

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

750D0056

HOUSE ENGROSSED NO. **HB1108** - 2/2/00

Introduced by: Representatives Crisp, Diedrich (Larry), Duniphan, and Koetzle and Senators
Vitter and Dunn (Rebecca)

1 FOR AN ACT ENTITLED, An Act to revise certain planning and zoning provisions.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 11-2-1 be amended to read as follows:

4 11-2-1. ~~The words or terms as Terms used in this chapter unless a different meaning is clearly~~
5 ~~indicated by the context shall mean:~~

6 (1) "Board," the board of county commissioners;

7 (2) "Commission," "planning and zoning commission," "zoning commission," or "planning
8 commission," any county planning and zoning commission created under the terms of
9 this chapter;

10 (3) "Comprehensive plan," a document which describes in words, and may illustrate by
11 maps, plats, charts, and other descriptive matter, the ~~policy~~, goals, policies, and
12 objectives of the board to interrelate all functional and natural systems and activities
13 relating to the development of the territory under its jurisdiction;

14 (4) "Governing body," the board of county commissioners, the city council or city
15 commission;

16 (5) "Municipality," a city or town however organized;

- 1 (6) ~~"Official controls," any ordinance, regulation, standard, map, or procedure adopted~~
2 ~~by the board to regulate the development of the territory so as to carry out the~~
3 ~~comprehensive plan~~ "Temporary zoning or subdivision ordinance," an ordinance
4 adopted as an emergency measure for a limited duration;
- 5 (7) "Subdivision ordinance," ~~the~~ any ordinance adopted by the board to regulate the
6 subdivision of land so as to provide coordination of streets with other subdivisions
7 and the major street plan, adequate areas set aside for public uses, water and
8 sanitation facilities, drainage and flood control, and conformity with the
9 comprehensive plan;
- 10 (8) ~~"Unit of local government," a municipality, township, school district or other special~~
11 ~~district~~ "Subdivision," the division of any tract or parcel of land into two or more lots,
12 sites, or other division for the purpose, whether immediate or future, of sale or
13 building development. The term includes resubdivision. This definition does not apply
14 to the conveyance of a portion of any previously platted tract, parcel, lot, or site if the
15 conveyance does not cause the tract, parcel, lot, or site from which the portion is
16 severed to be in violation of any existing zoning ordinance or subdivision ordinance
17 applying to the tract, parcel, lot, or site;
- 18 (9) "Zoning map," the map ~~adopted by resolution of the board~~ that delineates the extent
19 of each district or zone established in the zoning ~~resolution~~ ordinance;
- 20 (10) "Zoning ordinance," ~~the~~ any ordinance adopted by the board to ~~regulate by districts~~
21 ~~or zones the location, height, bulk, and size of buildings and other structures, and~~
22 ~~accessory uses, percentage of lot which may be occupied, the size of lots, courts, and~~
23 ~~other open spaces, the density and distribution of population, the location and use of~~
24 ~~buildings, and structures for trade, advertising uses, industry, residence, recreation,~~
25 ~~public activities, or other purposes, and, the uses of land for trade, industry,~~

1 ~~recreation, or other purposes~~ implement the comprehensive plan by regulating the
2 location and use of buildings and uses of land.

3 Section 2. That § 11-2-10 be amended to read as follows:

4 11-2-10. If a county is conducting or in good faith intends to conduct studies within a
5 reasonable time, or has held or is holding a hearing for the purpose of considering a
6 comprehensive plan ~~or official controls~~, the board in order to protect the public health, safety,
7 and general welfare may adopt as an emergency ~~measure~~ measures a temporary zoning ordinance
8 and map ~~and temporary zoning ordinance~~ and ~~other a temporary official controls subdivision~~
9 ordinance, the ~~purpose~~ purposes of which ~~shall be~~ are to classify and regulate uses and related
10 matters as constitutes the emergency. Before adoption or renewal of ~~such~~ the emergency
11 measure or measures, the board shall hold at least one public hearing . Notice of the time and
12 place of the hearing shall be given once at least ten days in advance by publication in a legal
13 newspaper of the county. Any emergency measure is limited to one year from the date it becomes
14 effective and may be renewed for one year. In no case may such a measure be in effect for more
15 than two years.

16 Section 3. That § 11-2-11 be amended to read as follows:

17 11-2-11. The county planning commission may prepare, or cause to be prepared, a
18 comprehensive plan for the county including those municipalities within the county which are
19 either unincorporated or which have requested by resolution of the governing board of such
20 municipality to be included. ~~Zoning ordinances, subdivision ordinances, the official zoning map,~~
21 ~~and other official controls as deemed necessary, shall be included as adjuncts to and in~~
22 ~~accordance with the comprehensive plan. The county planning commission shall hold a public~~
23 ~~hearing subject to the same notice requirements as provided in § 11-2-19.~~

24 Section 4. That § 11-2-13 be amended to read as follows:

25 11-2-13. ~~Official controls may include the establishment of zoning districts within which the~~

~~use of land for agriculture, forestry, recreation, residence, industry and commerce, soil conservation, water supply, sanitation and additional uses of land may be encouraged, regulated or prohibited and for such purposes the board may divide the county into districts of such number, shape and area as may be deemed best suited to carry out the comprehensive plan. For the purpose of promoting health, safety, or the general welfare of the county the board may adopt a zoning ordinance to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of the yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, flood plain, or other purposes.~~

Section 5. That § 11-2-14 be amended to read as follows:

~~11-2-14. For each zoning district zoning ordinances, or regulations may be adopted designating or limiting the location, height, bulk, number of stories, size of, and the specific uses for which dwellings, buildings and structures may thereafter be erected or altered; the minimum and maximum size of yards, or other open spaces; sanitary, safety and protective measures that shall be required for such dwellings, buildings and structures; the area required to provide for off-street loading and parking facilities; flood plain areas; and to avoid too great concentration or scattering of the population. All such provisions shall be uniform for each class of land or building throughout each district, but the provisions in one district may differ from those in other districts. For any of the purposes specified in § 11-2-13, the board may divide the county into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within the districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.~~

The regulations shall be made in accordance with a comprehensive plan and designed to

lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration or scattering of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks; and other public requirements.

