

# Community Development Department

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## MEMO

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To: City Council  
From: Brian McCuiston, Zoning Administrator *BM*  
Date: July 14, 2016  
RE: Overlay Zones

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I have been asked to provide some information regarding overlay zones in general and a summary of those we currently have within our Land Use Development Code. After explaining the eight different overlay zones, I will provide a summary of the Dimple Dell Overlay Zone that has been discussed over the last couple of months.

Enclosed is an article from the Planning Law Primer, Making Use of Overlay Zones (2001). This article explains what an overlay zone is, use of overlay zones, authority for establishing overlay zones, and basic contents of an overlay zone. Also enclosed is a publication from the Center for Land Use Education, Planning Implementation Tools - Overlay Zoning (2005). This describes the common uses for overlay zones, the implementation and administration, and then a report card for this type of zoning.

Following is a list of the overlay zones that we currently administer in Sandy City.

**1. Historic Sandy Development Overlay Zone.** The Historic Sandy Development (HSD) Overlay Zone is established to be used in appropriate locations within Historic Sandy in conjunction with the underlying R-1-7.5(HS) or other residential zones to provide subdivision design incorporating traditional neighborhood standards. The Historic Sandy Development (HSD) Zone represents a departure from typical zoning to the extent that it requires physical design that promotes human scale pedestrian activity (walkability) through the incorporation of specific development guidelines. These guidelines include controlling architectural elements, driveways, walkways, landscaping, street design, and other pedestrian elements.

In 2001 we created the Traditional Neighborhood Development (TND) to use as an infill tool. We have a number of projects that have used this overlay zone in Historic Sandy and other areas of the City. In February of this year, we amended the TND to create the Historic Sandy Development.

**2. Residential Conservation Overlay Zone.** The Residential Conservation Overlay Zone was adopted in 2008. This overlay zone provides flexibility for new subdivisions relating to lot sizes

and setbacks as well as helping existing homeowners add-on to their homes in the front yard, provided other improvements are added, such as a front porch.

This has been used three or four times for new subdivisions, and a number of times for existing dwellings.

**3. Storefront Conservation Overlay Zone.** In an effort to conserve land, encourage water conservation, and create development based upon CPTED principles, the Planning Commission may allow storefront type development in mixed use and commercial areas of the City. Irrespective of requirements in the underlying zone, the Planning Commission may reduce building setback requirements with the use of approved Urban Conservation and Suburban Conservation setbacks and sidewalk zones, based upon the following criteria:

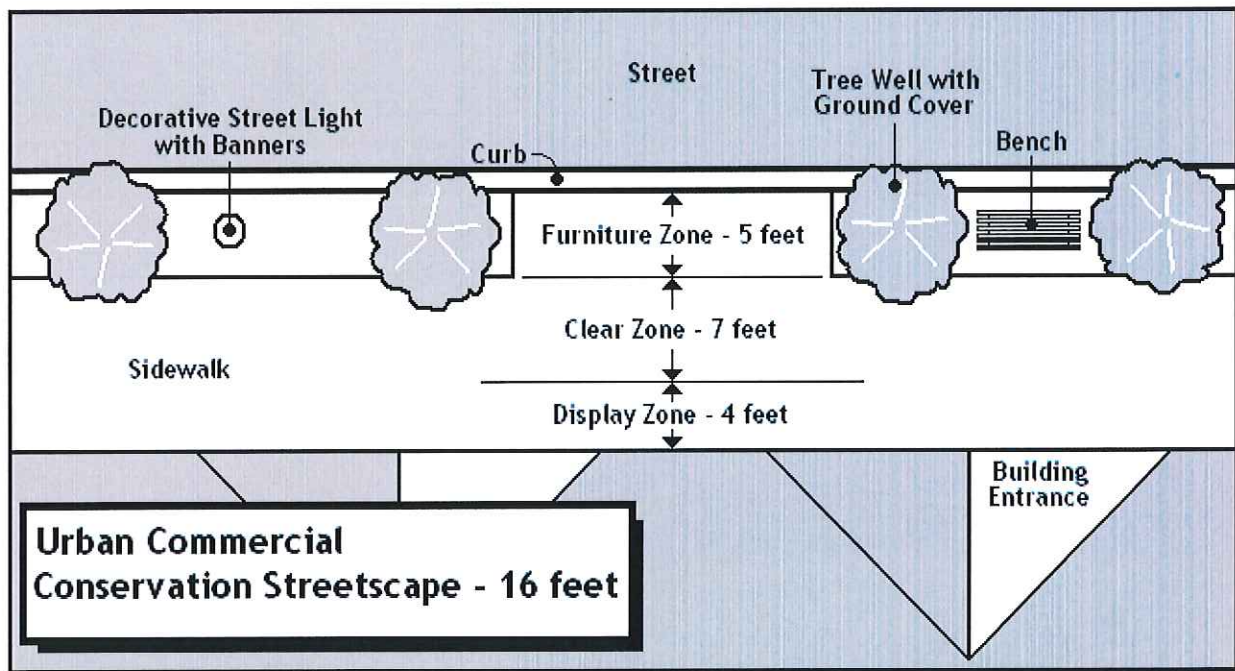
**Setback Areas.** Setback areas must comply with 12 foot, 16 foot, 20 foot, or 24 foot approved cross-sections as designed and updated by the City from time to time.

