Digital Commons @ Touro Law Center

Scholarly Works | Faculty Scholarship

Spring 2003

Planning for Conflicts of Interest in Land Use Decisionmaking: The Use of Alternate Members of Planning and Zoning Boards

Patricia E. Salkin
Touro Law Center, psalkin@tourolaw.edu

Follow this and additional works at: http://digitalcommons.tourolaw.edu/scholarlyworks

Part of the Land Use Law Commons, Legislation Commons, and the State and Local Government Law Commons

Recommended Citation

31 Real Est. L.J. 375 (Spring 2003)

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ Touro Law Center. It has been accepted for inclusion in Scholarly Works by an authorized administrator of Digital Commons @ Touro Law Center. For more information, please contact ASchwartz@tourolaw.edu.

Zoning and Land Use Planning

Patricia E. Salkin*

Planning for Conflicts of Interest in Land Use Decisionmaking: The Use of Alternate Members of Planning and Zoning Boards

I. Introduction

The number of land use cases that get to court based entirely or in part on an allegation of unethical conduct on the part of a member of a planning board, zoning board, or local legislative body continues to increase. Having documented these cases for a number of years,[1] it appears as though local governments are doing a poor job of planning for the eventuality that there is likely to be a conflict of interest in the local planning and zoning arena. Conflicts in and of themselves are not bad things; in fact, they should be expected, since members of the community serve as decisionmakers for community-based planning and land use control issues. Conflicts of interest, however, can present problems where: board members fail to recognize a conflict; board members fail to disclose and/or recuse themselves on voting where a conflict exists; and where one or more board members has a conflict of interest and their inability to participate in the decisionmaking presents quorum and/or voting problems (e.g., tie votes, or the inability to take a vote).

*Associate Dean and Director of the Government Law Center of Albany Law School where she also holds the title of Professor of Government Law. Salkin is author of the 4th edition of *New York Zoning Law & Practice* (West Group), and co-editor of West's *Zoning and Planning Law Report.* The author gratefully acknowledges the research assistance of Albany Law School student Karin McArthur for this column.

[1]See Salkin, ''Legal Ethics and Land Use Planning,'' 30 The Urban Lawyer 383 (1988); Salkin, ''1998 Survey of Ethics in Land Use Planning,'' 26 Fordham Urb. L. J. (1999), reprinted in Zoning and Planning Law Report, vol. 22 no. 4 (West Group 1999); Salkin, ''Municipal Ethics Remain a Hot Topic in Litigation: A 1999 Survey of Issues in Ethics for Municipal Lawyers,'' 14 BYU J. Pub. L. 209 (2000); and Salkin, ''Ethics Allegations in Land Use Continue to Fill the Court Dockets,'' Zoning and Planning Law Report (forthcoming, April 2003).

@MAGNETO/VENUS/SUPP04/REALESTATE/LAWJOURNAL/SPRING2003 SESS: 1 COMP: 03/10/03 PG. POS: 97

A recent case out of New Jersey highlights again the need for a process allowing for either the appointment of alternate members of planning and zoning boards, or the designation of another board to substitute for a planning or zoning board when all of its members are conflicted. A landowner who owned property contiguous to a private yacht club sought to disqualify seven members of the planning board who were members of the club.[2] Finding a conflict of interest, the court stated, ''It is difficult for the court to believe that a typical citizen would not perceive the clear potential for the objective capacity of the Yacht Club members to be impaired in this setting.''[3] Notwithstanding the recognized conflict, the court concluded that in smaller communities such as were involved in this case, and without an alternate procedure in place to rule on the application, the members of the board should be permitted to rule on the application consistent with their duty to protect the public interest.[4]

States should do more than simply authorize the appointment of alternate members of planning and zoning boards. Too few statutes provide guidance with respect to the reasons for the appointment of alternate members, the procedures that should be followed when initially appointing an alternate board member, and then a procedure for calling the alternate member into service. Furthermore, in instances where alternate members are authorized by state statute or local law to serve for reasons other than conflicts of interest (e.g., a regular member is incapacitated due to illness for an extended period of time), more specificity is needed to clarify when the service of the alternate is completed and the regular board member is able to resume service. Specifically, laws should address whether the alternate may or shall sit for all matters that arose during the alternate member's service, even when the regular member has returned to service. Lastly, statutes and local laws that authorize the appointment of alternates in cases of conflicts of interest must offer more in the way of defining what constitutes a conflict of interest.