The regulations shall be made with reasonable consideration, among other things, to the character of the district, and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the county.

Section 6. That § 11-2-15 be amended to read as follows:

~~11-2-15. Official controls~~ The regulations may include maps for highways, roadways, parkways, roads, and streets showing the exact alignments, gradients, dimensions, and other pertinent features, and including specific controls for setbacks from the right-of-way against encroachment by buildings or other physical structures or facilities.

Section 7. That § 11-2-16 be amended to read as follows:

~~11-2-16. Official controls~~ The regulations may include maps for other public facilities such as parks, playgrounds, schools, and other public buildings showing exact location, size, boundaries, and other related features including appropriate regulations protecting such future sites against encroachment by buildings and other physical structures or facilities.

Section 8. That § 11-2-17 be amended to read as follows:

~~11-2-17. Official controls may include specific regulations and controls pertaining to other elements incorporated in~~ The board may adopt a subdivision ordinance which shall be made in accordance with the comprehensive plan or establishing. The regulations may establish standards and procedures to be employed in land development including, ~~but not limited to,~~ subdividing of land and the approval of land plats and the preservation of streets and land for other public purposes requiring future dedication or acquisition and general design of physical improvements.

1 Section 9. That § 11-2-17.1 be amended to read as follows:

2 11-2-17.1. The board of county commissioners may enact permanent subdivision ordinances
3 as defined in subdivision 11-2-1(7). The board need not follow the procedures provided in this
4 chapter for establishing zoning districts or official controls pursuant to the comprehensive plan
5 in implementing this section. This section does not apply to any county that has adopted a
6 comprehensive plan. Before adoption of its subdivision ordinance or any amendment thereto, the
7 commission shall hold at least one public hearing. Notice of the time and place of the hearing
8 shall be given once at least ten days in advance by publication in a legal newspaper of the county.
9 Any interested person shall be given a full, fair, and complete opportunity to be heard at the
10 hearing, and the governing body may refuse or adopt the ordinance, with or without amendment.

11 Section 10. That § 11-2-18 be amended to read as follows:

12 11-2-18. ~~Official controls are not limited to the features set forth in §§ 11-2-13 to 11-2-17,~~
13 ~~inclusive.~~ The planning commission shall hold at least one public hearing on the respective
14 comprehensive plan, zoning ordinance, or subdivision ordinance. Notice of the time and place
15 of the hearings shall be given once at least ten days in advance by publication in a legal
16 newspaper of the county. Following the public hearing, the planning commission shall submit its
17 recommendation to the board.

18 Section 11. That § 11-2-19 be amended to read as follows:

19 11-2-19. After receiving the ~~proposed comprehensive plan drafted by the planning~~
20 ~~commission, which includes proposed official controls,~~ recommendation of the planning
21 commission the board shall hold at least one public hearing on the respective comprehensive
22 plan, zoning ordinance, or subdivision ordinance. Notice of the time and place of the ~~hearing~~
23 hearings shall be given once at least ten days in advance by publication in a legal newspaper of
24 the county.

25 Section 12. That § 11-2-20 be amended to read as follows:

1 11-2-20. Based on the results of the hearing or hearings, the action upon the comprehensive
2 plan ~~or any part, adjunct, amendment or additions~~, shall be by resolution ~~or ordinance~~, as
3 ~~appropriate~~, carried by the affirmative votes of not less than a majority of all the members of the
4 board of county commissioners.

5 Based on the results of the hearing or hearings, the action upon the zoning regulations and
6 the subdivision regulations shall be by ordinance carried by the affirmative votes of not less than
7 a majority of all the members of the board.

8 Section 13. That § 11-2-21 be amended to read as follows:

9 11-2-21. The action of the board of county commissioners on the plan shall be filed with the
10 county auditor. A summary notice of fact of the adoption shall be ~~prepared by the county~~
11 ~~planning commission, reviewed by the state's attorney, and~~ published once in a legal newspaper
12 of the county and take effect on the twentieth day after its publication unless the referendum is
13 invoked. Any summary notice of fact of adoption published under the provisions of this chapter
14 shall contain a notification that the public may inspect the entire comprehensive plan ~~or any part,~~
15 ~~adjunct, amendment, or additions~~ at the office of the county auditor during regular business
16 hours.

17 If such a zoning or subdivision ordinance is adopted, the ordinance is subject to the
18 provisions of § 7-18A-5 as a comprehensive regulation unless the referendum is invoked.

19 Section 14. That § 11-2-22 be amended to read as follows:

20 11-2-22. The county comprehensive plan ~~or any adjunct thereto~~, zoning ordinance, and
21 subdivision ordinance may be referred to a vote of the qualified voters of the county pursuant
22 to §§ 7-18A-15 to 7-18A-24, inclusive. The effective date of a county the comprehensive plan
23 ~~or adjunct thereto, zoning ordinance, or subdivision ordinance~~ on which a referendum is to be
24 held shall be suspended by the filing of a referendum petition until the referendum process is
25 completed. However, ~~when~~ if a comprehensive plan ~~or adjunct thereto~~, zoning ordinance, or

1 subdivision ordinance is referred to a referendum vote, no land uses that are inconsistent with
2 the ~~county comprehensive plan or adjunct thereto~~ plan or ordinance may be established between
3 the time of adoption of the plan resolution or ordinance by the ~~county commission board~~, as
4 provided in § 11-2-20, and the time of the referendum vote.