**Display Zone** (located immediately adjacent to the building).

**Clear Zone** (Walking zone for pedestrians)

**Furniture Zone** (adjacent to curb line)

Here is an example of one of the storefront cross-sections:



The use of this overlay zone has been used a number of times over the years. Some examples include the Post Office (south of City Hall), Gust Building (southeast of City Hall), Wallgreens (9400 S. 700 E), dental office building at 10800 S. 700 E., medical office building at 8680 S. 700 E., and a retail store located at 10500 South State Street.

**4. Sensitive Area Overlay Zone.** The City adopted the first Hillside Ordinance in August of 1978. This overlay zone provides standards, guidelines, and criteria having the effect of minimizing flooding, erosion, and other environmental hazards and protecting the natural scenic character of the sensitive areas and ensuring the efficient expenditure of public funds.

The Sensitive Area Overlay Zone includes areas of 30% or greater slope; flood plain, streams, lakes, ponds and wet land areas; and areas with a high potential of damage from natural hazards such as surface rupture during an earthquake, rock fall or debris flow, and other similar environmental conditions. Such areas are designated on the map entitled the Sandy City Sensitive Area Overlay Zone Map. Regulations of this overlay zone may apply to an area outside of the mapped Sensitive Area Overlay Zone if the Director determines that the environmental conditions of the subject area qualify it as a sensitive area.

**5. Flood Plain Overlay Zone.** Flood hazard areas of Sandy City are subject to periodic inundation which may result in loss of life and property, health hazards, disruptions of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

Flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and when structures are inadequately anchored, they may damage uses in other areas. Uses that are inadequately flood proofed, elevated, or otherwise protected from flood damage also contribute to flood loss.

It is the purpose of this overlay zone to promote the public health, safety, and general welfare, and to minimize public and private loss due to flood conditions to specific areas by applying additional regulations for developments in or around flood plain areas.

**6. Water Source Protection Overlay Zone.** The purpose of this Zone is to protect, preserve, and maintain existing and potential public drinking water sources in order to safeguard the public health, safety, and welfare of City residents and visitors. The intent of this zone is to establish and designate drinking water source protection zones and groundwater recharge areas for all sources of public drinking water within City boundaries and jurisdiction. This zone establishes criteria for regulating the storage, handling, use or production of hazardous or toxic substances within identified areas where groundwater is or could be affected by the potential contaminant source. This shall be accomplished by the designation and regulation of property uses and conditions that may be maintained within such zones or areas. Unless otherwise specified, the provisions of this zone apply to new development/redevelopment and/or handling, movement, and storage of potentially hazardous materials.

**7. Historic Resources Overlay Zone.** The purpose of this overlay zone is to provide regulations for those areas, districts, sites, and buildings in the Sandy area which have been designated as having significant character, interest, or value as part of the development, heritage, or cultural characteristics of Sandy City, the State of Utah, or the Nation.

