

**planning and zoning commission for recommendation. Each commission shall have a reasonable time fixed by the governing board to make its recommendations to the governing board.**

**(f) This section shall not preclude growth and development in areas of any county within the state of Idaho which are not within the areas of city impact provided for herein.**

**(g) If the area of impact has been delimited pursuant to the provisions of subsection (a)(1) of this section, persons living within the delimited area of impact shall be entitled to representation on the planning, zoning, or the planning and zoning commission of the city of impact. Such representation shall as nearly as possible reflect the proportion of population living within the city as opposed to the population living within the areas of impact for that city. To achieve such proportional representation, membership of the planning, zoning or planning and zoning commission, may exceed twelve (12) persons, notwithstanding the provisions of subsection (a) of section 67-6504, Idaho Code. In instances where a city has combined either or both of its planning and zoning functions with the county, representation on the resulting joint planning, zoning or planning and the zoning commission shall as nearly as possible reflect the proportion of population living within the impacted city, the area of city impact outside the city, and the remaining unincorporated area of the county. Membership on such a joint planning, zoning or planning and zoning commission may exceed twelve (12) persons, notwithstanding the provisions of subsection (a) of section 67-6504, Idaho Code. (1993)**

#### **Section 67-6526 - Comments**

**Significantly revised by the legislature in 1993. This section has increased importance because, effective 1-1-95, cities will not be able to annex an adjacent area unless it is within its area of city impact, unless requested by the landowner. This section provides:**

- a. for city authority outside corporate limits.
- b. that each city shall agree to an area of city impact prior to October 1, 1994, and shall agree to one of three possible regulatory schemes to be adopted no later than January 1, 1995.
- c. procedures for negotiations and breaking stalemates; parties are to seek a declaratory judgment from the court if they fail to enact appropriate ordinances.
- d. for an election when areas of city impact overlap and the cities cannot agree to application of ordinances within the overlapping area
- e. for representation on city PZ Commission in area of city impact.

#### **PRACTICAL POINTERS:**

This procedure is a way to grant municipalities a measure of authority regarding the perimeter of their city and regulation of development in that area which may be part of their trade area or may be subject to annexation. The recent amendment of this section provides new deadlines for agreement and a court remedy which may not be practical if the city and county cannot agree. The amendment further provides for an election in overlapping areas between two cities if the cities cannot agree to an area or applicable ordinances. Proportional

representation on planning commissions with representatives of the area of city impact is required. The writers have serious concerns regarding the court remedy provided. Title 50 Chapter 13 continues to give cities subdivision review authority within one mile of the corporate limits of the city until an area of city impact agreement is reached.

## **PENALTIES FOR VIOLATION OF LOCAL ORDINANCES**

### **67-6527. Violations - Criminal penalties - Enforcement.**

*A governing board may provide by ordinance for the enforcement of this chapter or any ordinance or regulation made pursuant to this chapter. A violation of any such ordinance or regulation is hereby declared a misdemeanor and the governing board may provide by ordinance for punishment thereof by fine or imprisonment or by both, and may seek civil penalties for such violation. Except that where property has been made non-conforming by the exercise of eminent domain it shall not be a violation and no penalty, either civil or criminal, shall result. In addition, whenever it appears to a governing board that any person has engaged or is about to engage in any act or practice violating any provision of this chapter or an ordinance or regulation enacted pursuant to this chapter, the governing board may institute a civil action in the district court to enforce compliance with this chapter or any ordinance or regulation enacted hereunder. Upon a showing that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or ordinance or regulation enacted hereunder, a permanent or temporary injunction, restraining order, or such other relief as the court deems appropriate shall be granted. The governing board shall not be required to furnish bond. (1975)*

### **Section 67-6527 - Comments**

- a. Governing Board may provide penalties for violation of ordinance.
- b. Criminal misdemeanor penalties allowed (\$300 and/or 6 months in jail).
- c. Civil enforcement can be undertaken, including injunction.

### **PRACTICAL POINTERS:**

Enforcement options include criminal penalties, civil injunctive remedies, and other civil actions. These enforcement practices are critical to maintain the integrity of zoning regulations. Enforcement work should be coordinated through the jurisdiction's regular attorney.

