

**The Standards, or Tests, for Special Uses & Planned Developments, and the
Adopted Plans they Reference, Are Mandatory,
As Are Findings of Fact**

The Evanston Zoning Ordinance begins with this clear precept: “these provisions **shall be** held to be the minimum requirements for the promotion of public health, safety, comfort, morals, convenience, and general welfare.” (emphasis added here and throughout) Sec. 6-2-1, p 3.

To prevent any possible misunderstanding about whether this interpretation (or “legal construction”), as well as other instructions throughout the ordinance, are mandatory, the ordinance proceeds immediately in the following paragraph (B), to specify: “The words ‘**shall,**’ ‘**must,**’ and ‘**will,**’ as used in these provisions, **are mandatory** and indicate an obligation to comply with the particular provisions to which they apply.” (To make the contrast sharp and clear, the next paragraph [C] states: “The word ‘may’ as used in these provisions is permissive.”)

Throughout the requirements for special uses and planned developments, findings of fact are mandated, and the ordinance uniformly specifies, again and again, that the expressed standards or tests “**shall**” be satisfied before special uses and planned developments may be recommended or adopted. Never is the word “may” applied to the standards or tests, or the findings of fact, which are therefore mandatory.

For special uses, the ordinance specifies directly that “the determination of special uses as appropriate **shall** be contingent upon their meeting a set of specific standards and weighing, in each case, of the public need and benefit against the local impact. . . .” Sec. 6-3-5-1, p 17.

The next section, 6-3-5-2, p17, begins” Special uses **shall** consist of the following categories of uses” Planned developments are one of the listed special uses.

The ordinance then proceeds to mandate “STANDARDS FOR SPECIAL USES: The Zoning Board of Appeals or the Plan Commission, as the case may be, **shall only** recommend approval, approval with conditions, or disapproval of a special use based upon **written findings of fact** with regard to **each** of the standards set forth below **and**, where applicable, any **special standards for specific uses** set forth in the provisions of a specific zoning district. . . .” Sec.6-3-5-10, p 19.

“The City Council,” in Sec. 6-3-6-2, p 24, has the authority to (but is not required) “**in**

accordance with the procedures and standards set forth in Section 6-3-5 and this Section 6-3-6, and **other standards and regulations** applicable to the district in which the subject property is located, approve by ordinance, planned developments for uses as listed within each zoning district.”

Then throughout the various zoning districts, satisfying the special use and planned development standards is made mandatory. For instance, for all residential districts, 6-8-1-10, p 106, states: “In addition to the general requirements for planned developments set forth in Section 6-3-6, ‘Planned Developments,’ the Plan Commission **shall not** recommend approval of, **nor shall** the City Council adopt a planned development in the residential districts **unless** they shall determine, based on **written findings of fact, that** the planned development **adheres to the standards** set forth herein.” The ordinance then lists a series of standards that must be satisfied for a planned development to be valid, such as “(A) 1. Each planned development **shall** be compatible with surrounding development and not be of such a nature in height, bulk, or scale as to exercise any influence contrary to the purpose and intent of the Zoning Ordinance as set forth in Section 6-1-2, ‘Purpose and intent.’ ” Thereafter in the same section, the ordinance specifies “**shall**” **thirteen (13) times** in regard to at least twenty-six standards or tests.

The equivalent requirement is mandated for every district in which planned developments are allowed.

One of the most precisely and frequently mandated standard is that special uses and planned developments “**shall be compatible with and implement the adopted Comprehensive General Plan, as amended, any adopted land use or urban design plan specific to the the area, this Zoning Ordinance, and any other pertinent City planning and development policies, particularly . . .**” 6-8-1-10 (A)(2), p107. This requirement is expressly provided for planned developments in all the following districts: Residential (6), Business (3), Commercial (3); Downtown (4); Transitional Manufacturing (2); Industrial (3); and the Special Purpose & Overlay districts (14).

But even as you read this, a fundamental misconception about this law, an “urban myth,” if you please, that it is just a suggestion or guideline, is insidiously polluting the thinking of otherwise informed people who would normally be immune to such lapses. This lapse, or failing, if not corrected, could hijack governmental policy. This falsehood could allow politics instead of sound policy to favor current and transitory political notions--to supplant carefully considered long term policies--or to favor and advance powerful moneyed interests which are accustomed to having their way. Yet could some versions of this fiction be infecting thought now, right here in Evanston? Who would think such sloppy, careless but damaging misconceptions could gain a foothold in Evanston, with so many highly educated, civically active residents?

The Evanston Zoning Ordinance, one of the first adopted in Illinois, in 1921, was initially challenged as creating too great a constraint on property rights. Eventually the courts accepted the zoning ordinance, along with other similarly careful, comprehensive land use regulations, as a valuable, enforceable and necessary plan to regulate urban land use. That was because of certain bedrock principles that the Evanston ordinance has honored from the beginning. First and foremost was that the plan had to be comprehensive, rational and enforced impartially against all property owners. This was necessary to insure that it cannot be merely a way to insinuate capricious and arbitrary local or provincial politics over the exercise of private property rights. Evanston officials, residents and taxpayers have made an enormous investment of time, effort and resources to defend this principle, including having defended the zoning ordinance all the way to the U.S. Supreme Court, to have zoning upheld.

City Manager Julia A. Carroll expressed this bedrock concept clearly in the Winter 2005 issue of *City of Evanston Highlights* (p 4): “Without the clear direction provided by a cohesive strategy and a long-term vision, City elected officials are forced to make policy decisions on an issue-by-issue basis, and staff will be forced to deal with matters without long-term policy guidance.”

So if you still have even the dimmest, fleeting impulse that zoning provisions that require conformance with adopted plans are just suggestions or guidelines, please ask yourself whether a law that provides that your home may be entered in order to find violations, and that a search warrant may be obtained if you refuse entry, sounds like a mere guideline or suggestion? What about one with a penalty of up to \$500 per day for each violation? (6-3-10-5 of the Evanston Code) And what if the law was deemed so important that Evanston officials and taxpayers took it all the way to the U.S. Supreme Court, where it was upheld?

--JY 3/25/06