---

[2] Gunthner v. Planning Bd. of Borough of Bay Head, 335 N.J. Super. 452, 762 A.2d 710 (Law Div. 2000).

[3] Id.

[4] Id.

II. American Planning Association's Growing Smart Guidebook Partially Recognizes Need for Statutory Reform to Provide for Alternate Board Members

The Growing Smart Legislative Guidebook recently published by the American Planning Association points to the historical development and divergent points of view regarding membership on planning commissions when conflicts might arise. For example, the Guidebook notes that while some of the early pioneers in planning, such as Edward M. Bassett and Frank B. Williams, did not propose limitations on planning commission membership (where such appointments could present ethical dilemmas), other founding leaders of the movement, such as Alfred Bettman, suggested that, ''none of the appointive members [of the municipal planning commission] shall hold any other public office or position in the municipality, except that one of them may be a member of the zoning board of appeals.''[5] These discussions, however, centered more on the politics of planning and zoning than on conflicts of interest that might arise in the ethical sense. The APA Guidebook, while not specifically discussing the need for alternates, does suggest that ''If it is desired that the local government be given the authority to appoint members who serve as alternates,'' that language be added to the enabling statutes.[6] The Guidebook offers the New Jersey statute, discussed below, as a model.[7]

III. State Statutory Responses

A. General Authority

Some states have begun to address the use and selection of alternate members for planning and zoning boards in state statutes. Many states simply authorize the designation of alternates without much guid-

[5]American Planning Association, Growing Smart Legislative Guidebook, 7-34 (2002) [hereafter referred to as APA Legislative Guidebook] citing Alfred Bettman in Edward Bassett, Frank B. Williams, Alfred Bettman, and Robert Witten, Model Laws for Planning Cities, Counties and States Including Zoning, Subdivision Regulation, and Protection of Official Map (Cambridge, Mass.: Harvard University Press, 1935), 76.

[6]APA Legislative Guidebook, 7-34.

[7]Id., citing to N.J.S.A. § 40:55D-23.1 (1997).

ance (e.g., Alabama,[8] Colorado,[9] Illinois,[10] Louisiana,[11] Maryland, [12] Missouri,[13] Rhode Island,[14] Texas,[15] and Utah[16]).

[8]With respect to planning commissions, Ala. Code 1975 § 11-52-13(a) provides in part, ''each member of the governing body shall nominate an alternate member of the commission subject to the approval of the governing body. The powers and duties of the alternate members shall be prescribed by the governing body. Alternate members serve at the pleasure of the governing body.'' For the board of adjustment, Alabama Statutes provide in part, ''In addition to the five regular members provided for in this subsection two supernumerary members shall be appointed to serve on such boards at the call of the chairman only in the absence of regular members and while so serving shall have and exercise all of the power and authority for regular members.'' Ala. Code 1975 § 11-52-80(a).

[9]According to Colorado Statutes, ''The governing body may provide by ordinance for filling vacancies on the board, for designation of alternate members, and for removal of members for inefficiency, neglect of duty, or malfeasance in office.'' C.R.S.A. § 31-23-307.

[10]Illinois statutes simply mention that up to two alternates may be appointed and that, ''Alternate members, if appointed, shall serve as members of the board only in the absence of regular members, with the alternate member who has the greatest amount of time remaining in his or her term to have priority over the other alternate member in determining which alternate member shall serve in the absence of a regular member.'' 55 ILCS 5/5-12010.