This overlay zone allows the Historic Committee to recommend design guidelines (adopted by the PC and CC) for all rehabilitation, restoration, or reconstruction of, or addition to the exterior of any improvement which constitutes all or part of a historic area, historic district, landmark site or a building of historic significance. Also, for any demolition or relocation of any improvement which is all or part of a building within a historic area, historic district, landmark site or a building of historic significance or any new construction within a historic area or district, upon any landmark site or on the property associated with a building of historic significance.

This also allows for studies to be performed before any significant building is demolished within a historic area or district, or a building of historical significance.

**8. Sports and Recreation Overlay Zone.** It is the purpose of this overlay zone to provide criteria and standards for allowing a freestanding sign on a separate parcel having freeway frontage for a major recreational complex (meaning a commercially-operated facility that generates regional attendance and is predominately used for outdoor recreational purposes, including but not limited to, amusement parks, stadiums, arenas, major sports venues), which is remote from the freeway to provide identification for the complex, its activities or events and efficient means of access to the complex.

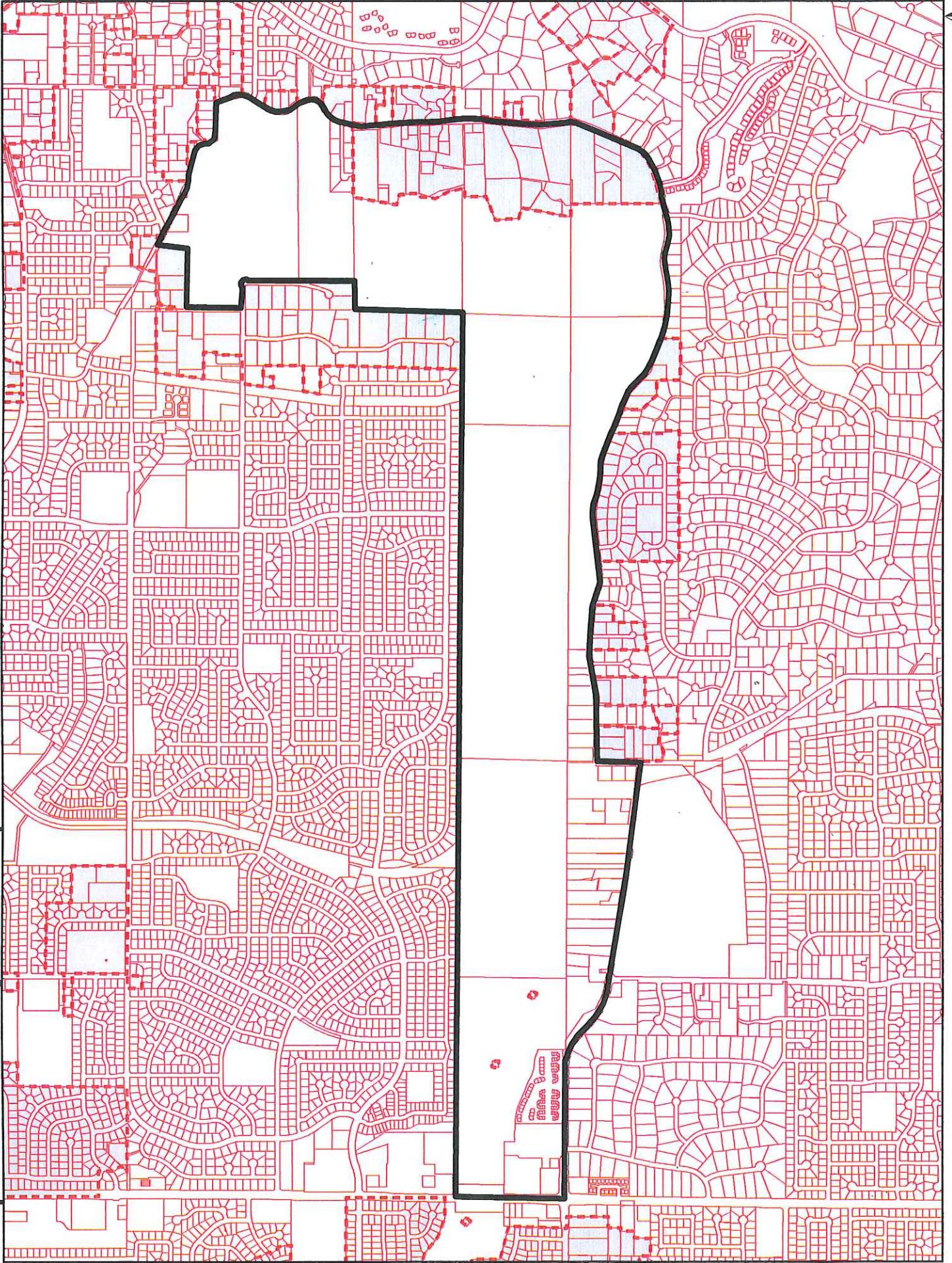
**Dimple Dell Overlay Zone.**

This overlay zone would include new development regulations for future projects along the south (east of 1300 East) and eastern portions of the Park (see attached boundary map). Majority of the properties on the eastern portion of the Park include properties that are currently in the county, but at some time in the future may annex into Sandy City.

This overlay zone would be applied to all new subdivisions developed within the boundaries of this overlay zone. The additional requirements would include increased building (primary dwellings and accessory structure) setbacks for lots abutting Dimple Dell Road, Dimple Dell Park, as well as for homes that were abutting any slopes in excess of 30%.

I hope this information is helpful and if you need anything else, please let me know.

# Dimple Dell Overlay Zone Map



# Making Use of Overlay Zones

by Elizabeth A. Garvin, Esq.

## WHAT IS AN OVERLAY ZONE?

Many communities are finding, with increasing frequency, that traditional zoning through residential, commercial, and industrial districts is not sophisticated enough to address complicated growth and development issues. To fill this void, local governments are creating zoning approaches with increased flexibility, aimed at more specialized targets and intended to solve problems identified in their community. One of these tools is the overlay zone.