## **APPLICABILITY OF ORDINANCES**

### **67-6528. Applicability of ordinances.**

*The state of Idaho, and all its agencies, boards, departments, institutions, and local special purpose districts, shall comply with all plans and ordinances adopted under this chapter unless otherwise provided by law. In adoption and implementation of the plan and ordinances, the governing board or commission shall take into account the plans and needs of the state of*

**Idaho and all agencies, boards, departments, institutions, and local special purpose districts. The provisions of plans and ordinances enacted pursuant to this chapter shall not apply to transportation systems of statewide importance as may be determined by the Idaho transportation board. The Idaho transportation board shall consult with the local agencies affected specifically on site plans and design of transportation systems within local jurisdictions. If a public utility has been ordered or permitted by specific order, pursuant to title 61, Idaho Code, to do or refrain from doing an act by the public utilities commission, any action or order of a governmental agency pursuant to titles 31, 50 or 67, Idaho Code, in conflict with said public utilities commission order, shall be insofar as it is in conflict, null and void if prior to entering said order, the public utilities commission has given the affected governmental agency an opportunity to appear before or consult with the public utilities commission with respect to such conflict. (1975)**

#### **Section 67-6528 - Comments**

- a. Requires local government to take state's interest into account.
- b. Transportation Department must consult.
- c. Public Utility is exempt if complying with IPUC order and if IPUC has required consultation before entering the order.

#### **PRACTICAL POINTERS:**

Land use ordinances adopted by local governments should take into account the plans of Idaho's State agencies. Nonetheless, all but a few state facilities are subject to local planning and zoning authority. Those exclusions include Idaho Transportation facilities that are of state-wide importance and actions by public utilities which are consistent with orders from the Public Utilities Commission.

## **APPLICABILITY TO AGRICULTURAL LAND**

#### **67-6529. Applicability to agricultural land.**

***No power granted hereby shall be construed to empower a board of county commissioners to enact any ordinance or resolution which deprives any owner of full and complete use of agricultural land for production of any agricultural product. Agricultural land shall be defined by local ordinance or resolution. (1975)***

#### **Section 67-6529 - Comments**

- a. Local planning and zoning cannot impair agricultural use.
- b. Agricultural land shall be defined by local ordinance or resolution.

## **PRACTICAL POINTERS:**

Nothing in a Local Planning Act can be construed to grant authority to local governments to take any action which compromises the activities of anyone engaged in a bonafide agricultural pursuit. Any provision of a local land use regulation which interferes with those agricultural activities is subject to being invalidated.

## **SHELTER HOMES DEFINED AS SINGLE-FAMILY DWELLING**

### **67-6530. Declaration of purpose.**

*The legislature declares that it is the policy of this state that mentally and/or physically handicapped or elderly persons are entitled to live in normal residential surroundings and should not be excluded therefrom because of their disability or advanced age, and in order to achieve statewide implementation of such policy it is necessary to establish the statewide policy that the use of property for the care of eight (8) or fewer mentally and/or physically handicapped or elderly persons is a residential use of such property for the purposes of local zoning. (1993)*

### **67-6531. Single family dwelling.**

*(a) For the purpose of any zoning law, ordinance or code, the classification "single family dwelling" shall include any home in which eight (8) or fewer unrelated mentally and/or physically handicapped or elderly persons reside; and which is supervised.*

*(b) Resident staff, if employed, need not be related to each other or to any of the mentally and/or physically handicapped or elderly persons residing in the home.*

*(c) No more than two (2) of such staff shall reside in the dwelling at any one time. (1993)*

### **67-6532. Licensure, standards and restrictions.**

*(a) The department of health and welfare may require such residences to be licensed and set minimum standards for providing services or operation. Such licensure may be under the residential care home regulations, or under the intermediate care facilities for mentally retarded or related conditions regulations, or under regulations specifically written for such residences.*

*(b) No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential facility which serves eight (8) or fewer mentally and/or physically handicapped or elderly persons and is supervised as required in section 67-6531, Idaho Code, which is not required of a single family dwelling in the same zone.*

*(c) No local ordinances or local restrictions shall be applied to or required for a residential facility which serves eight (8) or fewer mentally and/or physically handicapped or elderly persons and is supervised as required in section 67-6531, Idaho Code, which is not applied to or required for a single family dwelling in the same zone. (1993)*

### **Section 67-6530-32 - Comments**

- a. Policy is to allow mentally retarded and elderly persons to live in normal residential surroundings.
- b. Classifies group home for 8 or fewer mentally retarded or elderly persons as single family dwelling. H&W licenses.

## PRACTICAL POINTERS:

Recently amended to include elderly persons. Residential shelter care facilities for eight people or fewer are considered single family dwellings for purposes of land use ordinances. Questions have arisen in this regard concerning building codes which are not covered by this statute; opinions have been rendered in some jurisdictions, however, that building code restrictions may be affected by this Local Planning Act requirement. You should consult with your agency attorney for further discussion of this matter. Discrimination against shelter care facilities for less than eight persons would be expressly prohibited by this law.

## **RESTRICTION OF SALES OF SEXUAL MATERIAL**

67-6533. Location of stores selling sexual material restricted in certain areas.