[11]Louisiana statutes simply provide authorization for the appointment of up to two alternate members of the board of adjustment and provide that ''Alternate members shall serve only when called upon to comprise a full five-member board when a quorum is present. When so serving, alternate members shall have all the powers and duties of regular members.'' See LSA-R.S. §§ 33:4727(A)(2), (3). However, in certain parishes and cities (e.g., Orleans and Slidell) the ability to appoint alternates has been abolished.

[12]With respect to planning commissions, Maryland statutes provide: ''In a municipal corporation, the local legislative body may designate one alternate member of the commission who may sit on the commission in the absence of any member of the commission. When the alternate is absent, the local legislative body may designate a temporary alternate to sit on the commission.'' MD Code, Art. 66B § 3.02(g). Although the language is permissive for planning commissions (except in Cecil County where the language is mandatory—see MD Code, Art. 66B § 14.04(b)(1)), it is mandatory that an alternate be appointed for a board of appeals (''Each local legislative body shall designate one alternate member for the board of appeals who may sit on the board when any other member is absent. When the alternate member is absent, the local legislative body may designate a temporary alternate.''). See MD Code, Art. 66B § 4.07(b)(1), (2).

[13]Missouri statutes creating the boards of adjustment simply provide, ''Three alternate members may be appointed to serve in the absence or disqualification of regular members.'' V.A.M.S. § 89.080 (1998).

Yet in other states, such as Connecticut, each local entity has been entrusted with the power to adopt ordinances that sanction the appointment or election of alternate members, with additional guidance.[17] For example, a Connecticut statute specifies when and for what reasons regular members should be disqualified, and the statute forbids members from representing any party on any matter before any planning board.[18]

B. Appointment of Alternates Specifically for Conflicts of Interest

In New York, a local legislative body may enact a local law establishing alternate planning board positions for the express purposes of substituting a member in the event that member has a conflict of interest.[19] While the broad statutory authorization exists for the appointment of an alternate board member, the law is silent as to how a conflict of interest is to be identified and who determines that a conflict does indeed exist for purposes of triggering the alternate appointment.[20]

Furthermore, although the statutes in New York specify that alternates may be appointed only in cases where there is a conflict of interest (e.g., not when a member is ill, out of town, or otherwise unable to attend the meeting), the New York Attorney General has opined that local govern-

[14]Rhode Island statutes specifically allow three towns to appoint two alternate members to the planning board. No other legislative guidance is offered. See RI St. § 45-22-3(c).

[15]For alternate members of the boards of adjustment, Texas statutes simply provide, ''The governing body, by charter or ordinance, may provide for the appointment of alternate board members to serve in the absence of one or more regular members when requested to do so by the mayor or city manager.'' See V.T.C.A., Local Government Code § 211.008(c).

[16]Utah statutes provide that ''The board of adjustment shall consist of five members and whatever alternate members that the chief executive officer considers appropriate.'' U.C.A. 1953 § 10-9-710(2)(a).

[17]Conn. Stat. Ann. §§ 8-1b, 5 (2001).

[18]Conn. State. Ann. §§ 8-11, 8-21.

[19]See Gen. City Law § 27(16); Town Law § 271(15) and Village Law § 7-718(16) (planning board members).