5 Section 15. That § 11-2-22.1 be amended to read as follows:

6 11-2-22.1. If the voters ~~shall~~ reject the proposed comprehensive plan or adjunct thereto,
7 zoning ordinance, or subdivision ordinance, the board of ~~county commissioners~~ may cause the
8 planning commission to revise the plan or ~~parts thereof or adjunct thereto~~ regulations and adopt
9 the same as revised, and file and publish the same as required by § 11-2-21.

10 Section 16. That § 11-2-23 be repealed.

11 ~~11-2-23. Upon adoption of any ordinance or other official control including any maps or~~
12 ~~charts the county auditor shall file a certified copy thereof with the county register of deeds.~~

13 Section 17. That § 11-2-24 be amended to read as follows:

14 11-2-24. If a board of ~~county commissioners~~ has adopted the comprehensive plan or any part
15 thereof, no street, road, park, or other public way, ground, place, space, public building or
16 structure, public utility, whether publicly or privately owned, if covered by the comprehensive
17 plan or any adopted part thereof or adjunct thereto, may be constructed or authorized in the
18 county or within its subdivision jurisdiction, until the location and extent thereof has been
19 submitted to and approved by the planning commission. In case of disapproval, the commission
20 shall communicate its reasons to the board. By majority vote of the board members elect, a board
21 may overrule the disapproval.

22 Section 18. That § 11-2-25.1 be repealed.

23 ~~11-2-25.1. The board of county commissioners may appoint the planning and zoning~~
24 ~~commission to serve as a board of adjustment. The board of adjustment may, in specific cases~~
25 ~~to avoid unwarranted hardship which constitutes an unreasonable deprivation of use as~~

1 ~~distinguished from the mere grant of a privilege, make upon an affirmative vote of two-thirds of~~
2 ~~the full membership of the board of adjustment, special exceptions, or grant variances to the~~
3 ~~terms of the regulations or controls, subject to appropriate conditions or safeguards being~~
4 ~~adopted by the board of county commissioners.~~

5 Section 19. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Except as otherwise provided by section 30 of this Act, the board shall provide for the
8 appointment of a board of adjustment, or for the planing and zoning commission to act as a
9 board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of
10 this chapter, shall provide that the board of adjustment may, in appropriate cases and subject to
11 appropriate conditions and safeguards, grant variances to the terms of the ordinance ~~with general~~
12 ~~or specific rules therein contained.~~

13 Section 20. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 A board of adjustment, other than the planing and zoning commission acting as a board of
16 adjustment, consists of five members, each to be appointed for a term of three years and
17 removable for cause by the appointing authority upon written charges and after public hearing.
18 Vacancies shall be filed for the unexpired term of any member whose term becomes vacant. The
19 appointing authority may also appoint a first alternate and a second alternate for a term of three
20 years each. If a member is unable to attend a meeting, the first alternate, or second alternate, in
21 turn, shall serve in the member's place.

22 Section 21. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 Meetings of the board of adjustment are held at the call of the chair and at such other times
25 as the board of adjustment determines. The chair or, in the chair's absence, the acting chair may

1 administer oaths and compel the attendance of witnesses. All meetings of the board of adjustment
2 are open to the public.

3 Section 22. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 The board of adjustment shall keep minutes of its proceedings, showing the vote of each
6 member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep
7 records of its examinations and other official actions, all of which shall be immediately filed in
8 the office of the board of adjustment and are public records. However, the board of adjustment
9 may destroy any record that the records destruction board, acting pursuant to § 1-27-19,
10 declares to have no further administrative, legal, fiscal, research, or historic value.

11 Section 23. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 The board of adjustment may:

- 14 (1) Hear and decide appeals if it is alleged there is error in any order, requirement,
15 decision, or determination made by an administrative official in the enforcement of this
16 chapter or of any ordinance adopted pursuant to this chapter; and
- 17 (2) Authorize upon appeal in specific cases such variance from terms of the ordinance as
18 will not be contrary to the public interest, if, owing to special conditions, a literal
19 enforcement of the provisions of the ordinance will result in unnecessary hardship and
20 so that the spirit of the ordinance is observed and substantial justice done.

21 Section 24. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 The board of adjustment shall adopt rules in accordance with the provisions of any ordinance
24 adopted pursuant to this chapter.

25 Section 25. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Appeals to the board of adjustment may be taken by any person aggrieved or by any officer,
3 department, board, or bureau of the county affected by any decision of the administrative officer.
4 The appeal shall be taken within a reasonable time, as provided by the rules of the board of
5 adjustment, by filing with the officer from whom the appeal is taken and with the board of
6 adjustment a notice of appeal specifying the grounds of the appeal. The officer from whom the
7 appeal is taken shall transmit to the board of adjustment all the papers constituting the record
8 upon which the action appealed from was taken.

9 Section 26. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 An appeal to the board of adjustment stays all proceedings in the action appealed from,
12 unless the officer from whom the appeal is taken files a certificate that by reason of facts stated
13 in the certificate a stay would in the officer's opinion cause imminent peril to life or property. In
14 such case proceedings may not be stayed other than by a restraining order which may be granted
15 by the board of adjustment or by a court of record, on application, on notice to the officer from
16 whom the appeal is taken and on due cause shown.

