations would render the property incapable of reasonable use (Sampson 2007, 877). To address these situations, Section 211.008 of the Texas Municipal Code allows for the "...appointment of a board of adjustment to make special exemptions to the terms of zoning ordinance that are consistent with the general purpose and intent of the ordinance..."(Quirk 2006, 12). A variance is the legal vehicle by which these "special exemptions" are made. Section 211.009 of the Texas Municipal Code further outlines that a board may:

1. hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official relating to zoning;
2. hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the board to do so;
3. authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done; and
4. hear and decide other matters authorized by an ordinance (Quirk 2006, 12).

These guidelines direct municipalities as to the role of the zoning board of adjustment, and provide the zoning board great latitude. The most important trait of the

board is that it serves a quasi-judicial role<sup>7</sup> in the development process. The board's meetings are also subject to the Texas Open Meetings Act. As a quasi-judicial body, the board makes legal determinations on strict regulations. At times when the board is dealing with issues of a legal nature, a board of appointed citizens is not always suitable (Sampson 2007, 877). Randal Sampson, in his 2004 article, "Theory and Practice in the Granting of Dimensional Land Use Variances: Is the Legal Standard Conscientiously Applied, Consciously Ignored, or Something in Between", explores some of the problems that result when council-appointed boards attempt to fulfill a quasi-judicial role.

Sampson suggests assigning some or all of the variance cases to the planning and zoning commission or another appointed group with expertise in the development process when communities lack the ability to reliably recruit qualified and unbiased board members. Municipalities that can find qualified members for the board but still desire more accountability, may allow some form of participation from the planning and zoning commission. Additionally, some municipalities achieve accountability by requiring that a certain number of the board members also be members of the planning and zoning commission.

Another suggestion Sampson makes is to put an intervening step between the applicant's first request for a variance from the board and when the case goes before the board. This step, formal or informal, would involve a staff review of the application and a report of findings. This step can take the form of a staff recommendation to the board either supporting or denying the variance, if this determination can be made prior to the

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<sup>7</sup> Quasi-judicial referring to the responsibility to make finding based on legal requirements rather than policy.

applicant deciding to go before the board. This process can act as a filter as well, discouraging the cases with little or no hardship from moving forward. This review process can also serve as a template or guide for the board to follow if or when the board hears the case. It is important to note that this pre-analysis needs to be available long enough before the board meets so that the applicant still has an opportunity to exercise the option to not move forward (Sampson 2007, 877).

Board members must also receive adequate training. As Bornong and Peyton explain, “[b]oard members’ comprehension of substantive variance standards is essential if boards of adjustments are to function consistently within the scope of their delegated authority” (1983, 68). While substantive and ongoing training is essential for an effective board, another problem that arises as boards try to fulfill their quasi-judicial role, is that they may make decisions without fulfilling the legal requirements. One way to address this problem is to require a board member to “enunciate his or her position with respect to each criterion and whether it has been satisfied by the applicant evidence” (Sampson 2007, 877).

Finally, boards can become more effective in fulfilling their legal and quasi-judicial roles by allowing the board to hear other cases that do not have the legal burden, as well as by allowing more responsibility at the staff level to keep minor cases from progressing through the whole process. Allowing other cases to be heard by the board and giving staff discretion on minor cases, also allows the board to gain experience in different types of planning cases while not being bogged down with minor and straightforward issues.

Public participation associated with zoning board of adjustment meetings differs from that of the city council and planning and zoning commission in that they are generally attended by as many people as the planning and zoning commission meetings. However, because the board's role is more judicial, they must weigh public comments and concerns differently and depend more on staff and legal direction.

### *The Role of the Planning Staff*

Although the size of planning staffs differ from municipality to municipality, staffs play a vital role in making decisions on development applications. As previously discussed, state law clearly defines what types of development applications require review and approval from public hearings held by the planning and zoning commission, zoning board of adjustment, or the city council. All other types of development applications can be assigned to the planning staff to approve. Development applications approved exclusively by planning staff represent the least amount of public participation, as staff is not obligated to hold a public hearing when making a decision. However, all written material that staff produces is subject to an open records request.

From the beginning of municipal planning, cities have called on planners to serve as "...consultants, administrators, and later, scholars of zoning" (Birch 2009, 116). Burke defines the role of a planner as, "... not a single or uniform one. It is varied, it is complex, and it is constantly changing. It is, moreover, defined and shaped in the process of interacting with others in designing and achieving common objectives" (1979, 268). Thus, the municipal planning profession is complex. Transportation, land use, and economic planners all lend their expertise to the planning process, and municipal

planners must have an understanding of all of these sub-disciplines (Alexander 1995, 93). Consequently, Throgmorton describes planning as a “communicative practice” (2000, 367).

The planning director publicly represents all decisions made by city staff as those decisions relate to development applications. A challenge for the planning director is maintaining a working relationship with staff and policymakers. This relationship requires the director to perceive the end goal that policymakers wish to achieve and then advise them using his or her expertise in planning to achieve those goals. Ashworth describes this ability as “subordinate leadership” and advises future administrators how to develop this skill in his book, *Caught Between the Dog and the Fireplug*.