[20]See Alternate Members of Planning Boards and Zoning Boards of Appeals,'' Legal Memorandum LU06 (Counsel's Office), New York State Department of State, available at: http://www.dos.state.ny.us/cnsl/alterate.html.

ments may, using their home rule authority, supersede these provisions of state law and allow alternates to sit even when no conflict of interest is present.[21]

Not all states specifically recognize the use of alternates when a conflict arises. North Carolina, for example, allows for the appointment of alternates only for the purpose of serving in the absence of a regular member (though one can infer that absence can include absence for a conflict).[22] In North Dakota, an alternate member of a board of adjustment may be appointed by the local legislative body upon the request of the board of adjustment, and the alternate member ''shall sit as an active member when and if a member of said board is unable to serve at any hearing.''[23] Similarly, for zoning commissions in Ohio, alternate members take the place of an absent regular member.[24]

1. Defining Conflicts of Interest

Most states fail to specifically define what constitutes a conflict of interest for members of planning and zoning boards in applicable statutes. Some states provide broad statements, such as that of the Indiana statute, which simply refers to a conflict of interest as when a member has a ''direct or indirect financial interest.''[25] Connecticut goes into more detail, likewise forbidding participation in matters in which members have direct or indirect financial interests; the statute adds personal interest to the list

[21] Op. N.Y. Atty. Gen. 99-36 (12/24/99).

[22] N.C.G.S.A. § 153A-345 (1985). The statute further provides that, ''Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving in the absence of a regular member, has and may exercise all the powers and duties of a regular member.'' Id. See also N.C.G.S.A. § 160A-388 (a).

[23] N.D.C.C. § 40-47-07.

[24] For rural zoning commissions see Oh. St. § 303.04. The statute further provides that alternates must meet the same appointing criteria as regular members, and when appointed, they are authorized to vote on any matter that the regular member was authorized to vote on. Local ordinances are to specify the procedures for the appointment of alternates. Id. See also Oh. St. § 519.04 for the same provisions for township zoning commissions.

[25] Ind. Code. Ann. § 36-7-4-909 (West 1997).

@MAGNETO/VENUS/SUPP04/REALESTATE/LAWJOURNAL/SPRING2003 SESS: 2 COMP: 03/10/03 PG. POS: 102

of disqualifying instances, and calls for disqualifications to be recorded.[26]

C. Further Guidance on the Designation of Alternate Members

In New Hampshire, alternate board members are identified/appointed in the same manner as members of planning and zoning boards,[27] but the chairperson of the local land use board is vested with the authority to designate an alternate board member whenever a regular member is absent or disqualified.[28] The New Hampshire provision goes on to delineate the reasons members should disqualify themselves as those matters and questions before the board in which a member ''has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law.''[29] Further, to avoid even the appearance of impropriety, New Hampshire allows for an advisory, non-binding vote by members to ascertain if one should be disqualified from voting.[30]

In Minnesota, if a local board of adjustment has only three members (state statutes provide that the board may contain from three to seven members), the local ordinance creating the three-member board may also provide for the appointment of one alternate board member.[31] It is the responsibility of the board chair to direct the alternate, if and when desired, to ''attend all meetings of the board and participate fully in its activities,''[32] but the alternate ''shall not vote on any issue unless authorized

---

[26]Conn. Stat. Ann. § 8-21.

[27]N.H. Rev. Stat. § 673:6(a) states, ''The local legislative body may provide for the appointment of not more than 5 alternate members to any appointed local land use board, who shall be appointed by the appointing authority. The terms of alternate members shall be 3 years.''

[28]N.H. Rev. Stat. § 673:14 provides in part, ''If a member is disqualified or unable to act in any particular case pending before the board, the chairperson shall designate an alternate to act in the member's place . . . ''

[29]N.H. Rev. Stat. § 673:14(I).

[30]N.H. Rev. Stat. § 673:14(II).

[31]M.S.A. § 394.27 (2) (1996).