17 Section 27. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 The board of adjustment shall hold at least one public hearing of the appeal. Notice of the
20 time and place shall be given at least ten days in advance by publication in a legal newspaper of
21 the county, and due notice shall be given to the parties in interest. The board of adjustment shall
22 decide the appeal within a reasonable time. Any party may appear at the hearing in person or by
23 agent or by attorney.

24 Section 28. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
25 follows:

1 In exercising the powers mentioned in section 23 of this Act, the board of adjustment may,
2 in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may
3 modify the order, requirement, decision, or determination appealed from and may make such
4 order, requirement, decision, or determination as ought to be made, and to that end has all the
5 powers of the officer from whom the appeal is taken.

6 Section 29. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The concurring vote of two-thirds of the members of the board of adjustment is necessary
9 to reverse any order, requirement, decision, or determination of any such administrative official,
10 or to decide in favor of the applicant on any matter upon which it is required to pass under any
11 such ordinance, or to effect any variation in the ordinance.

12 Section 30. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 In lieu of appointing the board of adjustment provided by section 19 of this Act, the board
15 of county commissioners having adopted and in effect a zoning ordinance may act as and
16 perform all the duties and exercise the powers of the board of adjustment. The chair of the board
17 of county commissioners is chair of the board of adjustment as so composed. The concurring
18 vote of at least two-thirds of the members of the board as so composed is necessary to reverse
19 any order, requirement, decision, or determination of any administrative official, or to decide in
20 favor of the appellant on any matter upon which it is required to pass under any zoning
21 ordinance, or to effect any variation in the ordinance.

22 Section 31. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 Any person or persons, jointly or severally, aggrieved by any decision of the board of
25 adjustment, or any taxpayer, or any officer, department, board, or bureau of the county, may

1 present to a court of record a petition duly verified, setting forth that the decision is illegal, in
2 whole or in part, specifying the grounds of the illegality. The petition shall be presented to the
3 court within thirty days after the filing of the decision in the office of the board of adjustment.

4 Section 32. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Upon the presentation of the petition, the court may allow a writ of certiorari directed to the
7 board of adjustment to review the decision of the board of adjustment and shall prescribe the
8 time within which a return must be made and served upon the relator's attorney, which may not
9 be less than ten days and may be extended by the court. The allowance of the writ does not stay
10 proceedings upon the decision appealed from, but the court may, on application, on notice to the
11 board of adjustment and on due cause shown, grant a restraining order.

12 Section 33. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 The board of adjustment is not required to return the original papers acted upon by it, but
15 it is sufficient to return certified copies of the papers, or of such portions of the papers as may
16 be called for by the writ. The return shall concisely set forth such other facts pertinent and
17 material to show the grounds of the decision appealed from and shall be verified.

18 Section 34. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 If upon the hearing it appears to the court that testimony is necessary for the proper
21 disposition of the matter, the court may take evidence, or appoint a referee to take such evidence
22 as it may direct and report the evidence to the court with the referee's findings of fact and
23 conclusions of law, which constitute a part of the proceedings upon which the determination of
24 the court is made.

25 Section 35. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 The court may reverse or affirm, wholly or partly, or may modify the decision brought up for
3 review.

4 Costs are not allowed against the board of adjustment unless the court determines that the
5 board of adjustment acted with gross negligence, or in bad faith, or with malice in making the
6 decision appealed from.

7 Section 36. That § 11-2-26 be amended to read as follows:

8 11-2-26. ~~The~~ Any lawful use, lot, or occupancy of land or premises existing at the time of
9 the adoption of ~~an official control hereunder~~ the zoning ordinance may be continued, ~~although~~
10 ~~such even though the use, lot, or occupation does not conform to the provisions thereof, but if~~
11 ~~such of the ordinance. However, if the nonconforming use, lot, or occupancy is discontinued for~~
12 ~~a period of more than one year, any subsequent use, lot, or occupancy of the land or premises~~
13 ~~shall be in conformance with the official controls~~ conform with the zoning ordinance.

14 Section 37. That § 11-2-27 be amended to read as follows:

15 11-2-27. The board may by resolution as provided in § 11-2-25 prescribe such regulations
16 not contrary to law or § 11-2-26, as it deems desirable or necessary to regulate and control, or
17 reduce the number or extent of or bring about the gradual elimination of nonconforming uses ~~and~~
18 ~~, lots, or occupancies. Provided, however, that~~ However, in accordance with the provisions of
19 § 11-2-26, ~~the~~ any lawful use, lot, or occupancy of land or premises existing at the time of the
20 adoption of ~~an official control~~ the zoning ordinance may be continued, ~~although such use even~~
21 ~~though the use, lot, or occupancy does not conform to the provisions of such official control~~ the
22 zoning ordinance. ~~If such use~~ the use, lot, or occupancy is discontinued for more than one year,
23 the board may adopt, after notice by registered or certified mail to the property owners, an
24 amortization schedule to bring about the gradual elimination of ~~such the~~ nonconforming use, lot,
25 or occupancy.

Section 38. That § 11-2-28 be amended to read as follows:

11-2-28. ~~Regulations, restrictions, and boundaries, or enforcement provisions established in the comprehensive plan or adjuncts thereto adopted by the board of county commissioners~~ The plan, ordinances, restrictions, and boundaries adopted pursuant to this chapter may from time to time be amended, supplemented, changed, modified, or repealed by action of the board of county commissioners as outlined in this chapter. Such. Any such modification or repeal shall be proposed in a resolution or ordinance, as appropriate, presented to the board for adoption in the same manner and upon the same notice as required for the adoption of the original resolution or ordinance. The amendment, supplement, change, modification, or repeal may be requested through a petition by thirty percent of the landowners in the zoning district or districts requesting change.