Those above you in positions of authority, power, and leadership also have their own wants and desires that they like to have fulfilled. Even if you do not have firsthand contact with them it is still possible to learn or speculate on what their needs are. They frequently speak on what they care about. They have political agendas they promote. They accept accolades and awards and honors for things they value and spend their time and energies on. Those who are political figures are always searching for ways to look good with the voters and garner citizen support and approval. And if you have any imagination you should be able to conjecture about what might appeal to those above you in terms of what is right, fair, honorable, and in the interest of the general public, the city, the state, and nation. If you can delve the needs and wants of those above you, you will have found a key you might possibly be able to use to motivate them to act upon something you want to accomplish (1988, 64).

Throgmorton goes on to describe the responsibility to perceive policymaker goals and then help articulate them, as acting in the “flow of persuasive argumentation ... (where) planners can best be understood not as heroic experts, but as skilled-voices-in-the-flow” (2000, 367).

Some policymakers are hesitant to give any decision-making authority to staff because of mistrust or a desire to exert more control over development within the community. This behavior creates extra work for both the policymaker and the planner. Policymakers must then review more development applications and their associated staff reports. Planners must then attend more meetings and prepare more staff reports associated with those meetings. Ultimately, there is insufficient time for policymakers to deal with every level of the development process, and developers do not want to commit to the time and uncertainty involved in such processes. Conversely, policymakers can put too much trust in staff. If councils do not provide staff with clear direction, they put staff in the unenviable position of implementing a policy they are unsure the council and community supports.

In the interaction between planning staff and policymakers, the staff report is the most important means of explaining the issues of a development application and the basis of a staff's position on the application. In a practical sense, planners must be aware of the level of expertise and needs of the people reading the staff report. Staff reports and staff recommendations should be written to keep the content, level of technical detail, and dictation understandable to the lay reader (Erley 1988,140). Oral reports to the governing boards should be short and simple, and staff members presenting the report should not read the report verbatim, but rather cover the main points, making every effort to avoid repetition (Erley 1988, 148).

Planners should also be able to establish effective working relationships with both the boards and council they serve, as well as be capable of working with developers.

Wiess identifies a developer as one who “designs, engineers, finances, develops and sells an urban environment using as the primary raw material rural, undeveloped land” (1987, 1). Thus, planners need to understand the developer’s needs, be consistent, be careful in their review of plans, provide encouragement to both the developer and the council, and prioritize the projects that will have the highest return to the community (Solnit 1987, 37).

### **Conceptual Framework**

The above literature review outlines four administrative and policymaking bodies with decision-making authority in municipal planning organizations: city councils, planning and zoning commissions, zoning boards of adjustment, and planning staff. Although state laws and legal precedents exist, the research indicates that much of that information is vague and contradictory. This research uses a practical ideal model conceptual framework to develop a decision-making process in municipal development for use by local governments in the State of Texas. “Practical ideal types (models) provide benchmarks with which to understand reality” (Shields 1998, 219), which then serve as a tool for direction rather than a concrete directive. Shields and Tajalli (2006, 13) describe the purpose of a conceptual framework as “helping to organize inquiry into the problem at hand and is not expected to be perfect.” The framework for this research was built using the four decision-making bodies to ascertain which common development application would be best assigned to each. Table 2.1 shows the link between the decision-making bodies that act as components in the ideal model and the literature.

**Table 2.1: Conceptual Framework of Decision Making in Development Applications**

Descriptive Categories	Source
Development Applications that should be heard by the City Council	Garcia 2000, 380; Posivack 2006, 17; Paine 2006, 15; Gilley 2006, 15; Quirck 2006, 4; McDonald 2000, 27
Development Applications that should be heard by the Planning and Zoning Commission	Foglesong 1986, 225; Swope 2008, 19; Sampson 2007, 877; Anderson and Luebbering 2006, 64; Quirk 2006, 10
Development Applications that should be heard by the Zoning Board of Adjustment	Sampson 2007, 877; Quirk 2006, 12
Development Applications that should be administratively approved by Planning Staff	Alexander 1995, 93; Ashworth 1988, 64; Throgmorton 2000, 367; Erley 1988,140; Wiess 1987, 1; Solnit 1987, 37

In brief review, the city council, planning and zoning commission, and the zoning board of adjustment are all elected or appointed groups that offer their expertise to make decisions and recommendations on development applications. Their meetings are open to the public and state law requires that their agendas be made available to the public prior to their meetings. Planning staff members are professionals who work for a city and provide expert and unbiased analysis of applications. Although almost all staff correspondence and files are subject to open records requests, most of a planner's work is done within city offices with minimal public involvement. All of these different groups represent different levels of public participation and processing efficiency.

## **Chapter III**

### **Methodology**

The primary methodology serving this research is a survey, which was created using the components of decision-making in municipal planning applications as identified in the literature review. This survey was distributed to current working professionals in the field of city planning to gauge their expert opinions on the topic of decision-making for municipal planning applications. However, before discussing the details of the survey and its results, it is important to connect the survey questions to the conceptual framework and operationalize the main components of the practical ideal model.

#### **Operationalization to Create a Practical Ideal Model**

Table 3.1 operationalizes the components of the practical ideal model developed through the literature review. The decision-making components that are disallowed by state law to have decision making authority on a particular application were excluded from the table. The table also links the questions on the survey to the creation of the model. The operationalization table (Table 3.1) on the following pages connects the modes of research<sup>8</sup> to the conceptual framework.