*(a) From and after January 1, 1980, no person or entity shall own or operate any store, shop or business which sells or rents any materials defined as obscene materials in section 18-4101, Idaho Code, within twenty-five hundred (2500) feet of any school, church, or place of worship measured in a straight line to the nearest entrance to the premises.*

*(b) From and after January 1, 1980, no person or entity shall own or operate any store, shop or business which sells or rents any materials defined in subsection 1 or section 18-1515, Idaho Code, where such materials constitute ten percent (10%) or more of the printed materials held for sale or rent of such store, shop or business, within twenty-five hundred (2500) feet of any school, church, or place of worship measured in a straight line to the nearest entrance to the premises.*

*(c) From and after the effective date of this act, a violation of subsection (a) or subsection (b) of this section shall be misdemeanor.*

*(d) A judge of a court of competent jurisdiction shall immediately issue a temporary restraining order for a violation of subsection (a) or subsection (b) of this section upon application therefore by any public or private entity or person and upon compliance with the Idaho rules of civil procedure, except that no bond or security for the issuance of such restraining order shall be required. Further, a violation of subsection (a) or subsection (b) of this section shall subject the person and entities therefore to a preliminary and permanent order of any court of this state enjoining them from such violation and no bond or security shall be required from the plaintiff or applicant therefore.*

*(e) No entity, public or private, nor any person shall be liable for any damages, costs or attorney fees for any acts attempting to civilly or criminally enforce this section.*

*(f) Nothing contained in this section shall preempt or prohibit cities or counties from regulating or restricting the location of the business activity described in this section and cities and counties are hereby specially authorized to so regulate or restrict the location of said business activity. (1980)*

### Section 67-6533 - Comments

- a. Sale of obscene materials must be at least 2500 feet from school, church, or place of worship.
- b. Restraining order enforcement is authorized.
- c. Other regulation including location of such businesses is permitted.

### PRACTICAL POINTERS:

Zoning authority may be used to prohibit the location of business selling sexually explicit materials within 2500 feet of any school, church, or a place of worship. This section should be applied in a manner which is sensitive to the nature of civil rights protections and the potential of liability from applying the statute in a way that interferes with First Amendment rights. This subject deserves careful scrutiny by agency attorneys before action is taken in reliance thereon.

**67-6534. Adoption of hearing procedures.**

*The governing board by ordinance shall adopt procedures for the conduct of hearings.*  
(1982)

#### **Section 67-6534 - Comments**

- a. Requires adoption of procedures for hearings.
- b. Must be done by ordinance.

### PRACTICAL POINTERS:

The hearing procedures ordinance does not have to be a sophisticated or detailed document, but can be used as a tool to assist PZ commission members and elected officials in carrying out their duties as well as letting an applicant know what to expect of the hearing process. We recommend that the procedure contain, at a minimum, the following: Staff presentation; applicant presentation; testimony from any person who wants to comment (after they have provided name and address for the record); questions from officials; and rebuttal from applicant.

## **REQUIREMENTS FOR QUASI-JUDICIAL DECISIONS**

**67-6535. Approval or denial of any application to be based upon standards and to be in writing.**

*(a) The approval or denial of any application provided for in this chapter shall be based upon standards and criteria which shall be set forth in the comprehensive plan, zoning ordinance or other appropriate ordinance or regulation of the city or county.*

*(b) The approval or denial of any application provided for in this chapter shall be in writing and accompanied by a statement in the form of findings of fact and conclusions of law that explain the criteria and standards considered relevant, state the facts relied upon, and explain the justification for the decision based on the criteria, standards and facts set forth.*  
(1982)

### Section 67-6535 - Comments

- a. Actions by the local government on applications must be based on plan, ordinances, and standards.
- b. Approval or denial must include findings of fact and conclusions of law which must explain facts, criteria, standards and rationale underlying decision.

### PRACTICAL POINTERS:

While the agenda and materials are being reviewed and while the hearing is being held, PZ members and elected officials (Officials) involved should be: (1) considering how the request conforms or is inconsistent with the governing entity's plan, ordinances and standards; and (2) formulating findings of fact and conclusions. Questions should be asked as by Officials as early as possible during the hearing so that the applicant and the public has an opportunity to respond the question asked. Officials should not be asking questions after the hearing is closed (although this is not prohibited). After the hearing has been closed, Officials must verbalize the facts upon which they based their decision, any applicable conditions, and the substance of their decision as part of the process of approving or disapproving the request.

On complicated or difficult requests, it is often advisable to take the matter under consideration, table the matter to the next meeting, and formulate proposed findings of fact and conclusions, and conditions if applicable, for consideration by your fellow members at the next regular meeting.

### 67-6536. Transcribable record.

***In every case in this chapter where an appeal is provided for, a transcribable verbatim record of the proceeding shall be made and kept for a period of not less than six (6) months after a final decision on the matter. Upon written request and within the time period provided for retention of the record, any person may have the record transcribed at his expense.***

***The governing board shall also provide for the keeping of minutes of the proceedings. Minutes shall be retained indefinitely or as otherwise provided by law. (1982)***

### Section 67-6536 - Comments

- a. Must retain transcribable verbatim record for at least 6 months.
- b. Must keep minutes of proceedings.