Section 39. That § 11-2-28.1 be amended to read as follows:

11-2-28.1. An individual landowner may ~~also~~ petition the board to change the zoning of all or any part of the landowner's property. ~~Such~~ The petitioning landowner shall ~~also~~ notify all other abutting landowners by registered or certified mail of the petitioned zoning change at least seven days ~~prior to any~~ before the public hearing held ~~thereon~~ on the matter by the ~~board of county commissioners~~ planning commission. Property ~~shall be~~ is considered as abutting even though it may be separated from the property of the petitioner by a public road or highway.

Section 40. That § 11-2-29 be amended to read as follows:

11-2-29. ~~Upon such filing or upon separate request by the board, the~~ The planning commission shall hold at least one public hearing on any proposed change or modification to the plan or ordinances. Notice of the time and place of the hearing shall be given once at least ten days in advance by publication in a legal newspaper of the county. At ~~such~~ the public hearing, any person may appear and request or protest the requested change.

Section 41. That § 11-2-30 be amended to read as follows:

1 11-2-30. ~~The board of county commissioners shall thereafter~~ After the hearing, the board
2 shall by resolution or ordinance, as appropriate, either adopt or reject ~~such the~~ amendment,
3 supplement, change, modification, or repeal, ~~and if it is adopted by the board of county~~
4 ~~commissioners, a summary shall be prepared by the county planning commission, reviewed by~~
5 ~~the state's attorney, and published. If adopted, the board shall publish a notice of the fact of~~
6 adoption once in a legal newspaper of such county and take effect on the twentieth day after its
7 publication. The provisions of § 11-2-22 are applicable to this section.

8 Section 42. That § 11-2-31 be amended to read as follows:

9 11-2-31. The governing body of any municipality may request a county planning commission
10 to submit to ~~such the municipal~~ governing body a comprehensive plan for the municipality setting
11 forth such provisions as the county planning commission deems applicable to the municipality
12 for its best interests, or to prepare ~~official controls~~ zoning or subdivision ordinances to apply to
13 the area within the municipality. Notwithstanding the adoption of the comprehensive plan and
14 recommendations for the municipality, the plan and recommendations ~~shall not become~~ are not
15 binding until ~~official controls~~ zoning or subdivision ordinances are adopted by the municipality
16 in accordance with the plan.

17 Section 43. That § 11-2-36 be repealed.

18 ~~— 11-2-36. Any board of county commissioners may adopt zoning ordinances, resolutions or~~
19 ~~regulations designating or limiting the location, height, bulk, number of stories, size of, and the~~
20 ~~specific uses for which dwellings, buildings and structures may thereafter be erected or altered;~~
21 ~~the minimum and maximum size of yards, or other open spaces; sanitary, safety and protective~~
22 ~~measures that shall be required for such dwellings, buildings and structures; the area required to~~
23 ~~provide for off-street loading and parking facilities; flood plain areas; and to avoid too great a~~
24 ~~concentration or scattering of the population. All such provisions shall be uniform for each class~~
25 ~~of land or building throughout any district, but the provisions in one district may differ from~~

1 ~~those in other districts.~~

2 Section 44. That § 11-2-37 be amended to read as follows:

3 11-2-37. ~~Whenever~~ If an area within a county and not within a municipality ~~shall become~~
4 becomes so situated that a zoning ~~district becomes~~ ordinance is advisable, persons within the
5 area may apply to the board ~~of county commissioners~~ to establish the area as a special zoning
6 ~~district area~~ pursuant to this chapter. The board ~~of county commissioners shall~~ may not form
7 special zoning ~~districts areas~~ if a county wide comprehensive plan and zoning ordinances have
8 been adopted. The formation of a special zoning ~~district shall only be~~ area is only valid in a
9 county that has not adopted a county wide comprehensive plan and zoning ordinances.

10 Section 45. That § 11-2-38 be amended to read as follows:

11 11-2-38. Persons making application for the establishment of a special zoning ~~district area~~
12 shall first obtain an accurate survey and map of the territory intended to be embraced within the
13 limits of ~~such the special~~ zoning ~~district area~~, showing the boundaries and area ~~thereof, and the~~
14 ~~accuracy thereof of the proposed special zoning area. The accuracy of the survey and map shall~~
15 be verified by the affidavit of the surveyor.

16 Section 46. That § 11-2-41 be amended to read as follows:

17 11-2-41. The application for establishment of a special zoning ~~district area~~ shall be a petition
18 verified by one or more applicants, by affidavit stating that the affiant or affiants personally
19 witnessed the signatures ~~thereon~~ on the petition and believe them to be genuine, and shall be
20 subscribed by not less than one-third of the whole number of qualified voters residing within ~~such~~
21 the territory according to the census taken. ~~It~~ The petition shall be filed with the county auditor
22 and presented to the board ~~of county commissioners~~ for consideration at its next meeting.

23 Section 47. That § 11-2-42 be amended to read as follows:

24 11-2-42. If the board ~~of county commissioners shall be~~ is satisfied that the requirements of
25 this chapter have been fully complied with, it shall make an order declaring that ~~such the~~ territory

1 shall, with the assent of the qualified voters thereof as provided in § 11-2-39, be a special zoning
2 ~~district area~~ or number specified in the application. ~~It shall also include in such~~ The board shall
3 include in the order a notice for an election of the qualified voters resident in the proposed
4 special zoning ~~district area~~, at a convenient place or places therein, on some day within one
5 month ~~therefrom from the notice~~, to determine whether ~~such the~~ territory shall become a special
6 zoning ~~district area~~.