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<sup>8</sup> The term “modes of research” is used here synonymously with the term “survey questions”.

**Table 3.1: Table of Operationalization**

<i>Development Applications</i>	<i>Decision Making Bodies or Ideal Type Components</i>			
	City Council	Planning and Zoning Commission	Zoning Board of Adjustment	Planning Staff
Plat with five or more lots and/or require extension of public utilities	Decision Making Authority  Makes Recommendation  No action  Other (please specify):	Decision Making Authority  Makes Recommendation  No action  Other (please specify):	--	Makes Recommendation  No action  Other (please specify):
Final Plat with four or fewer lots with no required extension of public utilities	Decision Making Authority  Makes Recommendation  No action  Other (please specify):	Decision Making Authority  Makes Recommendation  No action  Other (please specify):	--	Decision Making Authority  Makes Recommendation  No action  Other (please specify):
Amending Plat	Decision Making Authority  Makes Recommendation  No action  Other (please specify):	Decision Making Authority  Makes Recommendation  No action  Other (please specify):	--	Decision Making Authority  Makes Recommendation  No action  Other (please specify):
Waivers to Platting Requirements	Decision Making Authority  Makes Recommendation  No action  Other (please specify):	Decision Making Authority  Makes Recommendation  No action  Other (please specify):	--	Makes Recommendation  No action  Other (please specify):

**Table 3.1: Continued**

<i>Development Applications</i>	<i>Decision Making Bodies or Ideal Type Components</i>			
	City Council	Planning and Zoning Commission	Zoning Board of Adjustment	Planning Staff
Change in Zoning	Decision Making Authority Makes Recommendation No action Other (please specify):	Makes Recommendation No action Other (please specify):	--	Makes Recommendation No action Other (please specify):
Comprehensive Plan Amendments	Decision Making Authority Makes Recommendation No action Other (please specify):	Decision Making Authority Makes Recommendation No action Other (please specify):	--	Makes Recommendation No action Other (please specify):
Variance	Decision Making Authority Makes Recommendation No action Other (please specify):	--	Decision Making Authority Makes Recommendation No action Other (please specify):	Makes Recommendation No action Other (please specify):
Appeals of Administrative Decision	Decision Making Authority Makes Recommendation No action Other (please specify):	Decision Making Authority Makes Recommendation No action Other (please specify):	Decision Making Authority Makes Recommendation No action Other (please specify):	Makes Recommendation No action Other (please specify):

**Table 3.1: Continued**

<i>Development Applications</i>	<i>Decision Making Bodies or Ideal Type Components</i>			
	City Council	Planning and Zoning Commission	Zoning Board of Adjustment	Planning Staff
Special Use Permit	Decision Making Authority  Makes Recommendation  No action  Other (please specify):			
Other Special Exceptions Not Listed Above	Decision Making Authority  Makes Recommendation  No action  Other (please specify):			
Site Plan	Decision Making Authority  Makes Recommendation  No action  Other (please specify):	Decision Making Authority  Makes Recommendation  No action  Other (please specify):	--	Decision Making Authority  Makes Recommendation  No action  Other (please specify):

As shown in the table, the identified components were incorporated into multiple choice and open-ended questions on a survey to gauge the thoughts and opinions of the respondents. This survey was administered, and the datum collected from it was used to create the practical ideal model<sup>9</sup>. A brief explanation of the ideal components and sub-components are listed below.

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<sup>9</sup> The model itself is included in the results chapter.

### *City Council*

As previously mentioned, the city council incorporates the greatest amount of public participation because their meetings are attended by the most citizens and they are responsible for appointing the other citizen boards. Consequently, the city council often represents the decision-making group with the least amount of technical expertise and the most political influence. Because of these limitations, councils can be the least efficient decision-making body. The survey and operationalization table were designed to gather the following information regarding the city council:

- Development Applications for which the city council should have decision making authority.
- Development applications for which the city council should make recommendations.

### *Planning and Zoning Commission*

Since the city council appoints the planning and zoning commission and less people generally attend planning and zoning commission meetings it represents a different level of public participation than the city council. However, these meeting agendas are typically much shorter, allowing more time for open discussion of the merits of a particular application. The survey and operationalization table were designed to gather the following information regarding the planning and zoning commission:

- Development Applications for which the planning and zoning commission should have decision making authority.

- Development applications for which the planning and zoning commission should make recommendations.

### *Zoning Board of Adjustment*

As was discussed, public participation associated with the zoning board of adjustment meetings differs from that of the city council and planning and zoning commission in that they are generally attended by as many people as attend the planning and zoning commission meetings. However, because the board's role is more judicial, they must weigh public comments and concerns differently and depend more on staff and legal direction. The survey and operationalization table were designed to gather the following information regarding the zoning board of adjustment:

- Development Applications for which the zoning board of adjustment should have decision making authority.
- Development applications for which the zoning board of adjustment should make recommendations.

### *Planning Staff*

In review, development applications approved exclusively by planning staff represent the least amount of public participation, as staff is not obligated to hold a public hearing when making a decision. However, all written material that staff produces is subject to an open records request. The survey and operationalization table were designed to gather the following information regarding the planning staff:

- Development Applications for which the planning staff should have decision making authority.
- Development applications for which the planning staff should make recommendations.