[32]Id.

to do so by the chair.''[33] The statutes goes on to state ''The chair shall authorize the alternate board member to vote on an issue when a regular member is absent, physically incapacitated, abstains because of a possible conflict of interest, or is prohibited by law from voting on that issue.''[34]

New Jersey state statutes offer a further level of detail by requiring that alternates be designated at the time of initial appointment as Alternate No. 1 and Alternate No. 2.[35] Further, the statute allows an alternate to sit and fully participate in discussions and proceedings of the board, but the alternate may not vote on matters unless the regular member for whom s/he is an alternate is either absent or disqualified.[36] To ensure that business can come before the board even where there may be conflicts of interest,[37] New Jersey takes the issue one step further and allows members from the Board of Adjustment to serve on a Planning Board, and vice versa, when there is a lack of a quorum due to personal or financial conflicts.[38] Alternate members are prohibited by statute from serving as chairman or vice chairman of the planning board.[39]

Nebraska takes a similar approach to the designation of first and second alternates for the zoning boards of appeals. State law provides, ''Two additional alternate members shall be appointed and designated as first alternate and second alternate members, either or both of whom may attend any meeting and may serve as voting and participating members of the board with the authority of a regular board member at any time when less than the full number of regular

---

[33]Id.

[34]Id.

[35]N.J.S.A. § 40:17-1.1 (1991); N.J.S.A. § 40:55D-23.1 (1991).

[36]Id.

[37]New Jersey statutes authorizing the appointment of alternates recognize that even alternates can have prohibited conflicts on interest (see, e.g., N.J.S.A. § 40:55D-23.1, which provides in part, ''No alternate member shall be permitted to act on any matter in which he has either directly or indirectly any personal or financial interest. An alternate member may, after public hearing if he requests one, be removed by the governing body for cause.'').

[38]N.J.S.A. §§ 40:55D-23.2, 40:55D-24 (2003).

[39]N.J.S.A. § 40:55D-24.

board members is present and capable of voting.''[40]

In Michigan, the local legislative body is directed to call alternates on a ''rotating basis as specified by the zoning ordinance.''[41] Connecticut statutes offer another twist, providing that ''If a regular member of a zoning board of appeals is absent, he may designate an alternate from the panel of alternates to act in his place. If he fails to make such designation or if he is disqualified, the chairman of the board shall designate an alternate from such panel, choosing alternates in rotation so that they shall act as nearly equal a number of times as possible.''[42] It is peculiar that individual board members should get to select their alternate, particularly when they are disqualified for a conflict of interest from participating in the matter. It would seem more appropriate for either the chair of the board to make the selection, or for the local law to provide for the specific rotation to best avoid even the appearance of impropriety. In Pennsylvania, the designation of an alternate is to be made on a ''case-by-case basis in rotation according to declining seniority among all alternates.''[43]

D. Voting Rights of Alternate Board Members

Although many states allow for the possibility of alternate board members in some manner, whether by appointment or by election, such alternates, while typically able to participate in meetings and hearings, are allowed to vote only when a regular member is absent or disqualified. This raises a number of interesting issues, particularly when the alternate is filling in simply because a regular board member is absent.

---

[40]Neb. Rev. St. § 14-408 (2001). With respect to planning commissions, however, Nebraska law allows cities of the first or second class and villages, by local ordinance, to provide for the appointment of only one alternate commission member. The statute further details that this alternate member is to be chosen by the mayor with the approval of a majority vote of the elected legislative body. The state statute further directs, ''The alternate member shall serve without compensation and shall no other municipal office. The term of office of the alternate member shall be three years, and he or she shall hold office until his or her successor is appointed and approved.'' Neb. Rev. St. § 14-408 (2001).

[41]M.C.L.A. § 125.585(2) (1997).

[42]C.G.S. § 8-5a. The statute goes on to require that, ''If any alternate is not available in accordance with such rotation, such fact shall be recorded in the minutes of the meeting.'' Id.

[43]53 P.S. § 10906(b).