7 Section 48. That § 11-2-43 be amended to read as follows:

8 11-2-43. The board shall give ten days' notice of ~~such the~~ election by publication and by
9 posting a copy of ~~such the~~ notice at three of the most public places in the proposed special
10 zoning ~~district area~~.

11 Section 49. That § 11-2-45 be amended to read as follows:

12 11-2-45. The board ~~of county commissioners~~ shall appoint three judges, who shall elect one
13 of their members as superintendent and who shall conduct the election. The ~~county~~
14 ~~commissioners board~~ shall provide the costs and supplies of the election.

15 Section 50. That § 11-2-46 be amended to read as follows:

16 11-2-46. The vote upon the question of establishing a special zoning ~~district area~~ shall be by
17 ballot in the form provided by § 9-13-22. If a majority of those voting vote in favor of the
18 establishment, ~~such the~~ territory ~~shall is~~ from that time ~~be deemed~~ a special zoning ~~district area~~
19 by the name and style specified in the order of the board ~~of county commissioners~~; otherwise,
20 no further proceedings ~~shall~~ may be taken thereon.

21 Section 51. That § 11-2-47 be amended to read as follows:

22 11-2-47. After the vote is cast and canvassed, ~~such the~~ judges shall make a verified statement
23 showing the whole number of ballots cast, together with the number voting for and the number
24 voting against establishment, and shall return the ~~same~~ statement to the board ~~of county~~
25 ~~commissioners~~ at its next session. If satisfied with the legality of ~~such the~~ election, the board of

1 ~~county commissioners shall make an order declaring that such zoning district~~ the special zoning
2 area has been incorporated by the name or number adopted. ~~Such order shall be~~ The order's
3 conclusive of the fact of ~~such~~ establishment.

4 Section 52. That § 11-2-48 be amended to read as follows:

5 11-2-48. The board ~~of county commissioners is authorized to~~ may expend funds of the
6 county, in the manner and to the extent permitted by law for other county expenditures, in the
7 payment of necessary costs of preparation of petitions, surveys, maps, and applications submitted
8 under the provisions of this chapter, and of the holding of elections on the establishment of
9 special zoning districts hereunder areas under the provisions of this chapter.

10 Section 53. That § 11-4-1 be amended to read as follows:

11 11-4-1. For the purpose of promoting health, safety, ~~morals,~~ or the general welfare of the
12 community the governing body of any municipality ~~is hereby empowered to~~ may regulate and
13 restrict the height, number of stories, and size of buildings and other structures, the percentage
14 of lot that may be occupied, the size of the yards, courts, and other open spaces, the density of
15 population, and the location and use of buildings, structures, and land for trade, industry,
16 residence, flood plain, or other purposes.

17 Section 54. That § 11-4-3.1 be amended to read as follows:

18 11-4-3.1. If a municipality is conducting or in good faith intends to conduct studies within
19 a reasonable time or has held or is holding a hearing for the purpose of considering a
20 comprehensive plan ~~or official controls~~, the city council in order to protect the public health,
21 safety, and general welfare may adopt as an emergency ~~measure~~ measures a temporary ~~zoning~~
22 ~~map, a temporary zoning ordinance and map, and other a temporary official controls subdivision~~
23 ordinance, the ~~purpose~~ purposes of which ~~shall be~~ are to classify and regulate uses and related
24 matters as constitutes the emergency. Before adoption or renewal of ~~such~~ the emergency
25 measure, the council shall hold at least one public hearing. Notice of the time and place of the

1 hearing shall be given once at least ten days in advance by publication in a legal newspaper of the
2 municipality. Any emergency ordinance is limited to one year from the date it becomes effective
3 and may be renewed for one year. In no case may ~~such the~~ ordinance be in effect for more than
4 two years.

5 Section 55. That § 11-4-4 be amended to read as follows:

6 11-4-4. The governing body may adopt ~~the necessary regulations for preparing a preliminary~~
7 ~~survey and plan designating the proposed restrictions and district boundaries. The proposed~~
8 ~~district and restrictions shall be definitely set forth in a proposed ordinance. The ordinance shall~~
9 ~~be adopted as other ordinances~~ a zoning ordinance. Before adoption or renewal of ~~such the~~
10 ordinance, the council shall hold at least one public hearing. Notice of the time and place of the
11 hearing shall be given once at least ten days in advance by publication in a legal newspaper of the
12 municipality. Any interested person shall be given a full, fair, and complete opportunity to be
13 heard at the hearing, and the governing body may refuse or adopt the ordinance, with or without
14 amendment.

15 Section 56. That § 11-4-5 be amended to read as follows:

16 11-4-5. If ~~such an~~ a zoning ordinance is adopted, the ordinance is subject to the provisions
17 of § 9-19-7 as a comprehensive regulation unless the referendum is invoked, or unless a written
18 protest is filed with the auditor or clerk, signed by at least forty percent of the owners of equity
19 in the lots included in any proposed district and the lands within two hundred fifty feet from any
20 part of ~~such the~~ proposed district. A corporation ~~shall be~~ is construed to be a sole owner, and
21 if parcels of land are in the name of more than one person, ownership representation ~~shall be~~ is
22 in proportion to the number of signers who join in the petition in relation to the number of
23 owners. If a protest is filed, the ordinance does not become effective unless the ordinance is
24 approved by two-thirds of the governing body of the municipality. The protest provisions of this
25 section do not apply to any ordinance regulating or establishing flood plain areas.