### **Planning Applications Survey**

Surveys are often employed to meet numerous types of research goals. Babbie (2004, 243) states that, “surveys may be used for descriptive, explanatory and exploratory purposes.” In terms of this research, the survey describes a list of common development applications and then asks the professionals surveyed, which decision-making bodies should play a role in the development application process and what role they should play. Thus, the survey results help further define the role of the different groups, to create an ideal model for decision-making in planning and development for Texas cities.

To clearly determine the ideal model’s components, the survey asked respondents to choose which body should have decision-making authority for approval of a development application, as well as which decision making body, or bodies, should make recommendations on the applications. Each question also allowed respondents an “other” category so that they could have the freedom to respond with what they felt was the best option even if it was not offered among the survey choices. The application questions were preceded by some basic demographic information that was used to gauge the population of their municipality, the size of their budget, and local geographic trends. The survey then concluded with several open-ended questions that allowed the respondents to

add general comments concerning development applications, decision-making, and public participation<sup>10</sup>.

#### *Texas APA Listserve*

The APA Texas PlannerNet ListServ was used to distribute the survey in order to decrease research costs and facilitate participation. This listserv is an open email forum designed for professionals in the planning field to share information regarding planning and development issues in the State of Texas. The listserv is associated with the Texas chapter of the American Planning Association (APA). The APA is a not-for-profit organization that provides leadership in community development by advocating community planning, education, and citizen empowerment through provision of tools and support. The APA website can be found at <http://www.planning.org>.

#### **Risks of Survey Research**

There are risks associated with the validity of survey research as with any research methodology. Babbie (2004, 243) points out the importance of “follow-up mailings” to act as reminders and to assist in the encouragement of survey participation. In this case, a follow-up email was sent via the listserv to encourage more participation and a higher response rate. No information exists in this paper that could identify individual survey participants.

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<sup>10</sup> See Appendix 1 and 2 for a copy of the letter sent with the survey as well as the survey itself.

## **Chapter IV Results**

This chapter analyzes and discusses the results of the development applications survey responses in the same order as the categories appeared in the survey<sup>11</sup>. Forty-seven professionals responded to the survey but not all surveys were complete; therefore, percentages were calculated based on complete responses for each question (typically 39 or 40). Space was allotted for respondents to answer questions with their own ideas or opinions through the “other” choice offered for each question. These answers were lumped with the closest provided response, or they were calculated as an “other” response and saved for later discussion in the conclusion section.

### **Platting Applications**

State law requires a public hearing for plats that require extension of public infrastructure or right of way, and for plats that create five or more lots. Alternatively, applications to amend plats, and plats that create four or fewer lots and do not require extension infrastructure or right of way, can be approved without a public hearing. As Table 4.01 shows, 70 percent of the survey respondents felt that the planning and zoning commission should be the only group to hold public hearings, and that they should make the final decision on plats that require the extension of public infrastructure or right of way and for plats that create five or more lots. Twenty-five percent of the respondents felt the City Council should make the decision on the afore-mentioned types of plats. For

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<sup>11</sup> The categories appeared by applications rather than by the ideal type categories in the survey (see Table 3.1).

plats that do not require a public hearing<sup>12</sup>, about 80 percent of the respondents felt that planning staff should make the decision (see Table 4.02). Additionally, the respondents indicated that city planning staff should make recommendations on all the platting applications if they are not given decision-making authority outright. The results also indicate that respondents believe that when development is first presented for approval, public hearings and staff input are appropriate. Also, for applications for smaller developments or for applications to correct or make small alterations on a project, respondents indicated that public hearings and policymaker involvement are not warranted.

**Table 4.01: Plats with 5 or more lots and/or there will be extension of public utilities.**

		City Council	Planning and Zoning Commission	Planning Staff	Other	None
On a platting application where there are 5 or more lots and/or there will be extension of public utilities, what decision making body should make the FINAL DECISION or should make RECOMMENDATIONS?	Decision-Making Authority	25% (10)	70% (28)	N/A	5% (2)	N/A
	Recommendation*	0	87.5% (19)	97.5% (39)	0	

\*This question allowed for respondents to choose more than one option as multiple groups can make recommendations to whatever body makes the final decision. Consequently, the number and percentage of each response should be viewed accordingly.

<sup>12</sup> Amending plats can require a public hearing they meet certain criteria as defined by state law but typically amending plat applications do not meet those criteria.

**Table 4.02: Plats with 4 of fewer lots and there will be no extension of public utilities.**

		City Council	Planning and Zoning Commission	Planning Staff	Other	None
On a platting application where there are 4 or fewer lots and there will be no extension of public utilities, what decision making body should make the FINAL DECISION or should make RECOMMENDATIONS?	Decision-Making Authority	10.3% (4)	17.9% (7)	69.2% (27)	2.5% (1)	N/A
	Recommendation*	0	17.5% (7)	82.5% (33)	0	

\*This question allowed for respondents to choose more than one option as multiple groups can make recommendations to whatever body makes the final decision. Consequently, the number and percentage of each response should be viewed accordingly.

*Amending Plats*

Unfortunately, the results indicate some respondent confusion as to what type of amending plat application these questions were referring. The confusion arose because there exists a requirement that applications to amend a residential plat require a public hearing, but non-residential plats do not. The intent of the question was to address a non-residential amending plat application. However, since the survey was unclear, the results may be skewed.