The overlay zone is, as the name tells us, a special zone placed over an existing zoning district, over part of a district, or over a combination of districts. Put another way, the overlay zone includes a set of regulations that is applied to property within the overlay zone *in addition* to the requirements of the underlying or base zoning district.

The overlay typically provides requirements (or incentives) intended either to protect a specific resource or to encourage development in certain areas. Overlay zones allow for increased flexibility in local zoning since they more closely tailor needed requirements (or incentives) to areas within the community which share certain characteristics.

## USES OF OVERLAY ZONES

Perhaps the most common use of overlays zones is in dealing with development in environmentally sensitive

areas, such as floodplains, wetlands, hillsides, and aquifers. Properties within a floodplain overlay zone, for example, would be subject to requirements designed to minimize flood damage (e.g., minimum building elevations; use of certain building materials). These would be *in addition* to the requirements of the underlying zoning district in which the

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property is located (e.g., the underlying residential, commercial, or industrial zoning district would likely include standards for density, lot size, and setbacks). Thus a home located within both a single-family residential district and a floodplain overlay zone would need to meet the requirements of both.

Another very common type of overlay zone is designed for historic preservation. This overlay would apply to designated historic properties or to specific areas (or streets) within the community.

The historic overlay zone regulations might address issues such as building materials, colors, facade requirements, and other items identified by the community as important to maintain the historic nature of the structure or area. This approach is sometimes referred to as a "mandatory requirement" overlay, indicating that the restrictions identified in the overlay are mandatory prerequisites to development or redevelopment. Each property within a historic preservation overlay zone – as with any overlay zone –

would also be subject to the requirements of the underlying zoning district in which it is located.

A more recent, but increasingly popular, type of overlay zone deals with development along specified transit or highway corridors. Provisions in a transit corridor overlay, for example, might seek to encourage clustered development with increased density along a bus or light-rail corridor. The community would maintain the existing zoning, probably some variation of commercial, and then overlay the transit corridor designation. This corridor might provide density bonuses for clustered development; have a supplemental use list; target incentives such as tax increment financing or public/private partnerships to development within the corridor; and perhaps allow waivers from impact fee payments. This approach is sometimes referred to as an "optional requirement" overlay zone, where the incentives are optional to the developer.