Section 57. That § 11-4-8 be amended to read as follows:

11-4-8. Regulations, restrictions, and boundaries adopted pursuant to this chapter may be amended, supplemented, changed, modified, or repealed. Any such modification or repeal shall be proposed in an ordinance presented to the governing body for adoption in the same manner and upon the same notice as required for the adoption of the original ordinance. However, amendments or additions to a planning subdivision or zoning ordinance may be published without republishing the full ordinance if the section or subsection of the ordinance containing the change is published in its entirety.

Section 58. That § 11-4-9 be amended to read as follows:

11-4-9. The governing body may by ordinance require as a condition precedent to the introduction of any ordinance proposing changes in the zoning ordinance that there be first filed with the city auditor, finance officer, or clerk the written consent of the owners of not exceeding sixty percent of the aggregate area having the right of protest against such proposed ordinance if adopted, determined as provided by § 11-4-5.

Section 59. That § 11-4-12 be amended to read as follows:

11-4-12. The planning and zoning commission, when appointed, shall ~~make a preliminary report, and~~ hold public hearings, subject to the same notice requirements as provided in § 11-4-4, ~~thereon~~ before submitting its final report recommendation, and the governing body ~~shall~~ may not hold its public hearings or take action until it has received the final report recommendation of ~~such~~ the commission.

Section 60. That § 11-4-13 be amended to read as follows:

11-4-13. Except as otherwise provided by § 11-4-24, the governing body shall provide for the appointment of a board of adjustment, or for the planning and zoning commission to act as a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this chapter, shall provide that the ~~said~~ board of adjustment may, in appropriate cases and

subject to appropriate conditions and safeguards, ~~make special exceptions or grant variances to~~
the terms of the ordinance ~~with general or specific rules therein contained.~~

Section 61. That § 11-4-14 be amended to read as follows:

11-4-14. A board of adjustment, other than the planning and zoning commission acting as
a board of adjustment, ~~shall consist~~ consists of five members, each to be appointed for a term of
three years and removable for cause by the appointing authority upon written charges and after
public hearing. Vacancies shall be filled for the unexpired term of any member whose term
becomes vacant. The appointing authority ~~shall~~ may also appoint a first alternate and a second
alternate for a term of three years each. If a member is unable to attend a meeting, the first
alternate, or second alternate, in turn, shall serve in ~~his~~ the member's place.

Section 62. That § 11-4-17 be amended to read as follows:

11-4-17. The board of adjustment ~~shall have the following powers~~ may:

(1) ~~To hear~~ Hear and decide appeals where it is alleged there is error in any order,
requirement, decision, or determination made by an administrative official in the
enforcement of this chapter or of any ordinance adopted pursuant ~~thereto~~ to this
chapter;

(2) ~~To hear and decide special exceptions to the terms of the ordinance upon which such~~
~~board is required to pass under such ordinance;~~

~~(3) To authorize~~ Authorize upon appeal in specific cases such variance from terms of the
ordinance ~~as will not be~~ contrary to the public interest, ~~where if~~ if, owing to special
conditions, a literal enforcement of the provisions of the ordinance will result in
unnecessary hardship and so that the spirit of the ordinance ~~shall be~~ is observed and
substantial justice done.

Section 63. That § 11-6-1 be amended to read as follows:

11-6-1. Terms used in this chapter, ~~unless the context otherwise plainly requires,~~ shall mean:

- 1 (1) "Commission," "planning and zoning commission," or "planning commission," any city
2 planning and zoning commission created under the terms of this chapter;
- 3 (2) "Comprehensive plan," a any document which describes in words, and may illustrate
4 by maps, plats, charts, and other descriptive matter, the ~~policy, goals~~ goals, policies,
5 and objectives of the municipality to interrelate all functional and natural systems and
6 activities relating to the development of the territory under its jurisdiction;
- 7 (3) "Council," the chief legislative body or governing body of the municipality;
- 8 (4) "Mayor," the chief executive of the municipality, whether the official designation of
9 such official be mayor, city manager, or otherwise;
- 10 (5) ~~The term "municipal" or "municipalities," "city" or "cities," includes and relates to all~~
11 ~~incorporated cities and towns~~ "Municipality" or "city," any incorporated city or town;
- 12 (6) ~~"Official controls," any regulation, standard, map, or procedure adopted by the~~
13 ~~municipality to regulate the development of the territory so as to carry out the~~
14 ~~comprehensive plan;~~
- 15 (7) ~~The term "street" or "streets," relates to and includes all streets, avenues, boulevards,~~
16 ~~roads, lanes, alleys or other ways~~ "Street," any street, avenue, boulevard, road, lane,
17 alley, or other roadway;
- 18 (8) "Subdivision," the division of any tract or parcel of land into two or more lots, sites,
19 or other division for the purpose, whether immediate or future, of sale or building
20 development and includes resubdivision. This definition ~~shall~~ does not apply to the
21 conveyance of a portion of any previously platted tract, parcel, lot, or site; ~~provided,~~
22 ~~however, that such~~ if the conveyance does not cause the tract, parcel, lot, or site from
23 which the portion is severed to be in violation of any existing zoning ordinance or
24 subdivision regulation applying to such tract, parcel, lot, or site;
- 25 (9) "Subdivision ordinance," ~~the~~ any ordinance adopted by the municipality to regulate

the subdivision of land so as to provide: coordination of streets with other subdivisions and the major street plan, adequate areas set aside for public uses, water and sanitation facilities, drainage and flood control, and conformity with the comprehensive plan;

(9A) "Temporary zoning or subdivision ordinance," an ordinance adopted as an emergency measure for a limited duration;

(10) "Zoning map," ~~the~~ any map adopted as an ordinance by the municipality that delineates the extent of each district or zone established in the zoning ordinance;

(11) "Zoning ordinance," ~~the~~ any ordinance adopted by the municipality to ~~regulate by districts or zones the location, height, bulk and size of buildings and other structures and accessory uses, percentage of lot which may be occupied, the size of lots, courts, and other open spaces, the density and distribution of population, the location and use of buildings, and structures for trade, advertising uses, industry, residence, recreation, public activities, or other purposes, and, the uses of land for trade, industry, recreation, or other purposes~~ implement the comprehensive plan by regulating the location and use of buildings and uses of land.