Table 4.03 indicates that 64.1 percent of the respondents assumed that the questions referred to non-residential plats and that those respondents indicated that planning staff should have the decision-making authority on these applications.

**Table 4.03: Amending Plats**

		City Council	Planning and Zoning Commission	Planning Staff	Other	None
On a platting application that is amending an existing plat, what decision making body should make the FINAL DECISION or should make RECOMENDATIONS?	Decision-Making Authority	7.7% (3)	23.1% (9)	64.1% (25)	5.1% (2)	N/A
	Recommendation*	2.5% (1)	15% (6)	80% (32)	0	25% (10)

\*This question allowed for respondents to choose more than one option as multiple groups can make recommendations to whatever body makes the final decision. Consequently, the number and percentage of each response should be viewed accordingly.

*Plat Waivers/Special Exceptions*

Some communities create a process to allow flexibility in approving plats. These applications<sup>13</sup> are usually classified as waivers or special exceptions that give the decision-making body an option outside of the variance process to approve plats that do not meet all of the code requirements. The respondents felt that these types of applications required a public hearing of some kind due to the fact that over 90 percent indicated that a decision-making body that is required to hold a public meeting should have decision-making authority (see Table 4.04).

**Table 4.04: Plat Waivers/Special Exceptions**

		City Council	Planning and Zoning Commission	Zoning Board of Adjustment	Planning Staff	Other	None
On a platting application that is requesting a waiver to a development regulation, what decision making body should make the FINAL DECISION or should make RECOMENDATIONS?	Decision Making Authority	35.9% (14)	25.6% (10)	28.2% (11)	5.1% (2)	5.1% (2)	N/A
	Recommendation*	0	42.5% (6)	15% (32)	85% (34)	2.5% (1)	

\*This question allowed for respondents to choose more than one option as multiple groups can make recommendations to whatever body makes the final decision. Consequently, the number and percentage of each response should be viewed accordingly.

<sup>13</sup> These applications are different from variance, as they are not required to show legal hardship.

## Zoning Map Amendments

State law explicitly states that the “governing body”<sup>14</sup> must make the final decision for changing the zoning of a particular parcel. In the survey, respondents were asked which other groups should offer their views on such applications. Generally, the respondents felt that both the planning and zoning commission (86 percent), and the planning staff (85 percent) should make recommendations on a zoning map amendment application (see Table 4.05).

**Table 4.05: Zoning Map Amendment**

		City Council	Planning and Zoning Commission	Planning Staff	Other	None
On an application to change the zoning of a specific parcel or amend the zoning map in any other way, which decision making bodies should make RECOMMENDATIONS?	Recommendation*	86.8% (1)	86.8% (6)	85.1% (32)	5.3% (2)	0

\*This question allowed for respondents to choose more than one option as multiple groups can make recommendations to whatever body makes the final decision. Consequently, the number and percentage of each response should be viewed accordingly.

The results from table 4.05 further emphasize the need for staff as well as planning and zoning commission input in reviewing zoning applications in order to aide city councils with development expertise and understanding.

## Comprehensive Plan Amendments

Communities are required to adopt a comprehensive plan on which to base zoning and other planning decisions. Comprehensive plans represent a vision of the future for the community. In cases where a proposed development does not conform to the

<sup>14</sup> “Governing body” refers to the elected leadership of the city as defined by its charter, typically the city council.

comprehensive plan, applicants can request an amendment to the plan to move the project forward. This application is often submitted concurrently with an application to change the zoning for that same parcel. However, these applications remain separated because the comprehensive plan constitutes a previously agreed upon vision of the community; therefore, a move to amend it is a more consequential request. Table 4.06 indicates that respondents overwhelmingly (95 percent) felt that the City Council should be the body that makes the final decision on such applications. The results also suggest, by similar margins, that the planning and zoning commission and staff (85 percent and 87.5 percent respectively) should make recommendations to the council as well.

**Table 4.06: Comprehensive Plan Amendments**

		City Council	Planning and Zoning Commission	Planning Staff	Other	None
On an application to change the land use designation of a specific parcel or amend the comprehensive plan in any other way, what decision making body should make the FINAL DECISION or should make RECOMMENDATIONS?	Decision Making Authority	95% (38)	5% (2)	N/A	0	N/A
	Recommendation*	15% (6)	85% (34)	87.5% (35)	0	

\*This question allowed for respondents to choose more than one option as multiple groups can make recommendations to whatever body makes the final decision. Consequently, the number and percentage of each response should be viewed accordingly.

### **Variations**

As discussed in the literature review, to address cases where there is a legal hardship concerning a parcel, the zoning board of adjustment can issue a variance as permitted by state law. Table 4.07 shows that respondents favored planning staff more than any other group (80 percent) when asked their views concerning which groups should make recommendations to the zoning board of adjustment concerning variance applications. Respondents also felt that the planning and zoning commission should make

recommendations (30 percent). These results indicate that the respondents believe that a variance is not a policy decision, but instead a technical, quasi-judicial determination requiring technical staff input and limited council and commission influence.