An overlay zone could also contain a combination of mandatory and optional requirements, in a grouping determined by the local government to meet community goals and policies.

An overlay zone is typically created to address only one topic or a related group of topics (e.g., hillside, steep slope, and erosion control). The overlay zone should, however, be an enhancement to the existing zoning, not a complete alternative. If a community finds that it is attempting to address multiple topics within a single overlay or that there are multiple overlay districts within a certain area of the community, it may be time to explore changes to the underlying zoning classifications.

Overlay districts are close in nature to planned unit developments, and indeed may include some of the incentive techniques used in PUDs such as clustering

The "overlay technique ... appears to have derived its name from being drawn on tracing, mylar, or other translucent paper which was then placed or 'laid over' the official zoning map. ..."

— Michael E. Libonati & John Martinez, Sands & Libonati Local Government Law, Sec. 16.07 (1982).

and density bonuses, but overlay districts can be recognized by their subject – the thing that was the reason for the creation of the overlay district (e.g., hillside protection, airport over flight).

#### AUTHORITY FOR ESTABLISHING OVERLAY ZONES

While most state zoning enabling laws do not mention overlay zones, hundreds of municipalities across the country include overlay zones in their zoning ordinances. There is also little case law involving overlay zones. This is not surprising, given that overlay zoning has much in common with conditional use (special permit) zoning provisions, which specify additional requirements which certain uses must satisfy to obtain a zoning permit. Indeed, a New York court, in upholding a village's establishment of a preservation overlay zone noted that "this case is not unlike the power of municipal bodies to deny a special permit to a legislatively authorized use which is subject to the additional requirement of a special permit." *Zartman v. Reisem*, 399 NYS 2d 509 (1977). In researching this article, I found only one major court case, in Arizona, striking down an overlay zone *Jachimek v. City of Phoenix*, 819 P.2d 487 (Ariz. 1991).

As always, however, it makes sense to have your city or town attorney advise you on your own state's legal requirements and ensure that whatever overlay zones you are developing would withstand any legal challenge.

As with any zoning regulation, an overlay zone must be adopted according to state and local notice requirements and subject to required public hearings.

#### BASIC CONTENTS OF AN OVERLAY ZONE

Some of the basic items that are key to a useful overlay zone include:

**Purpose Statement (Intent).** This provision identifies the subject of the overlay, the objectives of the zone, and if available, some of the background information that led to creation of the zone. It should also include reference to any

local plan(s) being implemented by the overlay zone.

**Applicability.** This should include identification of where the overlay zone will apply, the underlying zones that will be affected, and the types of development subject to the overlay zone.

**Definitions.** Any specific or unique terms used within the overlay should be defined either in the overlay zone text or in the definition section of the zoning ordinance.

**Permit/Procedural/Approval Requirements.** If there will be additional permitting, certificate, or procedural requirements, they should be identified or cross-referenced, along with submission requirements. If there will be an intermediate review body, such as a design review board or environmental commission, their role should also be identified.

**Use Lists.** Changes to the underlying zoning district(s) use list(s) (as of right, accessory, conditional or special use permit) must be identified.

**Overlay Criteria.** The substantive requirements of the overlay zone. This might include bulk regulations, site layout, design review, mapping, signage, architecture, parking, requirements for incentives and/or bonuses, and all other information necessary to meet the community's goals for the overlay.