Where a regular board member is disqualified for a conflict of interest, this is usually identified at the start of an application review and the alternate can be ''activated'' to review that application from start to finish (e.g., one board meeting or six board meetings—however long that particular matter takes). Where an alternate is called into service due to the absence of a regular board member, however, there are often no rules governing the matters over which the alternate can vote. Specifically, questions may arise as to the alternate's ability to vote on matters that have previously come before the board and may be under continuing review. In addition, if the alternate sits for one month due to absence of a regular member, and an application is held over until the next regularly scheduled meeting for additional review, there can be disagreement as to whether the alternate member who heard the application in the first instance should continue to take part in the review of that application, or whether the regular board member regains his or her right to vote on the matter when the board member returns from the one-meeting absence.

Michigan statutes address this issue for zoning boards of appeals by stipulating that when an alternate member ''fills in'' for a regular member, the alternate will preside over that matter until its completion or until a final decision, rather than hand it off to the regular member in the middle of the proceedings.[44]

IV. Drafting Local Laws to Provide for Alternate Board Members

From the foregoing discussion, it is clear that state enabling statutes lack consistency with respect to the use of alternate members of planning and zoning boards. If we start with the premise that alternate members are needed for the smooth operation of government land use decisionmaking, including the fact that alternates can be used to avoid, whenever possible, tie votes (due to either

[44] M.C.L.A. § 125.288(2) (1997). In Michigan, while an alternate may be appointed at any time where a regular board member has a conflict of interest, a regular member must be absent from or unable to attend two or more consecutive meetings before an alternate can be appointed. Id. Interestingly, for planning boards, there is no two consecutive meeting requirement before alternates can be called to sit in for regular members. See M.C.L.A. § 125.585(2) (1997).

absence or conflicts) and can be designated to prevent allegations of unethical conduct on the part of board members who may have real or perceived conflicts of interest, state statutes largely leave the task to the creativity of the local government in crafting ordinances and laws governing the procedures for the use of alternate members. With some exceptions, described in the details above, municipalities must develop a fair set of guidelines addressing all aspects of the use of alternates. What follows is some advice on what should be considered in the development of these local laws.

A. Naming of Alternate Members

Alternate members should be named at the same time and in the same manner as regular board members. This prevents a situation where a local official could be accused of designating an alternate in the first instance solely due to his/her stance on a particular current and politically sensitive land use issue. It also allows for a political balance of power when the chief elected official recommends the alternate subject to approval of the local legislative body. It would not be prudent to permit either of these entities, or the planning or zoning board chair, to have the unchecked power to make such an appointment. While some statutes authorize the appointment of a certain maximum number of alternates (e.g., one or two), where no such limitation exists it makes sense to consider appointing a panel of alternates equal to at least a majority number of members of the board. In addition, an effort should be made to find alternates who do not specifically resemble other board members (e.g., whenever possible, alternates should be considered who come from different professions, sit on different volunteer boards, and live in different neighborhoods). This will help in avoiding situations where both regular and alternate members have conflicts.

B. Terms of Office

Alternate members should be appointed for specific terms, which may or may not be renewable. Terms can be consistent with the term of office for regular board members (e.g., usually three years) and they may be staggered to parallel the terms of office of regular board members. Most statutes are silent as to terms of office for alternates.

C. Duties and Compensation

It is not enough to assume that an alternate will ''spring

into action'' upon an absence or disqualifying conflict of a regular board member. Regular board members attend many meetings, may undergo training, and, after a time in office, are fairly familiar with the state and local laws governing land use—more so than the average citizen. Careful consideration must be given as to how to adequately prepare an alternate to assume office in the event a regular member is unable to serve on a particular matter. Options include imposing the same requirements (and offering the same opportunities) for alternate board members as for regular board members. This includes attendance at all meetings (and a decision as to whether and to what extent, and in what capacity, an alternate member may participate in any of these meetings) and all training sessions.[45] Where this option is selected, it may require a small fiscal commitment from the municipality, both for parity of compensation where regular board members receive a ''salary,'' and additional funds to cover the cost of training.[46] By imposing these more stringent requirement on alternate members, applicants can be best assured that the alternates are equally prepared to review their application as are regular board members.