**Table 4.07: Variance**

		City Council	Planning and Zoning Commission	Planning Staff	Other	None
On an application for a variance, which decision making bodies should make RECOMMENDATIONS?	Recommendation*	5% (2)	30% (12)	80% (32)	30% (12)	

\*This question allowed for respondents to choose more than one option as multiple groups can make recommendations to whatever body makes the final decision. Consequently, the number and percentage of each response should be viewed accordingly.

### **Appeal of Administrative Decisions**

In cases where an application is administratively approved or denied, some municipalities create an application whereby that decision may be appealed to another decision-making body. Unfortunately, a problem with the survey prevented respondents from giving a clear opinion on this type of application. Consequently, the question could not deliver valid survey results; therefore, the appeal application was removed from the practical ideal model.

### **Site/Site Development Plan**

A more technical application is the site plan, which is designed to show how the development will conform to all the applicable requirements. More than half of the respondents (51.3 percent) feel that these applications should be approved by planning staff. Others (35.9 percent) feel instead that these should go through a public process,

with either the city council or planning and zoning commission making the decision (see table 4.08). One respondent indicated that the type and size of the development should be considered when discussing which group should have the decision making authority.

**Table 4.08: Site/Site Development Plans**

		City Council	Planning and Zoning Commission	Planning Staff	Other	None
On a site plan or site development plan application, what decision making body should make the FINAL DECISION or should make RECOMMENDATIONS?	Decision Making Authority	12.8% (5)	23.1% (9)	56.4% (22)	(3)	N/A
	Recommendation*	0	23.7% (9)	78.9% (30)	0	

\*This question allowed for respondents to choose more than one option as multiple groups can make recommendations to whatever body makes the final decision. Consequently, the number and percentage of each response should be viewed accordingly.

These results reinforce the mindset that once developments are approved conceptually for platting and zoning applications, the more technical site plan applications are best approved administratively by staff members who review the plans for conformance with the already approved concept.

### **Special/Conditional Use Permit**

When a specific land use or proposed development involves special or unique circumstances, many communities create special or conditional use permits in order to review each application on a case-by-case basis. For these types of permits, respondents predominantly (82.5 percent) viewed the city council as the best group to make such decisions, with only 2.5 percent, or 1 of 40 respondents, stating that the planning staff was best suited to make that decision. Respondents felt that the staff (87.2 percent) and the planning and zoning commission (87.2 percent) should make recommendations as to the outcome of these applications (see Table 4.09).

**Table 4.09: Special/Conditional Use Permits**

		City Council	Planning and Zoning Commission	Planning Staff	Other	None
On a special/conditional use permit application, what decision making body should make the FINAL DECISION or should make RECOMENDATIONS?	Decision Making Authority	82.5% (33)	15% (6)	2.5% (1)	0	N/A
	Recommendation*	(5)	87.2% (34)	87.2% (34)	0	

\*This question allowed for respondents to choose more than one option as multiple groups can make recommendations to whatever body makes the final decision. Consequently, the number and percentage of each response should be viewed accordingly.

### **Other Development Permits**

Respondents were also given the opportunity to make additional comments concerning applications that were not included in the survey. Many of their comments are discussed in the conclusion chapter of this paper; however, some of the additional comments address applications regarding: encroachment into, and abandonment of, easements and right-of-way; applications for wells; applications for changes to structures or uses within special or historic districts; and applications for review of traffic or environmental impact studies. Predominantly, the respondents felt that these applications should be approved by the city council with the planning and zoning commission and the staff giving recommendations.

### **The Practical Ideal Model**

Through the careful review of the literature and analysis of the survey responses, the following practical ideal model was developed. This model first complies with state law, then recommends that elected policy-making bodies that are required by law to have their meetings open to the public should approve developments in concept. After this initial approval, planning staff should then be given responsibility for the technical

implementation of those conceptual plans. Table 4.10 shows the practical ideal model applied to common types of development applications.

**Table 4.10: Practical Ideal Model**

Type of Application	Decision Making Authority	Makes Recommendation
Plats with 5 or more lots and /or an extension of public utilities.	Planning and Zoning Commission	Planning Staff
Plats with 4 or fewer lots and with no extension of public utilities.	Planning Staff	None
Amending Plats that require a public hearing*	Planning and Zoning Commission	Planning Staff
Amending Plats that do not require a public hearing*	Planning Staff	None
Plat Waivers/Special Exceptions	City Council	Planning and Zoning Commission and Planning Staff
Zoning Map Amendment	City Council*	Planning and Zoning Commission and Planning Staff
Comprehensive Plan Amendments	City Council	Planning and Zoning Commission and Planning Staff
Variance	Zoning Board of Adjustment*	Planning Staff
Site/Site Development Plans	Planning Staff	None
Special/Conditional Use Permits	City Council	Planning and Zoning Commission and Planning Staff

\*As required by state law

**Additional Comments**

Many of the respondents felt that “planning staff” may be too broad a term as staff may include planners, engineers, or representatives of the utility providers in the community. Many cities utilize a Development Review Committee (DRC) that

incorporates representatives of all of these staff members. For the purpose of this model, all of these groups were included under the term planning staff under the assumption that planners receive input from all of these groups prior to making any kind of decision or recommendation.

## Chapter V Conclusion

### The Practical Ideal Model

As previously discussed, the model is first built on a compliance with state law, then recommends that elected policy-making bodies that are required by law to have their meetings open to the public should approve developments in concept. After this initial approval, planning staff should then be given responsibility for the technical implementation of those conceptual plans. This lends planning professionals and policymakers to put planning applications on a continuum based on the how conceptual the applications are.