Section 64. That § 11-6-4.1 be amended to read as follows:

11-6-4.1. For the purpose of carrying out any of the provisions of §§ 11-6-26 to 11-6-38, inclusive, the city council may temporarily add as a member of the city planning and zoning commission a resident of the area to be affected by proposed ~~official~~ municipal ~~controls~~ zoning and subdivision ordinances outside the corporate limits of the municipality.

Section 65. That § 11-6-26 be amended to read as follows:

~~11-6-26. From and after the time when~~ After the city council of any municipality ~~shall have~~ has adopted a comprehensive plan ~~which that~~ includes at least a major street plan or ~~shall have~~ has progressed in its comprehensive planning to the stage of making and ~~adoption of~~ adopting

1 a major street plan, and ~~shall have~~ has filed a certified copy of ~~such the~~ major street plan in the
2 office of the register of deeds of the county in which the municipality is located, no plat of a
3 subdivision of land lying within the municipality, or of land within three miles of its corporate
4 limits and not located in any other municipality, ~~shall~~ may be filed or recorded ~~until it shall have~~
5 ~~been submitted to and a report and recommendations thereon made by the planning and zoning~~
6 ~~commission to the city council and the council has approved the plat~~ unless the plat has the
7 recommendation of the city planning and zoning commission and the approval of the city council.
8 As an alternative, the plat may be reviewed and approved in accordance with § 11-3-6. This
9 provision ~~shall be applicable~~ applies to land within three miles of the corporate limits of the
10 municipality and not located in any other municipality only if the comprehensive plan or major
11 street plan includes such land. However, ~~in the case of~~ if such extra municipal land ~~lying~~ lies
12 within three miles of more than one first or second class municipality, the jurisdiction of each
13 municipality ~~shall terminate~~ terminates at a boundary line equidistant from the respective
14 corporate limits of ~~such the~~ municipalities, unless otherwise agreed to by a majority vote of the
15 governing body of each such municipality. ~~Such~~ The plats shall, after report and
16 recommendations of the commission are made and filed, be approved or disapproved by the city
17 council or reviewed and approved in accordance with § 11-3-6. The commission shall make its
18 recommendation to the council within sixty days of submission.

19 Section 66. That § 11-6-26.1 be amended to read as follows:

20 11-6-26.1. In the case of land over which there is joint municipal-county zoning jurisdiction,
21 ~~such plats shall~~ the plats may not be filed or recorded until ~~also having~~ the plats have also been
22 submitted to the county planning and zoning commission for review and recommendation to the
23 city council. The county planning and zoning commission shall make its recommendation to the
24 city council within forty-five days of submission. If the county planning and zoning commission
25 recommends disapproval of any such plats, a two-thirds vote of the entire membership of the city

1 council ~~shall be~~ is required to approve ~~any such plats~~ the plats. The board of county
2 commissioners may by resolution designate an administrative official of the county to review and
3 make a recommendation to the city council in lieu of the review and recommendation by the
4 county planning commission.

5 Section 67. That § 11-6-39 be amended to read as follows:

6 11-6-39. ~~The city council may prescribe such regulations not contrary to law as it deems~~
7 ~~necessary to regulate and control nonconforming uses existing at the time of adoption of an~~
8 ~~official control hereunder or under chapter 11-4, and to reduce the number or extent of~~
9 ~~nonconforming uses and occupancies. Provided however, that the~~ The lawful use of land or
10 premises existing at the time of the adoption of ~~an official control~~ the zoning ordinance may be
11 continued, ~~although such use~~ even though the use, lot, or occupancy does not conform to the
12 provisions of ~~such official control~~ the zoning ordinance. If ~~such~~ the nonconforming use is
13 discontinued for a period of more than one year, ~~the city council may adopt, after notice by~~
14 ~~registered or certified mail to the property owners, an amortization schedule to bring about the~~
15 ~~gradual elimination of such nonconforming use~~ any subsequent use, lot, or occupancy of the land
16 or premises shall be in conformance with such regulation.

1 **BILL HISTORY**

2 1/18/00 First read in House and referred to committee assignment waived. H.J. 113

3 1/19/00 Referred to Local Government.

4 1/23/00 Scheduled for Committee hearing on this date.

5 1/25/00 Scheduled for Committee hearing on this date.

6 1/27/00 Scheduled for Committee hearing on this date.

7 1/27/00 Local Government Do Pass, Passed, AYES 13, NAYS 0. H.J. 265

8 1/28/00 House of Representatives Deferred to another day. H.J. 288

9 1/31/00 House of Representatives Deferred to another day. H.J. 318

10 2/1/00 House of Representatives Deferred to another day. H.J. 345

11 2/2/00 Motion to Amend, Passed. H.J. 369

12 2/2/00 House of Representatives Do Pass Amended, Passed, AYES 47, NAYS 21. H.J. 369