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**Should Your Town Establish a Land Use Board**



By Frank D. Tinari Mayor, Florham Park & Robert C. Kirkpatrick Municipal Engineer



*Although the savings of combining planning and zoning boards may be modest, each municipality should carefully consider potential financial savings as well as other advantages and disadvantages.*

Of the 41 municipalities in Morris County, three (Mount Arlington, East Hanover and Andover Township) have operated with a Land Use Board instead of separate Planning and Zoning Boards. In the summer of 2007, Wharton Borough proposed doing the same. Is this a good idea for other municipalities in New Jersey? What are the savings? What conditions must be present for a combined board to work effectively? Are there any downsides?

State statutes regulate the responsibilities and authority of planning and zoning boards.

The Role of the Planning Board A planning board is responsible for reviewing all proposed subdivisions as well as proposed site plan developments. It also reviews and makes recommendations to the governing body regarding zoning changes that the governing body may propose. In addition, planning boards are responsible for developing and periodically updating a town's Master Plan. The board has exclusive jurisdiction to make recommendations with respect to the "Official Map"1; hears and decides conditional use applications and makes recommendations with respect to the capital improvements program of the municipality. In some municipalities (such as our Florham Park), even a change in tenancy in a retail shop or other commercial buildings requires the applicant to



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come before the planning board for review before being granted a site plan waiver which may have conditions attached thereto.

**The Role of the Zoning Board** In contrast, a Zoning Board of Adjustment is responsible primarily for the granting of variances from zoning regulations on proposed projects. This includes hearing appeals on administrative issues, and adjudication of a matter brought directly to the board for disposition that includes site plans or subdivisions as an ancillary issue related to the variance sought.<sup>2</sup> If that new bedroom you want to build causes your building to exceed the maximum coverage requirement, you would go to your zoning board. If the deck you want to add juts into the side yard space, you would go to the zoning board to seek permission to vary from the regulation.

**Professionals and Members** Most applications that come before Planning Boards and Zoning Boards are provided to professionals for their review. Attorneys, engineers, planners, architects and other professionals used for this purpose are either on the municipality's staff or are retained on contract. How is all this review work paid for? Towns typically hire a secretary for each board (Florham Park has one secretary who handles the work of both boards). Planning boards are required to have the mayor and a council representative (Class I and Class III members); and sometimes a representative from another board within the municipality. But boards are filled primarily with non-paid citizen volunteers.

**Time Requirements** Meetings are typically held once or twice per month. Time spent does not stop there. If the members are to be productive and helpful to the process, there is "homework" required which includes becoming familiar with the rules that govern the boards and becoming familiar with the file material provided by the board secretary for each application listed on the next meeting's agenda. There is also a continuing education element to this homework.

**Fees for the time that paid professionals spend reviewing the technical aspects of an application and for helping prepare resolutions are ultimately paid by applicants who are required to pay application fees required by ordinance and to post escrow funds to pay for professional reviews.**

**Perceived Conflicts** Because zoning boards have the power to waive or grant a deviation from many requirements, they are subject to potential political influence and perceived corrupting favoritism. The public today is very sensitive to certain issues that may arise from a given variance application that, in the past, never even raised an eyebrow. Board members are subject to accusations and innuendo that would try the patience of a saint. That is one of the reasons why the state does not allow elected officials to sit on zoning boards, which are filled primarily with citizen volunteers.

Having served as a Planning Board volunteer for ten years, and more recently as mayor, co-author Tinari can attest to the board's effectiveness in dealing professionally and fairly with applications. Large projects such as the redevelopment of the former Exxon property in Florham Park, including the portion for the NY Jets facility, took enormous chunks of time of both the Planning Board and the governing body. Further tweaking of zoning of that property has just been completed after an additional period of six months.

In New Jersey we periodically hear stories about the abuse of power some applicants have encountered in towns across the state. Hopefully, these complaints represent a higher level of cynicism than an actual abuse of power. We have found the Residential Site Improvement Standards (R.S.I.S.) to be helpful in some of these issues since they are a uniform requirement and not a local idiosyncrasy.

**Savings of a Combined Board** With respect to combining the two boards into one, Wharton's officials were hoping to save about \$10,000 by merging the planning and zoning boards into one land use board. Given the total expenditures for both professionals and municipal employees, that is a relatively small savings. The reason it's not larger is that each individual application still needs to be reviewed, each approval requires the writing of a resolution and each meeting or hearing

needs minutes taken. Although a savings is a savings however modest, each municipality should carefully consider potential financial savings as well as other advantages and disadvantages.

**Other Considerations** We would offer the following rules of thumb:

If a municipality is small and mostly built out, a merged board may make some sense. There won't be many applications and the board could likely meet once or twice each month. This appears to be Wharton's situation.

If a municipality is larger in population and land area, a merged board would not make sense since there are likely to be numerous applications to be heard. Having two boards (groups of citizen volunteers) to split the responsibilities and time commitments required to properly review an application would be appropriate.

If a municipality has lots of applications because of continuing new development and/or re-development, a merger also would not seem to be wise.

A merged board may generate some financial savings. It provides the added advantage of having nearly the same people hear and vote upon proposed new developments as well as grant variances. But it has the disadvantage of concentrating greater power in the hands of fewer people. That is a more tempting environment for increasing the perception of both the abuse of power and the risks of corruption. And since Class I and Class III members could not vote on the "D" variances, there is always need for alternate members.

However, what is real but not readily measurable is loss of citizen involvement from merging two boards. A planning board typically uses the services of seven to nine volunteer residents (the number includes alternates), and a zoning board typically has nine citizens. In addition to attending twice-monthly evening meetings, board members do homework by reviewing drawings and reports. The experience, wisdom and different points of view that they bring to the two boards are immeasurable. A town considering a merger should also factor in loss of such knowledge and experience. We view the sharing of these responsibilities among residents as reinforcing local citizen rule, making for a stronger and more democratic community.

If the residents in other towns are anything like those in Florham Park, they are willing to step up to be sports coaches, volunteers in their churches and local organizations, and citizen volunteers on numerous boards and committees in local government. Town officials would be wise to weigh carefully the impact of a merged board on citizen involvement and the dispersion of power that they bring.

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1 See 40:55D-32

2 See 40:55D-70d

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