**Figure 5.1: Continuum of the Conceptual Nature of Various Planning Applications**



### Limitations of the Research

No research can be rendered perfect in its first iteration, thus this section discusses some of the important issues that should be taken into consideration when evaluating this paper. The primary limitations include unaddressed issues in the development process, sample size and possible respondent bias, the method of survey distribution, and errors in the survey.

One issue not addressed by this research is the role of politics in the development process. Proposed developments can have a polarizing affect on a community and often the decision about which group has final decision-making authority on preliminary applications for a development can become a political battle. Consequently, these preliminary and conceptual applications are most appropriately administered by the city council or planning and zoning commission as they are the most political of all the decision making bodies. It is unfair to expect the staff members or the zoning board of adjustment to become involved in these situations, where their actions often will be praised by one part of the community and condemned by another. Conversely, many lay people may not realize the number of applications that a single development may have to obtain before construction can even begin. It is common for a development to go through a comprehensive plan amendment, rezone, plat for public review, plat for recordation, and have approval of a site plan application before anything physically can be done to the site. To expect a developer and a city council to commit the time and energy required to review and approve every one of these applications, not to mention the staff time to create reports and send out public notices, is just not feasible. Thus, a model to help cities refer applications to the appropriate groups for final decision-making is necessary.

Another limitation of this research is the sample size and the possible bias of the research population. Because municipal planning is a highly specialized profession, the total number of planning professionals in the state of Texas is limited. Additionally, the majority of planners are also employed by cities, which may create a bias toward increasing the amount of discretion that city planning staff should have. However, the

research does show, that these professionals' recommendations did not always include an increase in staff decision-making authority.

A further possible weakness of the research is that it was sent out as an email in a listserv to members of the American Planners Association (APA), or to those who subscribe to the service. Not all planning professionals in the state of Texas are members of this association or subscribe to the service and therefore some planners were not given the opportunity to respond to this survey. Finally, there were some errors on the survey that may have caused some confusion among the respondents that were reached. The questions concerning an appeal of administrative decision in particular were removed from the survey as well as the analysis because of these errors.

### **Future Implications**

In spite of the above limitations, research pertaining to which groups in the development permitting process should have decision-making authority over applications is still very limited in scope. Therefore, this research and the resulting practical ideal model should help to facilitate the application process and increase the effectiveness of all of the decision-making groups involved. The global issue this research sought to examine was the appropriate balance between public participation, planning expertise, and efficiency in processing development applications. There are many professionals in the state of Texas whose experience and training has helped them achieve an understanding of how to create this balance. Consequently, this research should largely confirm what is already understood by many as the ideal way to keep the public and

policymakers involved in the development application process without harming development within the community.

In review, this research provides an introduction into municipal planning and development regulation and explains some of the legal and historical issues associated with these regulations. The policymaking and professional groups that can have decision-making authority were also discussed as the ideal components of a model for processing development applications. The relevant literature on these groups and the issues associated with them was explored to provide a better understanding of the model. Then the survey, which acted as the main method of research and analysis, was developed and sent to planning professionals across the state to gather their opinions in order to develop this model. The responses and comments were presented in the results chapter and were sufficient to create a practical ideal model.

Though this research was carefully planned and conducted, further research is warranted to determine the role that politics plays in the development process, as well as to investigate whether this practical ideal model is in use in Texas cities<sup>15</sup>. Ultimately, the information obtained in this research is designed for use by cities across the state of Texas to improve the development applications process. City planners and public officials need to be aware of the issues concerning decision-making in the land development environment. Finally, readers should keep in mind that every city is different and that any development process should be tailored to the needs of the community.

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<sup>15</sup> Any major change in state law concerning development applications would also warrant a reassessment of the practical ideal model.

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## Appendix 1

### Texas Chapter APA Members:

#### **RFI #2**

As a masters degree candidate at Texas State University and a city planner I am conducting **research to try to find if there is a “best practice” or “ideal” way to process the development** applications in respect to the level of staff, city council, board and commission involvement. Although state law does give some direction, policy makers often look to their staffs to give direction on the best way to process development applications such as site plans, plats, and zoning map amendments. Consequently, I am asking planners from across the state to give their opinions on the best way to handle various types of development applications so that the public and policy makers feel involved in the development process and developers feel that their applications are processed with a fast enough turnaround so as not to slow down their projects.

Please go to [http://www.surveymonkey.com/s.aspx?sm=hW\\_2bANSVI6GgFshggVjzNHA\\_3d\\_3d](http://www.surveymonkey.com/s.aspx?sm=hW_2bANSVI6GgFshggVjzNHA_3d_3d) to take the survey on-line. Some people have reported that sometimes the link does not load on the first try but will when you refresh the page.

**Although there are some basic questions pertaining to your city’s demographic information,** names and survey results will not be associated nor will your specific opinions be associated with your cities. If you would like a copy of the finished report please also send your email address to [sg1090@txstate.edu](mailto:sg1090@txstate.edu) and I will be more than happy to forward one on to you once it is completed.