### **PRACTICAL POINTERS:**

The hearings standards set forth herein are applicable to all hearings required under the Local Planning Act. The records required and the findings which must be made should be available for public inspection and review such that a reviewing court can conduct a complete and thorough review on the record. These code requirements were set forth in general terms by the Supreme Court decision in 1980 in the case of Cooper v. Board of Commissioners of Ada County. This method of decision making provides a reviewable record which is more readily tracked in an appeal. A down side to the matter is that it does not facilitate arbitration or mediation of land use disputes because the actions taken by the governing body must be on the record and based upon formal proceedings. Note that 67-6519 further requires that the entity specify actions which the applicant could take to obtain a permit.

Taping of hearings is sometimes difficult for small jurisdictions. Small, inadequate equipment is often employed. The failure to have a clear recording could lead to having a court compel rehearing of such matters. The use of two small recorders may aid in meeting this obligation if better equipment can not be afforded.

## **GROUND WATER CONSIDERATIONS**

**67-6537. Application to ground water.**

***When considering amending, repealing or adopting a comprehensive plan, the local governing board shall consider the effect the proposed amendment, repeal or adoption of the comprehensive plan would have on the quality of ground water in the area. (1989)***

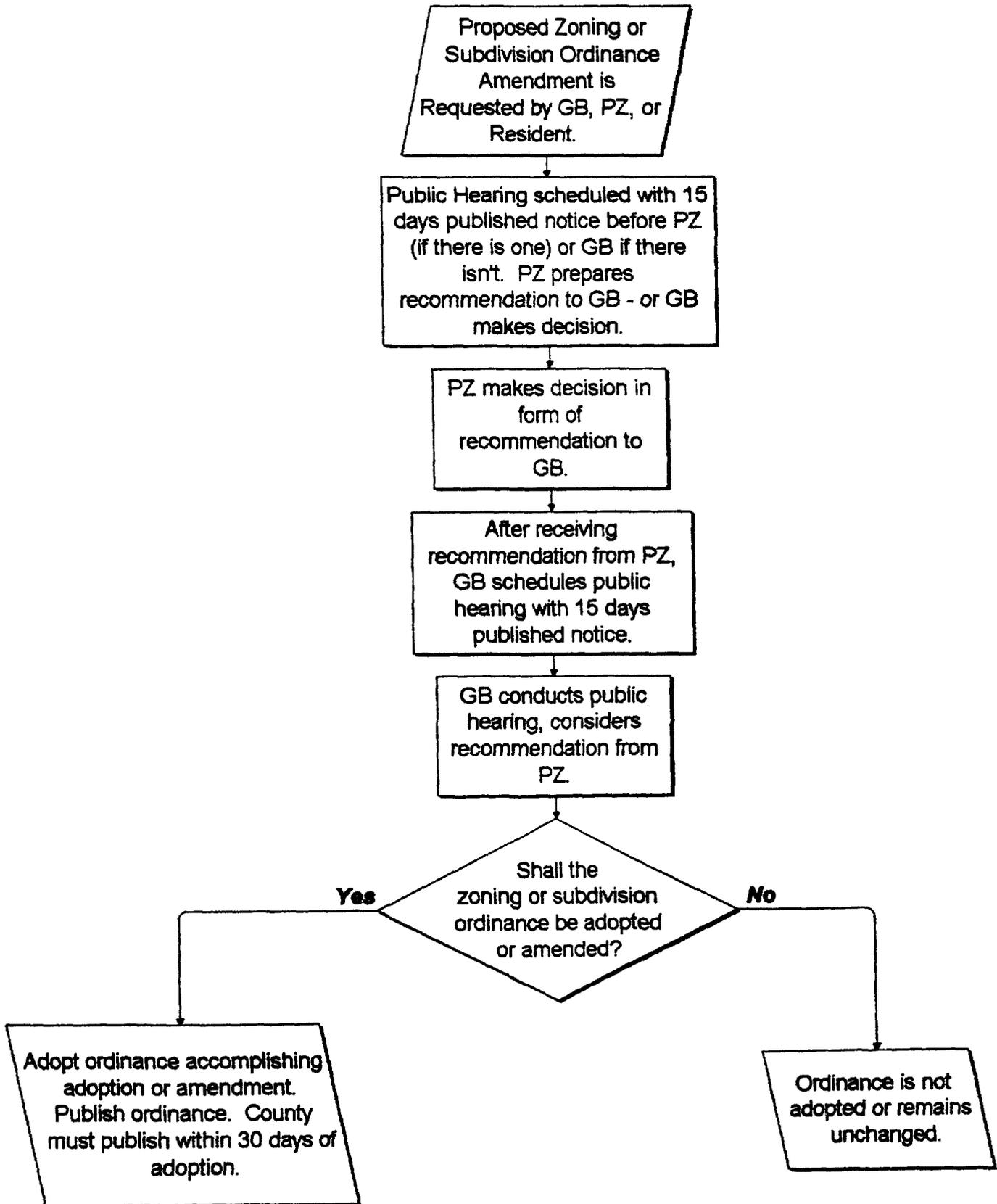
### **Section 67-6537 - Comments**

- a. Must consider effects on groundwater.
- b. Consideration must be given every time comprehensive plan is amended, adopted, or repealed.

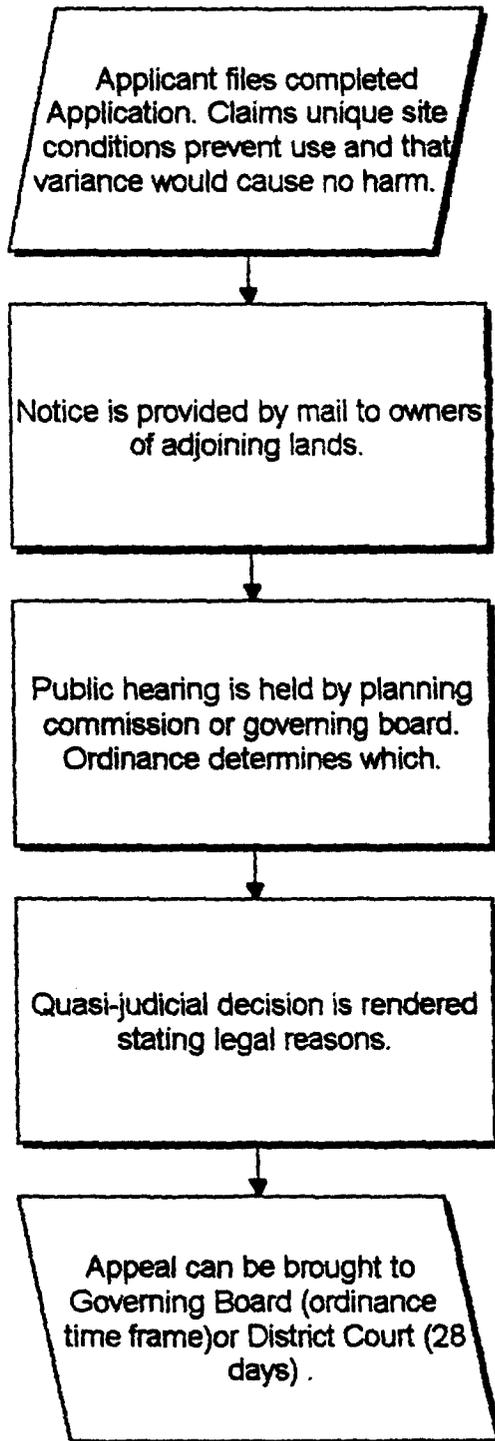
### **PRACTICAL POINTERS:**

This matter will likely be discussed in greater detail when the State Ground Water Quality Council delivers its report to the legislature during the legislature and proposes legislation in this regard. At present time, local ground water authority is substantial by virtue of this code provision. State legislation in the ground water arena may change this in the near future.