#### SUMMING UP:

Overlay zones are a useful and increasingly common tool employed by communities attempting to direct planning and land use controls at specific problems or issues. They should be carefully drafted to ensure that they reach planning and policy goals and are not simply another layer of general zoning regulation. ♦

*Elizabeth A. Garvin, Esq., AICP, is an attorney and planner with HNTB in Kansas City, Missouri. She has worked with numerous communities on revisions to their land development ordinances. Garvin holds both a law degree and a master's in urban planning from the University of Kansas. She co-authored (with Martin Leitner) "An Introduction to Subdivision Regulation" in Issues 5 and 6 of the PCJ 1992).*



## Highway Overlay Zones

A growing number of communities are adopting overlay zones along major roadway corridors. These overlays set out additional requirements (e.g., setbacks; landscaping) for properties within the designated corridors. The statement of purposes for the Raleigh, North Carolina highway overlay district reflects the typical goals of this kind of overlay:

"The Special Highway Overlay District-1 is intended to protect and preserve the natural scenic beauty along designated major access corridors and specified principal arterials which are located now or will be constructed within this Overlay District. Maintaining the attractiveness of these roadway corridors will enhance the economic value of the community by encouraging tourism and trade. This Overlay District is established also for the purpose of:

- Protecting the public investment in and lengthening the time during which highways can continue to serve their functions without expansion or relocation by expediting the free flow of traffic and reducing the hazards arising from unnecessary points of ingress and egress and cluttered roadside development;
- Reducing the costs of future highway expansions by requiring that buildings and structures be sufficiently set back from the right-of-way to provide adequate storage for vehicles until they can safely enter the highway;
- Reserving adequate roadside space through which neighborhood traffic may be admitted to and from the highway system in a manner that avoids undue traffic concentrations, sudden turnings and stoppings and other hazards; and
- Achieving a common unified appearance along a roadway with other jurisdictions of the county. ..."



# Planning Implementation Tools Overlay Zoning



Center for Land Use Education

[www.uwsp.edu/cnr/landcenter/](http://www.uwsp.edu/cnr/landcenter/)

November 2005

## TOOL DESCRIPTION

Overlay zoning is a regulatory tool that creates a special zoning district, placed over an existing base zone(s), which identifies special provisions in addition to those in the underlying base zone. (see Figure 1). The overlay district can share common boundaries with the base zone or cut across base zone boundaries. Regulations or incentives are attached to the overlay district to protect a specific resource or guide development within a special area.

## COMMON USES

### *Natural Resource Protection*

Overlay districts can manage development in or near environmentally sensitive areas, such as groundwater recharge areas (e.g. to ensure water quality and quantity), special habitat (e.g. species or feature protection) or floodplains (e.g. prevent flood damage). Common requirements may include building setbacks, density standards, lot sizes, impervious surface reduction and vegetation requirements. Structure requirements could include building floor height minimums and flood-proofing to high water level.

### *Development Guidance*

Overlay zones may also be applied to protect historical areas or encourage or discourage specific types of development. Land within the historic overlay district may be subject to requirements that protect the historical nature of the area (e.g. materials, façade design, or color). A community might use incentives along a transit corridor to encourage higher development densities, target uses or control appearance.

## Potential Uses

- ◆ Create a walkable community, connect pathways
- ◆ Preserve/enhance a special district
- ◆ Encourage economic development
- ◆ Preserve/enhance rural character
- ◆ Protect quality of surface water
- ◆ Protect groundwater quality and quantity
- ◆ Manage stormwater
- ◆ Preserve forestry integrity
- ◆ Preserve sensitive area/wildlife habitat
- ◆ Protect aesthetics of the natural environment
- ◆ Preserve farmlands

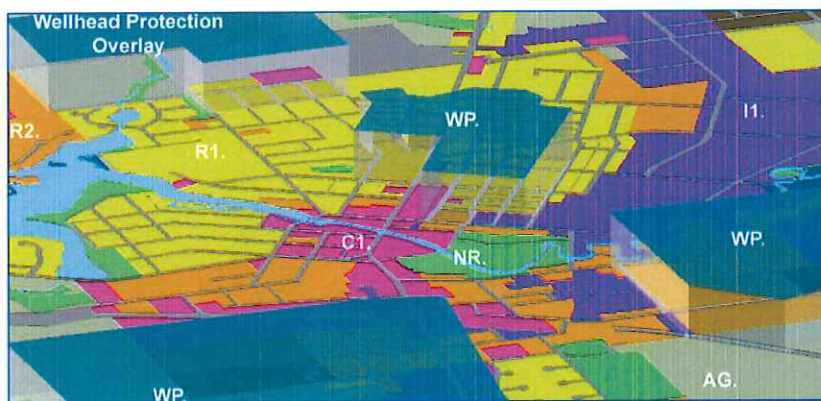


Figure 1. A wellhead protection overlay has special provisions in addition to the requirements of the base municipal zones in order to protect nearby wells from contaminants