Tommy Garcia

## Appendix 2

### Development Applications Survey

#### *Community Demographics*

1. What is the population of the city you work for?

2. Approximately how much is your city's budget?

3. Which form of Government does your city utilize?

City Council/Manager

Mayor/Council

Other (please specify)  \_\_\_\_\_

4. Within what region would you classify your city?

Houston Metropolitan Area

Dallas/Fort Worth Metropolitan Area

San Antonio Metropolitan Area

Austin Metropolitan Area

West Texas/ Big Bend Area

Gulf Coast Area

Central Texas Area

South Texas Area

East Texas Area

Texas Panhandle Area

Other (please specify)  \_\_\_\_\_

*Development Applications*

1. On a platting application where there are 5 or more lots and/or there will be extension of public utilities, what decision making body should make the FINAL DECISION?

City Council

Planning and Zoning Commission

Other (please specify)  \_\_\_\_\_

2. On a platting application where there are 5 or more lots and/or there will be extension of public utilities, which decision making bodies should make RECOMMENDATIONS? (you may choose more than one)

City Council

Planning and Zoning Commission

Planning Staff

None

Other (please specify)  \_\_\_\_\_

3. On a platting application where there are 4 or fewer lots and there will be no extension of public utilities, what decision making body should make the FINAL DECISION?

City Council

Planning and Zoning Commission

Planning Staff

Other (please specify)  \_\_\_\_\_

4. On a platting application where there are 4 or fewer lots and there will be no extension of public utilities, what decision making bodies should make RECOMMENDATIONS? (you may choose more than one)

City Council

Planning and Zoning Commission

Planning Staff

None

Other (please specify)  \_\_\_\_\_

5. On a platting application that is amending an existing plat, what decision making body should make the FINAL DECISION?

City Council

Planning and Zoning Commission

Planning Staff

Other (please specify)  \_\_\_\_\_

6. On a platting application that is amending an existing plat, which decision making bodies should make RECOMMENDATIONS? (you may choose more than one)

City Council

Planning and Zoning Commission

Planning Staff

None

Other (please specify)  \_\_\_\_\_

7. On a platting application that is requesting a waiver to a development regulation, what decision making body should make the FINAL DECISION?

City Council

Planning and Zoning Commission

Zoning Board of Adjustment

Planning Staff

Other (please specify)  \_\_\_\_\_

8. On a platting application that is requesting a waiver to a development regulation, which decision making bodies should make RECOMMENDATIONS? (you may choose more than one)

City Council

Planning and Zoning Commission

Zoning Board of Adjustment

Planning Staff

None

Other (please specify)  \_\_\_\_\_

9. On an application to change the zoning of a specific parcel or amend the zoning map in any other way, which decision making bodies should make RECOMENDATIONS? (you may choose more than one)

Planning and Zoning Commission

Planning Staff

None

Other (please specify)  \_\_\_\_\_

10. On an application to change the land use designation of a specific parcel or amend the comprehensive plan in any other way, what decision making body should make the FINAL DECISION?

City Council

Planning and Zoning Commission

Other (please specify)  \_\_\_\_\_

11. On an application to change the land use designation of a specific parcel or amend the comprehensive plan in any other way, which decision making bodies should make RECOMMENDATIONS? (you may choose more than one)

City Council

Planning and Zoning Commission

Planning Staff

None

Other (please specify)  \_\_\_\_\_

12. On an application for a variance, which decision making bodies should make RECOMMENDATIONS? (you may choose more than one)

City Council

Planning and Zoning Commission

Zoning Board of Adjustment

Planning Staff

None

Other (please specify)  \_\_\_\_\_

Development Applications Survey Development Applications Survey Development Applications Survey Development Applications Survey

13. On an appeal of an administrative decision, which decision making bodies should make RECOMMENDATIONS? (you may choose more than one)

City Council

Planning and Zoning Commission

Zoning Board of Adjustment

None

Other (please specify)  \_\_\_\_\_

14. On a site plan or site development plan application, what decision making body should make the FINAL DECISION?

City Council

Planning and Zoning Commission

Planning Staff

Other (please specify)  \_\_\_\_\_

15. On a site plan or site development plan application, which decision making bodies should make RECOMMENDATIONS? (you may choose more than one)

City Council

Planning and Zoning Commission

Planning Staff

None

Other (please specify)  \_\_\_\_\_

16. On a special/conditional use permit application, what decision making body should make the FINAL DECISION?

City Council

Planning and Zoning Commission

Planning Staff

Other (please specify)  \_\_\_\_\_

17. On a special use permit application, which decision making bodies should make RECOMMENDATIONS? (you may choose more than one)

City Council

Planning and Zoning Commission

Planning Staff

None

Other (please specify)  \_\_\_\_\_

18. Are there any application not listed above that should have some kind of public review? (Please specify the type of application)

\_\_\_\_\_

19. If you entered an application on the previous question, what decision making body should make the FINAL DECISION?

City Council

Planning and Zoning Commission

Zoning Board of Adjustment

Planning Staff

Other (please specify)  \_\_\_\_\_

Development Applications Survey Development Applications Survey Development Applications Survey Development Applications Survey

20. For the application you listed above, which decision making bodies should make RECOMMENDATIONS? (You may choose more than one)

City Council

Planning and Zoning Commission

Zoning Board of Adjustment

Planning Staff

Other (please specify)  \_\_\_\_\_

21. Please enter any additional comments or issues concerning public review of development applications that should be considered.