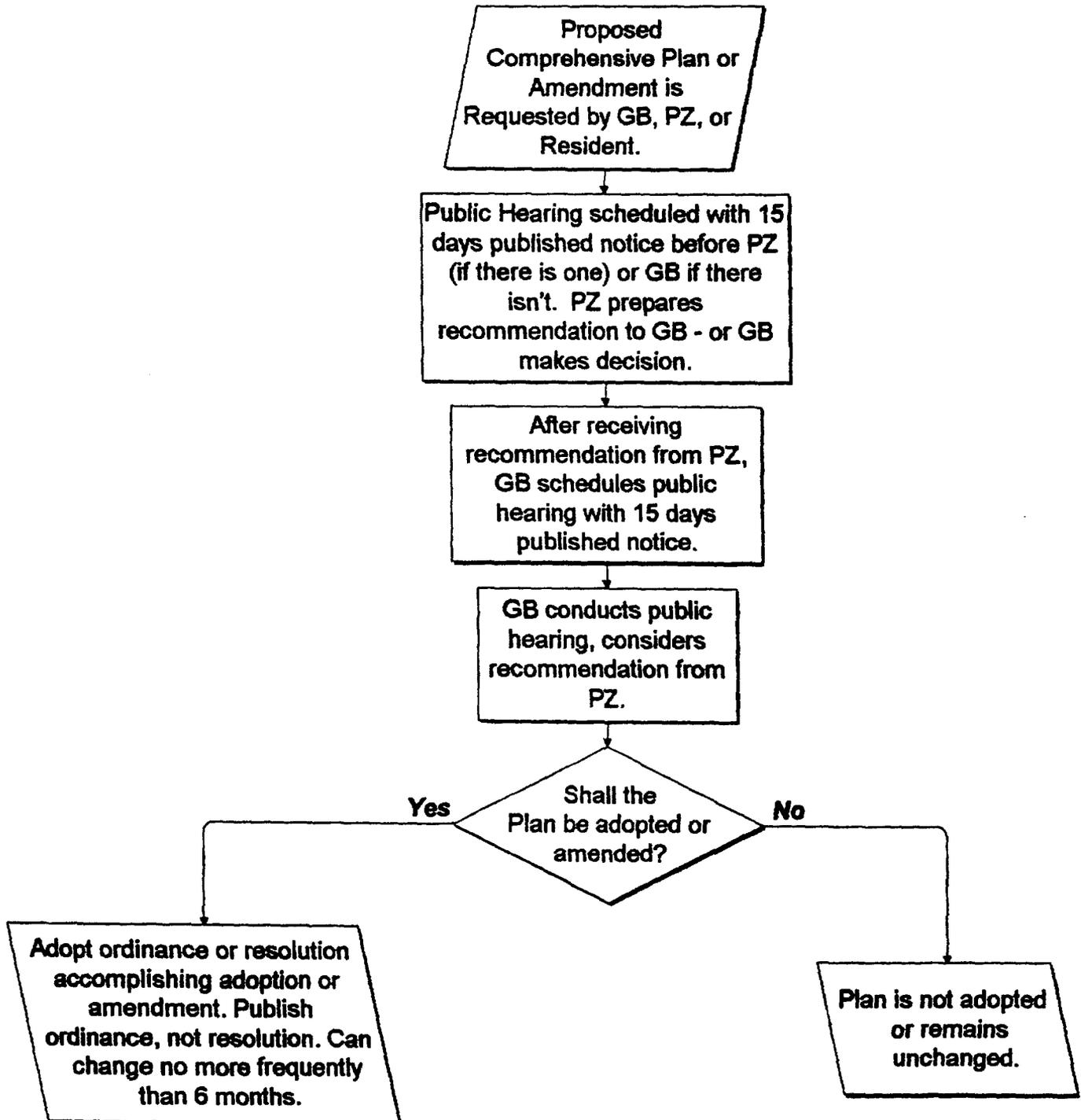
# ADOPTION OR AMENDMENT OF TEXT OF ZONING OR SUBDIVISION ORDINANCE



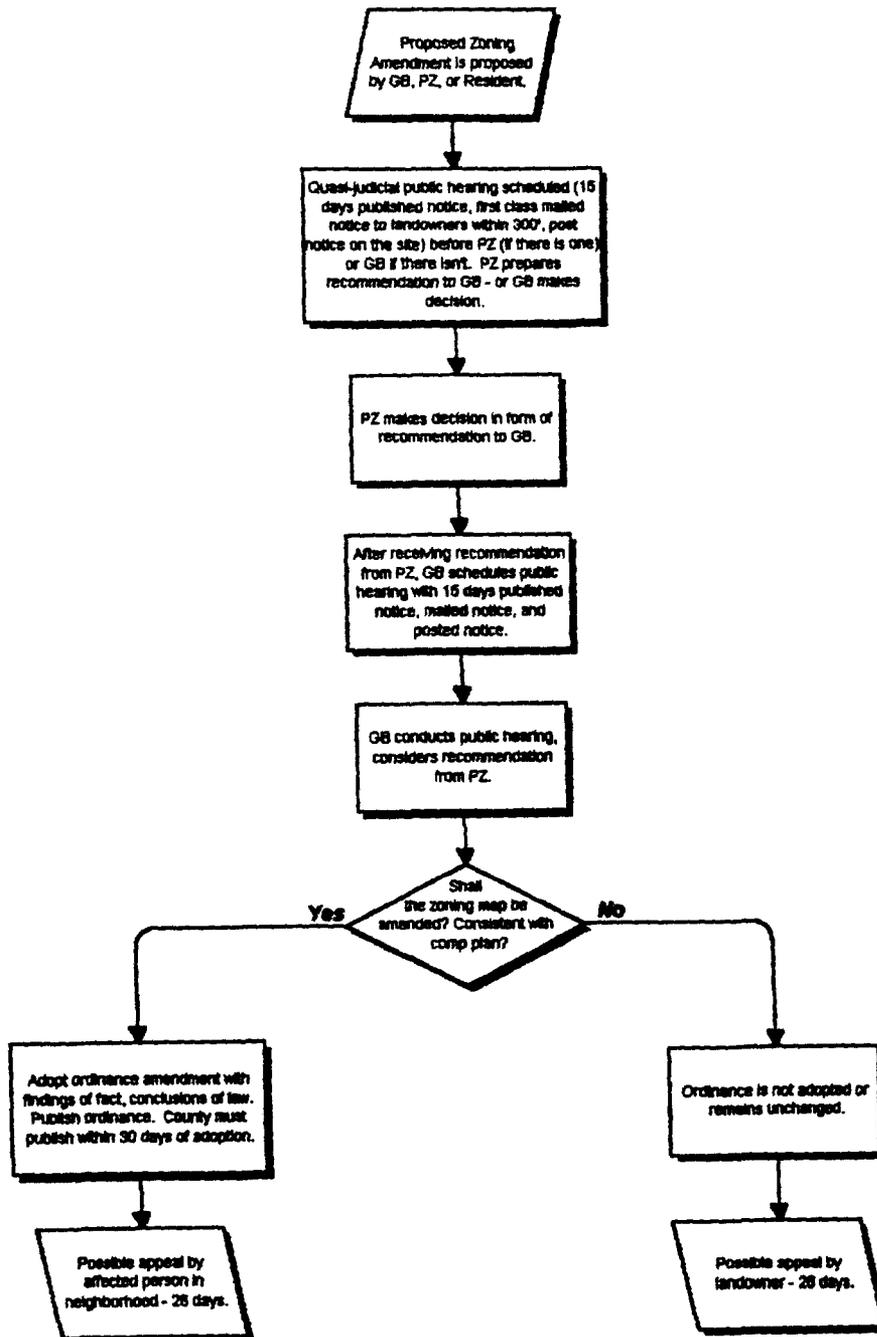