Where the additional compensation is not available, and/or the municipality determines that equal duties (absent a vote unless officially called into service) are not necessary, alternate members should be appointed as close to the start of a review of the particular application as possible. This means that absences should be known with as much advance notice as possible[47] (e.g., where a board member is leaving for a planned vacation, a scheduled out-of-town business trip, or scheduled surgery), and con-

---

[45] For example, in Pennsylvania, alternates to the zoning board ''may participate in any proceeding or discussion of the board but shall not be entitled to vote as a member of the board nor be compensated . . . unless designated as an alternate member'' pursuant to statute. See 53 P.S. § 10903(b).

[46] Where alternates are appointed in Virginia, this is the approach prescribed by state statute. Specifically, the law provides, ''The qualifications, terms and compensation of alternate members shall be the same as those of regular members.'' See Va. Code Ann. § 15.2-2308(A).

[47] For example, Virginia statutes require that when a regular board member knows that he or she will be absent from a meeting or will have to abstain from an application at a meeting, they must notify the chairman twenty-four hours prior to the meeting of such fact. See Va. Code Ann. § 15.2-2308(A).

flicts of interest for regular board members should be identified and articulated as early as possible.

D. Designating the Alternate to Serve

In most cases, municipalities will designate more than one alternate. Local law should set forth the procedure for designating the specific alternate to serve. Whenever possible, discretion should be removed from this designation so as to avoid the appearance that the appointing entity is ''shopping'' for a particular point of view. Alternates may designated, for example, as number one and number two. Procedures should then indicate whether alternate one will always be called first, or whether the alternates are to called on a rotating (or alternating) basis. There may certainly be instances when both or all alternates are simultaneously serving in place of regular board members.

E. Attendance by Alternates at Meetings

This issue relates in part to the duties of board members discussed above. Where alternates are required to attend all regularly scheduled board meetings, it provides further assurance to the applicant that, where there is a withdrawal of a regular member further into the review process (e.g., not from the beginning), the alternate member is fully knowledgeable about the issues involved in the review/proceedings. Issues can also arise where a decision is reached on the application with the assistance of an alternate board member, and the applicant later comes back with a similar/related request. Procedures should discuss what, if any, role the alternate member should have in this regard.

F. Right to Vote

Typically, alternates will have a right to vote only when they are designated to replace a regular board member for the specific reasons the alternate was appointed. Such a right to vote is easily understood, for example, when an alternate is appointed for the review of a particular application because a regular board member has a conflict of interest on that application. More guidance is needed, however, where an alternate is appointed due to the absence of a regular member. In this scenario, does the alternate stay as a voting member of the board, in the shoes of the absent board member, for all future meetings in which matters brought before the board in the regular member's absence might come up—even after the regular board member has re-

turned to service? This issue can be resolved by simply allowing the alternate to see through, from start to finish, all applications that were begun under his/her service on the board as a full (alternate) member. This option, however, would require the alternate member potentially to ''spring into service'' at any number of future board meetings. Some municipalities might prefer, particularly where there is no conflict of interest, to have the regular board member assume these responsibilities. A dilemma exists in situations where the alternates are appointed for reasons other than conflicts of interest, e.g., absences. Legitimate questions arise as to whether alternates should vote on matters that had previously been reviewed by the board prior to the alternate's appointment, and where the alternate was not in attendance at these meetings. Although fairness issues could be raised by the applicant, these are no different from a situation in which a term of office ends for a regular board member and a new member is appointed to the board. Terms of office do not always end to coincide with the conclusion of all ''old business'' before the board.

V. Conclusion

It is a good idea for municipalities to appoint alternate members for planning and zoning boards. Such appointments, however, require that local governments consider the range of policy issues that are likely to arise, so that they can be addressed either in the local law/ordinance authorizing the appointment of alternates, or addressed in the by-laws or procedures governing the operations of planning and zoning boards (where such by-laws or procedures exist).