## IMPLEMENTATION

### CREATION

Any governmental unit with the power to create zoning districts can create an overlay district. There are three basic steps to creating an overlay district:

- 1. Define the purpose of the district.** The district should have a clearly defined purpose e.g. to protect drinking water, preserve historical character, minimize erosion from storm water runoff, etc.
- 2. Identify the areas that make up the district.** Mapping district boundaries will depend on the natural or cultural resources and the geographic areas that relate to achieving the purpose of the district. For example, if the purpose of the zone is to protect groundwater, important groundwater recharge areas and areas prone to pollution, such as fractured bedrock or areas with a high groundwater table should be mapped..
- 3. Develop specific rules that apply to the identified district.** In a groundwater recharge district for example, provisions may restrict development or require development guidelines that capture and filter water runoff..

“When reviewing a project of any size in the overlay zone, it is important that the development be consistent not only with the goals and objectives of the overlay but with the long-term goals and strategies of the overall municipal comprehensive plan.”

It is critical that the zoning provisions offer clear guidance to both property owners and the governing body charged with approving proposals. Zoning requirements must be applied equally over all properties within the district. The ordinance not only must comply with any state and federal regulations, but must also be consistent with the goals, objectives, and policies of the municipality’s comprehensive plan.

It is important that the local governing body involve the public to clarify issues and explain the reasons behind mapping district boundaries. An educational program targeting developers and affected property owners will help increase awareness and compliance with the new requirements.

The procedures for adopting an overlay district are the same as for adopting a zoning or rezoning provision. The overlay provisions as well as changes to the zoning map must be approved by the local governing body for adoption.

### ADMINISTRATION

Consideration of the overlay district standards can be incorporated into the existing subdivision or site plan review process for large-scale residential developments and most commercial development. Because smaller-scale development will often require only a building permit, it may be necessary to include provisions for a streamlined form of site plan review for these projects. This review could be administered by a municipal board or commission or by a zoning administrator or building inspector. Long-term compliance can be addressed in the existing procedures for current zoning compliance.

## *Report Card: Overlay Zoning*

<b>Cost</b>	<b>Money or staff resources required to implement tool.</b>
<b>A</b>	Assuming a zoning ordinance currently exists, the cost to create the district should be similar to the potential cost to modify the existing ordinance. Little if any additional staff would be required to administer the new zoning provisions.
<b>Public Acceptance</b>	<b>The public's positive or negative perception of the tool.</b>
<b>B</b>	Zoning provisions for the overlay zone in addition to base zoning rules may be confusing to the public without some education.
<b>Political Acceptance</b>	<b>Politician's willingness to implement tool.</b>
<b>B</b>	Political willingness will depend upon the provisions within the ordinance.
<b>Equity</b>	<b>Fairness to stakeholders regarding who incurs costs and consequences.</b>
<b>B</b>	The tool can be perceived as fair if all properties within the zone are treated equally and the criteria for delineating the zone are straightforward and justified.
<b>Administration</b>	<b>Level of complexity to manage, maintain, enforce, and monitor the tool.</b>
<b>B</b>	An overlay district can be integrated into the administration of the existing zoning ordinance. An additional process may need to be established for small projects needing only a building permit. Reviewer training will be needed. A well-written ordinance and clear boundaries will simplify compliance.
<b>Scale</b>	<b>The geographic scale at which tool is best implemented.</b>
<b>Municipal to Regional</b>	The tool is most often implemented at a municipal or county scale. Wisconsin's shoreland zoning program is an example of statewide overlay zoning that is administered locally.

**GRADING EXPLANATION**

A - Excellent

B - Above Average

C - Average

D - Below Average

F - Failing

Comments and grades were derived from a Delphi process conducted with practicing planners and educators in 2005