# VARIANCE PROCEDURE



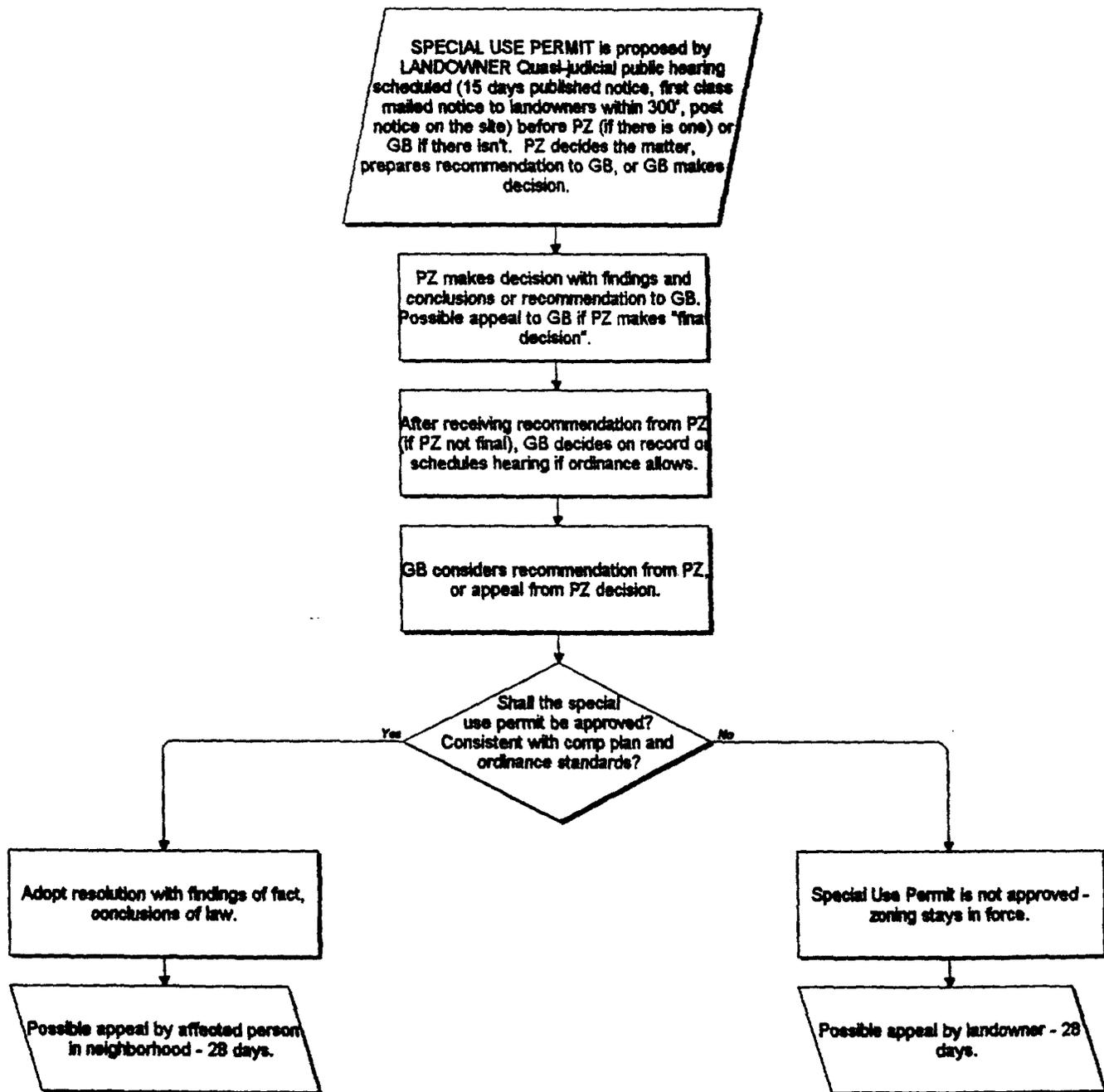
# ADOPTION OR AMENDMENT OF COMPREHENSIVE PLAN.



# AMENDMENT OF ZONING MAP BY ORDINANCE



# CONSIDERATION OF SPECIAL USE PERMIT, SAME AS FOR PLANNED UNIT DEVELOPMENT.





# COUNTY OF SACRAMENTO

## PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT

827 SEVENTH STREET, ROOM 230  
SACRAMENTO, CALIFORNIA 95814  
Telephone: (916) 440-6141  
FAX: (916) 440-6400

DOCKET FILE COPY ORIGINAL

THOMAS W. HUTCHINGS  
DIRECTOR

Robert Sherry, Principal Planner  
Long Range Planning & Enforcement

Tricia Stevens, Principal Planner  
Application Processing

Ana Rhodes, ASO III  
Administration

October 31, 1997

Office of the Secretary  
Federal Communications Commission  
1919 M Street NW  
Washington, DC 20554

Subject: **Federal Communications Commission Preemption of Local Zoning**  
**Docket No. 97-182**

Honorable Secretary:

The Sacramento County Board of Supervisors has recently become aware of proposed rule making (Docket 97-182) which would preempt local government from exercising its full land use authority in the siting and installation of television and radio broadcast towers. At its October 29, 1997, regular meeting the Board of Supervisors voted unanimously to **oppose** in the strongest terms any such preemption of local land use authority.

The Board of Supervisors is aware of the need to accommodate emerging technology in the radio and television broadcast industry; however, the Board believes that retaining local authority for regulating the permitting and placement of broadcast towers is essential to protecting the public interest. Sacramento County has adopted pro-active policies regarding the location and placement of broadcast towers and has a record of acting responsibly in accommodating the needs of both the broadcast industry as well as the public.

The Board of Supervisors of Sacramento County is strongly opposed to the adoption of any regulation which would prevent them from exercising their existing authority to regulate such uses in a responsible manner.

Sincerely,

Thomas W. Hutchings, Director  
Department of Planning and Community Development

c: Board of Supervisors  
Bob Fogel, National Association of Counties  
DeAnn Baker, California State Association of Counties



COMMONWEALTH OF PENNSYLVANIA  
 DEPARTMENT OF TRANSPORTATION  
 HARRISBURG, PENNSYLVANIA 17120

October 30, 1997

OFFICE OF  
 SECRETARY OF TRANSPORTATION

MM97-182  
 RECEIVED  
 OCT 31 1997  
 FCC MAIL ROOM

DOCKET FILE COPY ORIGINAL

FCC Docket 97-296  
 FCC Dockets Branch  
 Room 239, 1919 M Street NE  
 Washington, DC 20037

Dear Commissioners:

The Pennsylvania Department of Transportation strongly opposes Notice of Proposed Rulemaking 97-296. Certainly a perceived need for rapid implementation of digital television (DTV) should not usurp the rights and duties of federal, state, and local agencies to protect the flying public and airports. To ignore safety for the "need" to establish DTV cannot be allowed.

Legislating a 21 to 45 day action period for state or local government is unreasonable. The FCC cannot expect local governments and people to review and act on such a drastic change to their community within this short time period.

Aviation has been somewhat negatively impacted by the multitude of cellular towers constructed nationwide. This has occurred despite the federal, state, and local restriction already in place. However, without these processes, cellular tower construction would have been more chaotic and hazardous to air navigation. Constraints mandated by the systems already in place are necessary to control hazardous DTV construction and to protect the aviation public.

The Pennsylvania Department of Transportation opposes this Notice of Proposed Rulemaking in its entirety and recommends that the system designed to protect public safety be allowed to work. State and local rights must not be sacrificed in the name of television.

Sincerely,

Elizabeth Sarge Voras  
 Deputy Secretary for Aviation,  
 Rail Freight and Ports

No. of Copies rec'd 0  
 List ABCDE